

*In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel, under existing statutes and court decisions and assuming compliance with certain tax covenants described herein, (i) interest on the Series 2019 Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Series 2019 Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code. Bond Counsel is further of the opinion that, under existing statutes, interest on the Series 2019 Bonds is exempt from personal income taxation imposed by the State of New York or a political subdivision thereof, including The City of New York. See "TAX MATTERS" herein regarding certain other tax considerations.*



**\$20,685,000**  
**BUILD NYC RESOURCE CORPORATION**  
**Revenue Bonds**  
**(New Dawn Charter Schools Project), Series 2019**

**Dated: Date of Issuance**

**Due: February 1, as shown on the inside front cover**

The above-referenced Build NYC Resource Corporation Revenue Bonds (New Dawn Charter Schools Project), Series 2019 (the "Series 2019 Bonds") are special limited revenue obligations of Build NYC Resource Corporation (the "Issuer") payable exclusively from the Trust Estate as described in this Limited Offering Memorandum. Undefined capitalized terms on this cover are defined in the text hereof or in APPENDIX E, APPENDIX F or APPENDIX G of this Limited Offering Memorandum.

**The Series 2019 Bonds are special limited revenue obligations of the Issuer, payable as to principal, redemption price and interest, from and secured by (i) certain unconditional payments to be made by the Institution (as defined below) pursuant to the Loan Agreement, dated as of February 1, 2019 (the "Loan Agreement"), between New Dawn Charter Schools, a New York not-for-profit education corporation (the "Institution"), and the Issuer, (ii) a pledge of certain funds and accounts established under the Indenture of Trust, dated as of February 1, 2019 (the "Indenture"), between the Issuer and The Bank of New York Mellon, New York, New York, as trustee (the "Trustee"), and (iii) mortgage liens on and security interests in the Mortgaged Property, including the Facility (as defined herein). Neither the State of New York (the "State") nor any political subdivision thereof, including The City of New York, New York (the "City"), shall be obligated to pay the principal or redemption price of, or the interest on, the Series 2019 Bonds. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, including the City, is pledged to the payment of the Series 2019 Bonds. The Series 2019 Bonds will not be payable out of any funds of the Issuer other than those pledged therefor pursuant to the Indenture. The Series 2019 Bonds will not give rise to a pecuniary liability or charge against the credit or taxing powers of the State or any political subdivision thereof, including the City. No recourse will be had for the payment of the principal of, or the interest on, the Series 2019 Bonds against any member, officer, director, employee or agent of the Issuer. The Issuer has no taxing power.**

The Series 2019 Bonds will be issued by the Issuer pursuant to the Indenture. The Series 2019 Bonds will be payable from (i) amounts held by the Trustee under the Indenture; and (ii) loan payments to be made by the Institution under the Loan Agreement. The Series 2019 Bonds will be additionally secured by the Mortgage, and a pledge of certain funds and accounts held under the Indenture. See "THE PROJECT AND PLAN OF FINANCE" and "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS" in this Limited Offering Memorandum.

Proceeds derived from the sale of the Series 2019 Bonds will be used by the Institution, along with other available funds, for the purposes of funding: (i) the acquisition, construction, renovation, equipping and furnishing of an approximately 24,000 square-foot building on an approximately 7,500 square-foot parcel of land located at 238-242 Hoyt Street, Brooklyn, New York (the "Facility"), which is being operated by the Institution as a public charter school for over-aged and under-credited students in grades 9-12, (ii) a debt service reserve fund; and (iii) costs of issuance of the Series 2019 Bonds. See "THE PROJECT AND PLAN OF FINANCE" and "THE SERIES 2019 BONDS" in this Limited Offering Memorandum.

Interest on the Series 2019 Bonds will be payable on February 1 and August 1 of each year, commencing August 1, 2019. The Series 2019 Bonds will be issued as fully registered bonds in the minimum authorized denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York ("DTC"). Purchases of the Series 2019 Bonds will be made in book-entry form only. Purchasers of beneficial interests will not receive physical certificates. The Series 2019 Bonds are subject to redemption as described in this Limited Offering Memorandum. See "THE SERIES 2019 BONDS" in this Limited Offering Memorandum. An investment in the Series 2019 Bonds is subject to certain risks. See "RISK FACTORS" in this Limited Offering Memorandum. Investors must read the entire Limited Offering Memorandum, including the Appendices hereto.

---

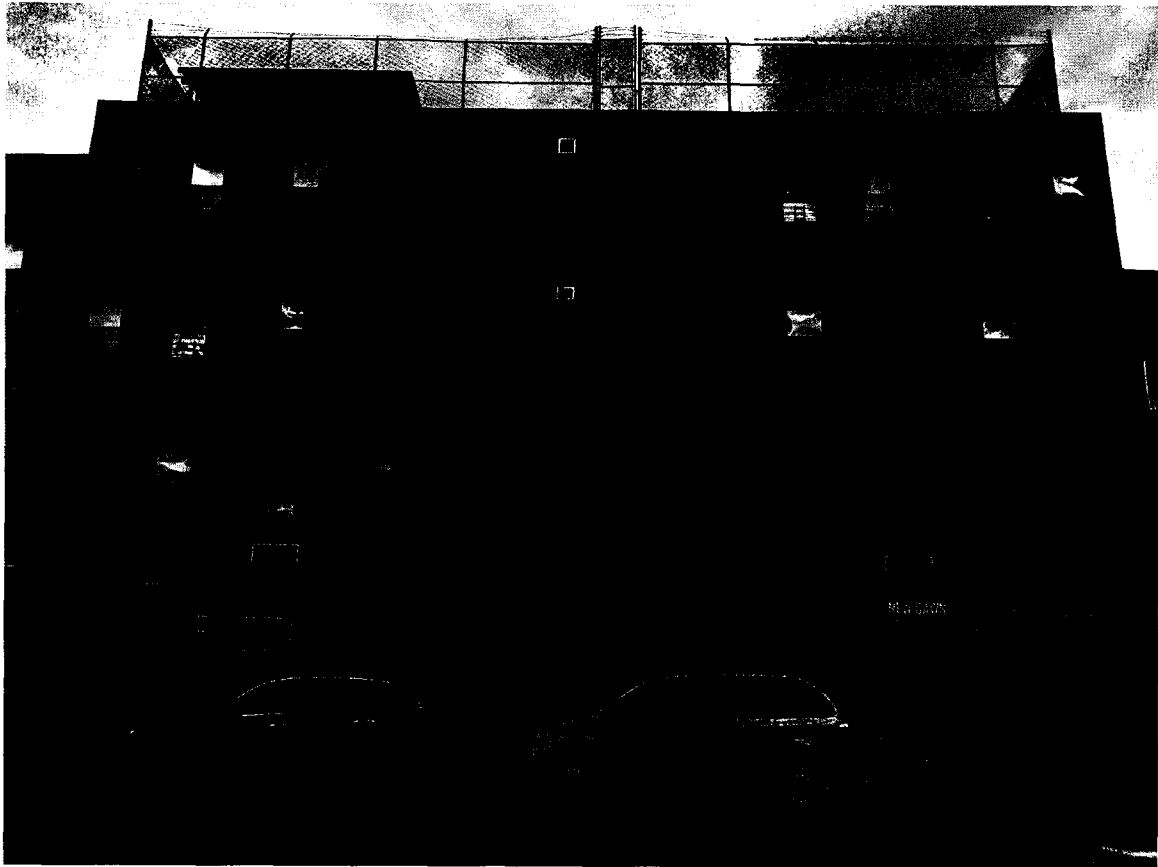
**SEE THE INSIDE FRONT COVER FOR THE MATURITY SCHEDULE FOR THE SERIES 2019 BONDS**

---

The Series 2019 Bonds are offered, subject to prior sale, when, as and if accepted by B.C. Ziegler and Company (the "Underwriter") and subject to an opinion as to the validity of the Series 2019 Bonds and the tax-exempt status of the Series 2019 Bonds by Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel to the Issuer, and to the approval of certain legal matters for the Issuer by its General Counsel, for the Institution by its special counsel, Davidoff Hatcher & Citron LLP, New York, New York and for the Underwriter by its counsel, Greenberg Traurig, LLP, Chicago, Illinois, and certain other conditions. It is expected that delivery of the Series 2019 Bonds will be made on or about February 28, 2019 through the facilities of DTC.



**New Dawn Charter High School - Existing Facility**



**New Dawn Charter High School - Rendering of Facility as Completed**



## MATURITY SCHEDULE

**\$20,685,000**

**Build NYC Resource Corporation**

**Revenue Bonds**

**(New Dawn Charter Schools Project), Series 2019**

\$5,260,000 5.00% Series 2019 Term Bond due February 1, 2033

Price of 99.007% to Yield 5.10%

CUSIP: 12008EPQ3\*\*

\$3,865,000 5.625% Series 2019 Term Bond due February 1, 2039

Price of 100.136% to Yield 5.60%\*

CUSIP: 12008EPR1\*\*

\$11,560,000 5.75% Series 2019 Term Bond due February 1, 2049

Price of 100.277% to Yield 5.70%\*

CUSIP: 12008EPS9\*\*

---

\* To first optional par call on February 1, 2026.

\*\* CUSIP data is provided by CUSIP Global Services, which is managed on behalf of the American Bankers Association by S&P Global Market Intelligence, a division of S&P Global Inc. The CUSIP numbers listed above are being provided solely for the convenience of bondholders only at the time of issuance of the Series 2019 Bonds and none of the Issuer, the Underwriter or the Institution makes any representation with respect to such numbers or undertake any responsibility for their accuracy now or at any time in the future.

No person has been authorized by the Issuer, the Underwriter or the Institution to give any information regarding the Series 2019 Bonds, the Institution, the Project, the offering contained herein and related matters or to make any representations other than those contained in this Limited Offering Memorandum and if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Limited Offering Memorandum does not constitute an offer to sell or the solicitation of an offer to buy in any state in which it is unlawful for any person to make such offer or solicitation. The information contained in this Limited Offering Memorandum has been furnished by or on behalf of the Issuer and the Institution and other sources which are believed to be reliable. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Limited Offering Memorandum nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the parties referred to above since the date hereof.

The Underwriter has provided the following sentence for inclusion in this Limited Offering Memorandum. The Underwriter has reviewed the information in this Limited Offering Memorandum in accordance with, and as a part of, the Underwriter's responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

Neither the Issuer nor any of its members, agents, employees or representatives has reviewed this Limited Offering Memorandum or investigated the statements or representations contained herein, except for those statements relating to the Issuer set forth under the captions "THE ISSUER" and "LITIGATION - The Issuer." Except with respect to the information contained under such captions, neither the Issuer nor any of its members, agents, employees or representatives makes any representation as to the completeness, sufficiency and truthfulness of the statements set forth in this Limited Offering Memorandum. Members of the governing body of the Issuer and any other person executing the Series 2019 Bonds are not subject to personal liability by reason of the issuance of the Series 2019 Bonds. Other than the information under the caption "THE ISSUER" and "LITIGATION - The Issuer," the Issuer assumes no responsibility for this Limited Offering Memorandum and has not reviewed or undertaken to verify any information contained herein.

References in this Limited Offering Memorandum to New York law, the Series 2019 Bonds, the Indenture, the Loan Agreement, the Account Direction Agreement, the Mortgage, the Continuing Disclosure Agreement, and other documents do not purport to be complete. Potential investors should refer to such statutes and documents for full and complete details of their provisions. Copies of such documents are on file with the Trustee and the Institution.

The Chancellor of the City School District of the City of New York (the "Chancellor") has not participated in the preparation of this Limited Offering Memorandum or any other disclosure documents relating to the Series 2019 Bonds. The Chancellor does not assume any responsibility as to the accuracy or completeness of any information contained in this Limited Offering Memorandum or any other such disclosure documents.

THE SERIES 2019 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT, AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2019 BONDS IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF LAWS OF THE STATES IN WHICH SERIES 2019 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE SERIES 2019 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS LIMITED OFFERING MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

#### **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

THIS LIMITED OFFERING MEMORANDUM, INCLUDING THE APPENDICES HERETO, CONTAINS STATEMENTS WHICH SHOULD BE CONSIDERED "FORWARD-LOOKING STATEMENTS," MEANING THEY REFER TO POSSIBLE FUTURE EVENTS OR CONDITIONS. SUCH STATEMENTS ARE GENERALLY IDENTIFIABLE BY THE WORDS SUCH AS "PLAN," "EXPECT," "ESTIMATE," "BUDGET," OR SIMILAR WORDS. THE PROJECTIONS CONTAINED IN APPENDIX A ATTACHED TO THIS LIMITED OFFERING MEMORANDUM ARE NOT A HISTORICAL STATEMENT OF FINANCIAL PERFORMANCE BUT ARE FORWARD LOOKING PROJECTIONS OF FUTURE, PROJECTED FINANCIAL PERFORMANCE. THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS OR IN THE PROJECTIONS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES, AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE, OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS OR IN THE PROJECTIONS. THE INSTITUTION DOES NOT EXPECT OR INTEND TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS OR TO THE PROJECTIONS IF OR WHEN ITS EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS OR FORECASTS ARE BASED, OCCUR.



## TABLE OF CONTENTS

SUMMARY INFORMATION.....	S-1
INTRODUCTORY STATEMENT .....	1
General .....	1
Loan of Series 2019 Bond Proceeds; Mortgage and Other Security .....	2
Debt Service Reserve Fund .....	2
Continuing Disclosure.....	3
Additional Bonds.....	3
Special Covenants of the Institution; Additional Indebtedness .....	3
Bondholders' Risks .....	3
Miscellaneous.....	3
THE ISSUER.....	3
THE INSTITUTION .....	4
THE PROJECT AND PLAN OF FINANCE .....	5
SOURCES AND USES OF FUNDS.....	6
DEBT SERVICE SCHEDULE .....	7
CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK .....	8
General .....	8
Charter School Basic Tuition .....	8
Federal and State Aid Attributable to a Student with a Disability.....	10
Facilities Access Payments/Rental Assistance .....	11
THE SERIES 2019 BONDS.....	11
Interest; Maturity; Payment.....	11
Redemption of Series 2019 Bonds .....	12
Deemed Representations by Holders.....	18
SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS.....	18
Special Limited Revenue Obligations .....	18
General .....	19
Special Covenants of the Institution; Additional Indebtedness .....	19
The Indenture .....	29
Flow of Funds; Revenue Fund .....	29
Acceleration .....	30
Debt Service Reserve Fund .....	30
Repair and Replacement Fund.....	31
Project Fund .....	32
Additional Bonds.....	33
Defeasance .....	33
Mortgage .....	33
RISK FACTORS .....	34
Nature of Special, Limited Obligations .....	34
Dependence on Institution's Ability to Pay Loan Payments .....	34
No Taxing Authority; Dependence on Education Aid Payments .....	35
Failure of New York City Department of Education to Make Education Aid Payments to the Institution .....	35
Delay in or Termination or Reduction of Education Aid Payments .....	35
Projections.....	35
Termination, Revocation or Nonrenewal of the Charter .....	36
Queens School and Separate Facilities.....	36
Need to Relocate School During Renovations .....	37
Construction Risks; Permitting .....	37
No Pledge of Revenues by the Institution .....	38
Factors Associated with Education .....	38
Potential Unionization.....	38
Competition for Students.....	38
Foreclosure Delays and Deficiency .....	38

Effect of Federal Bankruptcy Laws on Security for the Series 2019 Bonds .....	39	
Key Personnel .....	39	
Additional Indebtedness .....	39	
Forward-Looking Statements .....	39	
Property Tax Exemption .....	40	
Tax-Exempt Status of the Institution .....	40	
IRS Compliance Program .....	41	
Tax-Exempt Status of the Series 2019 Bonds .....	41	
Lack of Rating/ Secondary Market .....	41	
Changes in Law; Annual Appropriation; Inadequate Education Aid Payments .....	41	
Damage or Destruction .....	42	
Environmental Risks .....	42	
Environmental Regulations .....	42	
Hazardous Materials .....	42	
Enforcement of Remedies .....	43	
Failure to Provide Ongoing Disclosure .....	43	
Private School Vouchers .....	43	
Redemption Prior to Maturity .....	43	
Summary .....	43	
AUDITED FINANCIAL STATEMENTS OF THE INSTITUTION .....	43	
UNAUDITED FINANCIAL STATEMENTS OF THE INSTITUTION .....	44	
THE PROJECTIONS .....	44	
TAX MATTERS .....	44	
Opinion of Bond Counsel .....	44	
Certain Ongoing Federal Tax Requirements and Covenants .....	45	
Certain Collateral Federal Tax Consequences .....	45	
Original Issue Discount .....	46	
Bond Premium .....	46	
Information Reporting and Backup Withholding .....	47	
Miscellaneous .....	47	
LEGAL MATTERS .....	47	
CONTINUING DISCLOSURE .....	47	
NO RATING .....	48	
LITIGATION .....	48	
The Issuer .....	48	
The Institution .....	48	
UNDERWRITING .....	48	
MISCELLANEOUS .....	49	
No Registration of the Series 2019 Bonds .....	49	
Interest of Certain Persons Named in this Limited Offering Memorandum .....	49	
Limited Offering Memorandum Certification .....	50	
APPENDIX A	NEW DAWN CHARTER SCHOOLS .....	A-1
APPENDIX B	SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW .....	B-1
APPENDIX C	AUDITED FINANCIAL STATEMENTS OF THE INSTITUTION FOR THE FISCAL YEAR ENDED JUNE 30, 2018 (INCLUDING JUNE 30, 2017 COMPARATIVE INFORMATION) .....	C-1
APPENDIX D	UNAUDITED FINANCIAL STATEMENTS OF THE INSTITUTION FOR THE SIX MONTHS ENDED DECEMBER 31, 2018 (INCLUDING DECEMBER 31, 2017 COMPARATIVE INFORMATION) .....	D-1
APPENDIX E	FORM OF INDENTURE .....	E-1
APPENDIX F	FORM OF LOAN AGREEMENT .....	F-1
APPENDIX G	FORM OF MORTGAGE .....	G-1
APPENDIX H	FORM OF BOND COUNSEL OPINION .....	H-1
APPENDIX I	FORM OF CONTINUING DISCLOSURE AGREEMENT .....	I-1
APPENDIX J	BOOK-ENTRY ONLY SYSTEM .....	J-1

## SUMMARY INFORMATION

The following is a summary of certain information contained in this Limited Offering Memorandum. The summary is not comprehensive or complete and is qualified in its entirety by reference to the complete Limited Offering Memorandum (including the Appendices hereto). This Limited Offering Memorandum speaks only as of the date shown herein, and the information herein is subject to change. Undefined capitalized terms used below are defined in APPENDIX E, APPENDIX F or APPENDIX G hereto or elsewhere in this Limited Offering Memorandum.

**Issuer** Build NYC Resource Corporation (the “Issuer”) is a not-for-profit local development corporation created pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York (the “NFP Corporation Law”), and is authorized by the NFP Corporation Law to issue the Series 2019 Bonds. See “THE ISSUER” in this Limited Offering Memorandum.

**Institution** New Dawn Charter Schools (the “Institution”) is a New York not-for-profit education corporation organized under Article 56 of the New York Education Law, as amended (the “Charter Schools Act”), and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). The Institution currently operates a single public charter school (the “School”) under the terms of the Initial Charter (the “Initial Charter”) with the Board of Regents of the State of New York (the “Board of Regents”) and the New York Charter School Act of 1998, codified as Article 56 of the Education Law, (the “Charter School Act”). The Charter was initially approved by the Board of Regents on September 12-13, 2011 and renewed pursuant to an Extension to Provisional Charter dated May 9, 2017 (the “Renewed Charter” and, together with the Initial Charter, the “Charter”). The Institution and the Board of Regents executed a First Renewal Charter for a term commencing on the expiration of the Initial Charter through June 30, 2022. The Institution has also applied for and been granted (in May 2018) a charter to operate a transfer school (the “Queens School”) in Jamaica, Queens, which will begin enrollment in September 2019. The Queens School will be overseen by Institution’s Board of Trustees, and Dr. Sara Asmussen will oversee the operations of both the School and the Queens School. See “THE INSTITUTION” and “APPENDIX A - NEW DAWN CHARTER SCHOOLS” in this Limited Offering Memorandum. See also “CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK” and “APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW” in this Limited Offering Memorandum.

**Series 2019 Bonds** The Issuer is issuing its Revenue Bonds (New Dawn Charter Schools Project), Series 2019 (the “Series 2019 Bonds”), in the original aggregate principal amount of \$20,685,000, pursuant to an Indenture of Trust, dated as of February 1, 2019 (the “Indenture”), between the Issuer and The Bank of New York Mellon, as trustee (the “Trustee”). The Series 2019 Bonds will be issued in minimum authorized denominations of \$100,000 or any integral multiples of \$5,000 in excess thereof (“Authorized Denominations”). See “THE SERIES 2019 BONDS” in this Limited Offering Memorandum.

**Plan of Finance and Use of Proceeds**

The Issuer will loan the proceeds derived from the sale of the Series 2019 Bonds to the Institution pursuant to the terms of a Loan Agreement, dated as of February 1, 2019 (the "Loan Agreement"), between the Issuer and the Institution. Proceeds of the Series 2019 Bonds will be used by the Institution, along with other available funds, for the purposes of funding: (i) the acquisition, construction, renovation, equipping and furnishing of an approximately 24,000 square-foot building on an approximately 7,500 square-foot parcel of land located at 238-242 Hoyt Street, Brooklyn, New York (the "Facility"), which is being operated by the Institution as a public charter school for over-aged and under-credited students in grades 9-12, (ii) a debt service reserve fund; and (iii) costs of issuance of the Series 2019 Bonds. The Institution is currently operating its charter school at the Facility pursuant to a Lease with the seller of the Facility as lessor. See "THE PROJECT AND PLAN OF FINANCE," "SOURCES AND USES OF FUNDS" and "APPENDIX A - NEW DAWN CHARTER SCHOOLS" in this Limited Offering Memorandum.

**Security for the Series 2019 Bonds**

The Series 2019 Bonds will be secured by and payable from an assignment and pledge of (i) all money held under the Indenture, including the Series 2019 Bond proceeds initially deposited in the Debt Service Reserve Fund, (ii) the interest of the Issuer in the Loan Agreement (except for the Issuer's Reserved Rights), and (iii) loan payments due from the Institution under the Loan Agreement.

The Series 2019 Bonds will also be secured by mortgage liens on and security interests in the Mortgaged Property, including the Facility, under the terms of a Mortgage and Security Agreement (Acquisition Loan), a Mortgage and Security Agreement (Building Loan), and a Mortgage and Security Agreement (Indirect Loan), each dated as of February 1, 2019 (collectively, the "Mortgage"), each from the Institution in favor of the Issuer and the Trustee, as assigned by the Issuer to the Trustee under the terms of an Assignment of Mortgage and Security Agreement (Acquisition Loan), an Assignment of Mortgage and Security Agreement (Building Loan) and an Assignment of Mortgage and Security Agreement (Indirect Loan), each dated as of February 1, 2019 (collectively, the "Assignment of Mortgage").

The Charter Schools Act prohibits the Institution from pledging or assigning Education Aid Payments (as defined herein), and other amounts payable by the New York State Department of Education (the "Department of Education") to the Institution in connection with the construction, acquisition, reconstruction, rehabilitation, or improvement of a school facility. Pursuant to the terms of an Account Direction Agreement, dated as of the date of issuance of the Series 2019 Bonds (the "Account Direction Agreement"), among the Institution, Israel Discount Bank of New York, as depository bank (the "Depository Bank"), and the Trustee, the Institution will direct the Depository Bank to initiate automatic transfers on each Loan

Payment Date from the Institution's designated account at the Depository Bank to an account in the name of the Trustee in specific amounts designed to be sufficient to meet the Institution's debt service payment obligations under the Loan Agreement.

**Special, Limited  
Obligations**

THE SERIES 2019 BONDS ARE SPECIAL LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE AS TO PRINCIPAL, REDEMPTION PRICE AND INTEREST, SOLELY FROM THE TRUST ESTATE. NEITHER THE STATE OF NEW YORK (THE "STATE") NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK, NEW YORK (THE "CITY") SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2019 BONDS. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY, IS PLEDGED TO SUCH PAYMENT OF THE SERIES 2019 BONDS. THE SERIES 2019 BONDS WILL NOT BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE SERIES 2019 BONDS WILL NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE CREDIT OR TAXING POWERS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY. NO RECOURSE WILL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2019 BONDS AGAINST ANY MEMBER, OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

**Risk Factors**

Purchase of the Series 2019 Bonds involves a degree of risk. A prospective purchaser of the Series 2019 Bonds is advised to read this entire Limited Offering Memorandum including the Appendices attached hereto in their entirety, particularly the section entitled "RISK FACTORS" in this Limited Offering Memorandum, for a discussion of certain risk factors, which should be considered in connection with an investment in the Series 2019 Bonds.

**Optional Redemption**

The Series 2019 Bonds are subject to optional redemption, on or after February 1, 2026, in whole or in part at any time (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$100,000), at the option of the Issuer (which option shall be exercised only upon the giving of notice by the Institution of its intention to prepay loan payments due under the Loan Agreement), at the redemption price of 100% of unpaid principal amount of the Series 2019 Bonds to be redeemed, plus accrued interest to the date of redemption. See "THE SERIES 2019 BONDS – Redemption of Series 2019 Bonds – *General Optional Redemption*" in this Limited Offering Memorandum.

**Mandatory  
Redemption**

Certain maturities of the Series 2019 Bonds are also subject to mandatory sinking fund redemption as set forth in this Limited Offering Memorandum. See “THE SERIES 2019 BONDS - Redemption of Series 2019 Bonds – *Mandatory Sinking Fund Installment Redemption*” in this Limited Offering Memorandum.

**Extraordinary  
Mandatory Redemption**

Under certain circumstances, the Series 2019 Bonds are also subject to redemption prior to maturity upon the occurrence of certain events. See “THE SERIES 2019 BONDS – Redemption of Series 2019 Bonds – *Mandatory Redemption from Excess Proceeds and Certain Other Amounts*”, “– Extraordinary Redemption”, “– *Mandatory Redemption Upon Failure to Operate the Facility for the Approved Project Operations, Material Violation of Material Legal Requirements, False Representation or Failure to Maintain Liability Insurance*”, and “– *Mandatory Taxability Redemption*” in this Limited Offering Memorandum.

**Purchase in Lieu of Optional  
Redemption**

In lieu of calling the Series 2019 Bonds for optional redemption, the Series 2019 Bonds shall be subject to mandatory tender for purchase at the direction of the Issuer, upon the direction of the Institution, in whole or in part (and, if in part, in such manner as determined by the Institution) on any date on or after February 1, 2026, at a purchase price equal to the applicable redemption price for any optional redemption of such Series 2019 Bonds, plus accrued interest to the purchase date, as described in “THE SERIES 2019 BONDS – Redemption of Series 2019 Bonds – *Purchase in Lieu of Optional Redemption*” in this Limited Offering Memorandum.

**Exchange and  
Transfer**

While the Series 2019 Bonds remain in book-entry only form, transfer of ownership by Beneficial Owners may be made as described in “THE SERIES 2019 BONDS” and “APPENDIX J – BOOK-ENTRY ONLY SYSTEM” in this Limited Offering Memorandum.

**Payment**

Interest accrues on the Series 2019 Bonds at the rates set forth on the inside front cover of this Limited Offering Memorandum from their date of issuance and is payable on February 1 and August 1 of each year, commencing August 1, 2019 (or, if any such day is not a Business Day, the immediately succeeding Business Day, each an “Interest Payment Date”). The Series 2019 Bonds mature as set forth on the inside front cover of this Limited Offering Memorandum. Interest on and the principal of the Series 2019 Bonds is payable as described under the heading “THE SERIES 2019 BONDS – Interest; Maturity; Payment” and “THE SERIES 2019 BONDS – Redemption of Series 2019 Bonds – *Mandatory Sinking Fund Installment Redemption*” in this Limited Offering Memorandum.

**Form**

The Series 2019 Bonds will be registered under a book-entry system in the name of The Depository Trust Company ("DTC") or its nominees. See "THE SERIES 2019 BONDS" in this Limited Offering Memorandum.

**Tax Status**

In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Issuer ("Bond Counsel"), under existing statutes and court decisions and assuming compliance with certain tax covenants described herein, (i) interest on the Series 2019 Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Series 2019 Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code. Bond Counsel is further of the opinion that, under existing statutes, interest on the Series 2019 Bonds is exempt from personal income taxation imposed by the State of New York or a political subdivision thereof, including The City of New York. See "TAX MATTERS" and "APPENDIX H – FORM OF BOND COUNSEL OPINION" in this Limited Offering Memorandum.

**Continuing Disclosure Agreement**

Pursuant to the requirements of Securities and Exchange Commission Rule 15c2-12 (17 CFR Part 240, § 240.15c2-12) (the "Rule"), the Institution has agreed for the benefit of the Registered Owners and Beneficial Owners of the Series 2019 Bonds to provide certain financial information, other operating data and notices of material events. The Institution has not been subject to any prior continuing disclosure undertaking under the Rule. See "CONTINUING DISCLOSURE," and "APPENDIX I – FORM OF CONTINUING DISCLOSURE AGREEMENT" in this Limited Offering Memorandum.

**Delivery Information**

The Series 2019 Bonds are offered when, as, and if issued by the Issuer and accepted by the Underwriter, subject to prior sale and the approving legal opinion of Bond Counsel and certain other conditions. It is expected that delivery of the Series 2019 Bonds will be made on or about February 28, 2019 through the facilities of DTC in New York, New York, against payment therefor.

**Legal Counsel, Underwriter and Trustee**

Hawkins Delafield & Wood LLP, New York, New York, is acting as Bond Counsel. Certain legal matters will be passed upon for the Institution by their special counsel, Davidoff Hutcher & Citron LLP, New York, New York, and for the Underwriter by its counsel, Greenberg Traurig, LLP, Chicago, Illinois. B.C. Ziegler and Company, Chicago, Illinois will serve as the Underwriter for the Series 2019 Bonds. See "UNDERWRITING" in this Limited Offering Memorandum. The Bank of New York Mellon, New York, New York, will serve as the Trustee and the Paying Agent for the Series 2019 Bonds. Certain fees that are payable with respect to the Series 2019 Bonds to various counsel, the Underwriter and the Trustee are contingent upon the issuance and delivery of the Series 2019 Bonds.

**Additional  
Information**

The summaries of or references to constitutional provisions, statutes, resolutions, agreements, contracts, financial statements, reports, publications and other documents or compilations of data or information set forth in this Limited Offering Memorandum do not purport to be complete statements of the provisions of the items summarized or referred to and are qualified in their entirety by the actual provisions of such items, copies of which are either publicly available or available upon request and the payment of a reasonable copying, mailing and handling charge from the Underwriter, One North Wacker Drive, Suite 2000, Chicago, Illinois 60606, or the Trustee, 240 Greenwich Street, New York, New York 10286, Attention: Corporate Trust Administration.

**Audited Financial  
Statements**

The audited financial statements of the Institution for the fiscal year ended June 30, 2018 are included in this Limited Offering Memorandum as APPENDIX C. These are the most recent audited financial statements available for the Institution. The financial statements in APPENDIX C were audited by Schall & Ashenfarb, Certified Public Accountants, LLC, New York, New York. See "APPENDIX C - AUDITED FINANCIAL STATEMENTS OF THE INSTITUTION FOR THE FISCAL YEAR ENDED JUNE 30, 2018 (INCLUDING JUNE 30, 2017 COMPARATIVE INFORMATION)" in this Limited Offering Memorandum.

**Unaudited  
Financial Statements**

The unaudited financial statements of the Institution for the six months ended December 31, 2018 are contained in APPENDIX D. The financial statements contained in APPENDIX D have been prepared by the Institution and have not been audited, reviewed or examined by any independent accounting firm. See "APPENDIX D - UNAUDITED FINANCIAL STATEMENTS OF THE SCHOOL FOR THE SIX MONTHS ENDED DECEMBER 31, 2018 (INCLUDING DECEMBER 31, 2017 COMPARATIVE INFORMATION)" in this Limited Offering Memorandum.

**Projections**

The Financial Projections (the "Projections") in APPENDIX A – Projected Financial Information" are projections of the future financial performance of the Institution based upon certain assumptions made by the Institution and contained therein. The Projections have not been updated to reflect final pricing of the Series 2019 Bonds. NO ASSURANCES CAN BE GIVEN THAT THE OPERATIONS OF THE INSTITUTION WILL EQUAL OR EXCEED THE PROJECTED FUTURE FINANCIAL PERFORMANCE SET FORTH IN THE PROJECTIONS. The Projections are for the five fiscal years of the Institution ending June 30, 2019 through June 30, 2023. Both projected results and projected breakeven results for such period are included in the Projections.

(The remainder of this page is intentionally left blank.)



## **LIMITED OFFERING MEMORANDUM**

**\$20,685,000**

**Build NYC Resource Corporation**

**Revenue Bonds**

**(New Dawn Charter Schools Project), Series 2019**

### **INTRODUCTORY STATEMENT**

The following is a brief introduction as to certain matters discussed elsewhere in this Limited Offering Memorandum and is qualified in its entirety as to such matters by such discussion and the text of the actual documents described or referenced. Capitalized terms not defined herein have the meanings assigned in APPENDIX E, APPENDIX F or APPENDIX G or other document with respect to which the term is used. Definitions contained in the text hereof are for ease of reference only and are qualified in their entirety by the definitions in APPENDIX E, APPENDIX F, APPENDIX G or the documents with respect to which such terms relate. The Appendices to this Limited Offering Memorandum are an integral part of this Limited Offering Memorandum and each potential investor should review the Appendices in their entirety.

#### **General**

Build NYC Resource Corporation, a not-for-profit local development corporation created pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York (the "Issuer"), will issue its Revenue Bonds (New Dawn Charter Schools Project), Series 2019 (the "Series 2019 Bonds"), in the original aggregate principal amount of \$20,685,000, pursuant to an Indenture of Trust, dated as of February 1, 2019 (the "Indenture"), between the Issuer and The Bank of New York Mellon, as trustee (the "Trustee"). The Issuer will loan the proceeds of the Series 2019 Bonds (the "Loan") to New Dawn Charter Schools, a New York not-for-profit education corporation (the "Institution") and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), pursuant to a Loan Agreement, dated as of February 1, 2019 (the "Loan Agreement"), between the Issuer and the Institution. See "APPENDIX F - FORM OF LOAN AGREEMENT" in this Limited Offering Memorandum.

Proceeds of the Series 2019 Bonds will be used by the Institution, along with other available funds, for the purposes of funding: (i) the acquisition, construction, renovation, equipping and furnishing of an approximately 24,000 square-foot building on an approximately 7,500 square-foot parcel of land located at 238-242 Hoyt Street, Brooklyn, New York (the "Facility"), which is being operated by the Institution as a public charter school (the "School") for over-aged and under-credited students in grades 9-12, (ii) a debt service reserve fund; and (iii) costs of issuance of this Series 2019 Bonds. The Institution is currently operating the School at the Facility pursuant to a Lease with the seller of the Facility as lessor. See "THE PROJECT AND PLAN OF FINANCE," "SOURCES AND USES OF FUNDS" and "APPENDIX A - NEW DAWN CHARTER SCHOOLS" in this Limited Offering Memorandum.

The Institution has also applied for and been granted (in May 2018) a charter to operate a transfer school (the "Queens School") in Queens, New York, which will begin enrollment in September 2019. The Queens School will be overseen by the current Board of Trustees of the Institution, and Dr. Sara Asmussen will oversee the operations of both the School and the Queens School.

## **Loan of Series 2019 Bond Proceeds; Mortgage and Other Security**

Proceeds of the Series 2019 Bonds will be loaned by the Issuer to the Institution pursuant to the Loan Agreement, and the Series 2019 Bonds will be payable from and secured by a pledge of payments to be made by the Institution under the Loan Agreement and a Promissory Note from the Institution to the Issuer (the "Promissory Note"), which, if fully and promptly paid, will be sufficient to pay when due the scheduled principal of and interest on the Series 2019 Bonds. The Series 2019 Bonds will also be secured by mortgage liens on and security interests in the Mortgaged Property, including the Facility pursuant to the Mortgage and Security Agreement (Acquisition Loan), a Mortgage and Security Agreement (Building Loan), and a Mortgage and Security Agreement (Indirect Loan), each dated as of February 1, 2019 (collectively, the "Mortgage"), to be executed by the Institution in favor of the Issuer and the Trustee, as assigned by the Issuer to the Trustee under the terms of an Assignment of Mortgage and Security Agreement (Acquisition Loan), an Assignment of Mortgage and Security Agreement (Building Loan) and an Assignment of Mortgage and Security Agreement (Indirect Loan), each dated as of February 1, 2019, each from the Institution to the Trustee (collectively, the "Assignment of Mortgage"). See "APPENDIX F - FORM OF LOAN AGREEMENT" and "APPENDIX G - FORM OF MORTGAGE" in this Limited Offering Memorandum.

The Charter Schools Act prohibits the Institution from pledging or assigning Education Aid Payments (as defined herein), and other amounts payable by the New York State Department of Education (the "Department of Education") to the Institution in connection with the construction, acquisition, reconstruction, rehabilitation, or improvement of a school facility. Pursuant to the terms of an Account Direction Agreement, dated as of the date of issuance of the Series 2019 Bonds (the "Account Direction Agreement"), among the Institution, Israel Discount Bank of New York, as depository bank (the "Depository Bank"), and the Trustee, the Institution will direct the Depository Bank to initiate automatic transfers on each Loan Payment Date from the Institution's designated account at the Depository Bank to an account in the name of the Trustee in specific amounts designed to be sufficient to meet the Institution's debt service payment obligations under the Loan Agreement.

Pursuant to the Indenture, the Issuer will pledge to the Trustee, for the benefit of the holders of the Series 2019 Bonds, all of its interest in the Loan Agreement (other than the Issuer's Reserved Rights) to secure payment of the principal of, premium, if any, and interest on the Series 2019 Bonds. The obligation of the Institution to make loan payments under the Loan Agreement is an absolute and unconditional obligation of the Institution. However, the ability of the Institution to generate additional revenues is limited in the event that the Education Aid Payments received by the Institution are not sufficient to make the required loan payments under the Loan Agreement. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS" and "APPENDIX E - FORM OF INDENTURE" in this Limited Offering Memorandum.

## **Debt Service Reserve Fund**

On the date of the issuance of the Series 2019 Bonds, proceeds of the Series 2019 Bonds in an amount equal to the Debt Service Reserve Fund Requirement (defined below) will be deposited in the Debt Service Reserve Fund created by the Indenture. Amounts in the Debt Service Reserve Fund will secure the Series 2019 Bonds and may be used by the Trustee to pay principal of and interest on the Series 2019 Bonds in the event sums in the Bond Fund are insufficient for such purpose. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS - Debt Service Reserve Fund" and "APPENDIX E - FORM OF INDENTURE - Custody and Investment of Funds - Debt Service Reserve Fund" in this Limited Offering Memorandum. The "Debt Service Reserve Fund Requirement" shall mean (a) \$1,444,356.26 with respect to the Series 2019 Bonds (provided that if the Series 2019 Bonds shall be redeemed in part, Debt Service Reserve Fund Requirement shall mean the Maximum

Annual Debt Service of the Series 2019 Bonds, and (b) with respect to each Series of Additional Bonds, shall mean the Maximum Annual Debt Service of such Series of Additional Bonds.

### **Continuing Disclosure**

The Institution will agree in the Continuing Disclosure Agreement to provide certain annual financial reports, certain periodic quarterly and annual financial reports and notices of certain other events with respect to the Series 2019 Bonds. See "CONTINUING DISCLOSURE" and "APPENDIX I – FORM OF CONTINUING DISCLOSURE AGREEMENT" in this Limited Offering Memorandum.

### **Additional Bonds**

Pursuant to the Indenture, upon complying with certain prescribed conditions, Additional Bonds may be issued from time on the terms and conditions and or the purposes stated in the Indenture. If issued, Additional Bonds will be equally and ratably secured under the Indenture with each other and with the Outstanding Series 2019 Bonds. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS – Additional Bonds" in this Limited Offering Memorandum.

### **Special Covenants of the Institution; Additional Indebtedness**

The Loan Agreement requires the Institution to comply with certain financial covenants and places certain restrictions on the incurrence of indebtedness by the Institution. The Loan Agreement prohibits the Institution from incurring any additional indebtedness other than as described herein under "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS - Special Covenants of the Institution; Additional Indebtedness".

### **Bondholders' Risks**

Certain risks associated with an investment in the Series 2019 Bonds are discussed under "RISK FACTORS" in this Limited Offering Memorandum.

### **Miscellaneous**

This Limited Offering Memorandum (including the Appendices hereto) contains descriptions of, among other matters, the Indenture, the Loan Agreement, the Mortgage, the Account Direction Agreement, the Continuing Disclosure Agreement, the Issuer, the Facility, the Institution, and the Series 2019 Bonds. Such descriptions and information do not purport to be comprehensive or definitive. All references to documents described herein are qualified in their entirety by reference to such documents, copies of which are available for inspection at the designated corporate trust office of the Trustee.

## **THE ISSUER**

The Issuer is a not-for-profit local development corporation organized pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York (the "State") at the direction of the Mayor of The City of New York, New York (the "City"). The Issuer is not an agency of State or City government and is not subject to administrative direction by any department, commission, board or agency of the State or of the City. The Issuer is authorized by the Not-For-Profit Corporation Law of the State and the Issuer's Certificate of Incorporation to promote community and economic development, and the creation of jobs in the non-profit and profit sectors for residents of the City by developing and providing programs for not-for-profit borrowers, manufacturing and industrial businesses and other entities to access low interest tax-exempt and non-tax-exempt financing for their eligible projects.

The Issuer has offered and plans to offer other obligations from time to time to finance projects for other not-for-profit borrowers and, under certain circumstances, manufacturing and industrial businesses, with respect to facilities located in the City. Such obligations have been and will be issued pursuant to and secured by instruments separate and apart from the Indenture.

The Issuer has not prepared or assisted in the preparation of this Limited Offering Memorandum, except for statements under the sections captioned "THE ISSUER" and "LITIGATION - The Issuer" and, except as aforesaid, the Issuer is not responsible for any statements made in this Limited Offering Memorandum. Except for the execution and delivery of documents required to effect the issuance of the Series 2019 Bonds, the Issuer has not otherwise assisted in the public offer, sale or distribution of the Series 2019 Bonds. Accordingly, except as aforesaid, the Issuer disclaims responsibility for the disclosures set forth in this Limited Offering Memorandum or otherwise made in connection with the offer, sale and distribution of the Series 2019 Bonds.

The Series 2019 Bonds are special limited revenue obligations of the Issuer payable solely from the payments made by the Institution under the Loan Agreement, the Promissory Note, and from the Trust Estate as described in the Indenture. Neither the Issuer nor its directors or officers are personally liable with respect to the Series 2019 Bonds. Accordingly, no financial information with respect to the Issuer and no information with respect to its directors or officers have been included in this Limited Offering Memorandum.

## **THE INSTITUTION**

The Institution is a not-for-profit education corporation incorporated under Article 56 of the New York Education Law and operates pursuant to a charter agreement with the Chancellor of the City School District of the City of New York (the "Authorizer"). The Institution currently operates a single public charter school (the "School") under the terms of the Initial Charter (the "Initial Charter") with the Board of Regents of the State of New York (the "Board of Regents") and the New York Charter School Act of 1998, codified as Article 56 of the Education Law, (the "Charter School Act"). The Charter was initially approved by the Board of Regents on September 12-13, 2011 and renewed pursuant to an Extension to Provisional Charter dated May 9, 2017 (the "Renewed Charter" and, together with the Initial Charter, the "Charter"). The Institution and the Board of Regents executed a First Renewal Charter for a term commencing on the expiration of the Initial Charter through June 30, 2022. The Institution has also applied for and been granted (in May 2018) a charter to operate a transfer school (the "Queens School") in Jamaica, Queens, which will begin enrollment in September 2019. The Queens School will be overseen by the Institution's Board of Trustees, and Dr. Sara Asmussen will oversee the operations of both the School and the Queens School. See "APPENDIX A - NEW DAWN CHARTER SCHOOLS - The Charter Contract" in this Limited Offering Memorandum for a more detailed description of the Charter and renewal process.

The Institution is an organization described in Section 501(c)(3) of the Code which is exempt from federal income taxation under Section 501(a) of the Code (except with respect to "unrelated business taxable income" within the meaning of Section 512(a) of the Code) and which is not a "private foundation" as defined in Section 509(a) of the Code. The Institution operates as a New York not-for-profit education corporation and as such is governed by the law applicable to such entities and its Charter and bylaws. The Institution's bylaws provide that the Institution is managed and controlled by a Board of Trustees. For more information with respect to the Institution, the Charter and the Institution's history and operations, see "APPENDIX A - NEW DAWN CHARTER SCHOOLS" in this Limited Offering Memorandum.

## THE PROJECT AND PLAN OF FINANCE

Proceeds of the Series 2019 Bonds will be used by the Institution for the purposes of funding the acquisition, construction, renovation, equipping and furnishing of an approximately 24,000 square-foot building on an approximately 7,500 square-foot parcel of land located at 238-242 Hoyt Street, Brooklyn, New York (the "Facility"), which is being operated by the Institution as a public charter school for over-aged and under-credited students in grades 9-12 (the "Project").

The Institution currently leases, occupies and operates out of the Facility. The Facility is currently owned by an unrelated limited liability company (the "Lessor") and leased to the Institution pursuant to a Lease dated April 6, 2016 (the "Lease") between the Lessor and the Institution. The Institution is exercising a purchase option under the Lease pursuant to which it will purchase the land and building (the "Property") for a purchase price of \$14,000,000 (less certain credits). The Institution has deposited a \$1,000,000 earnest money deposit with the Lessor which will be applied against the purchase price at closing. In addition, the Institution will renovate the property as described below, which renovations are expected to cost approximately \$10,458,550. The closing of the purchase of the Property will occur on the date of issuance of the Series 2019 Bonds and will be funded with proceeds of the Series 2019 Bonds and Institution equity. The issuance of the Series 2019 Bonds is dependent upon the purchase of the Property by the Institution and vice versa.

The building was constructed in the 1960's and has not been materially renovated since that time. All building infrastructure (including HVAC, elevator, wiring and plumbing) is reaching the end of its useful life. In addition, the Institution will retrofit the building with sprinklers consistent with building code. Much of the building will be reconfigured to make more efficient use of the space. This will include upgrades, including adding more classrooms and reconfiguring office space on the first floor to include a culinary teaching kitchen. This will also allow the Institution to expand its College and Career Readiness Program by providing office space for staff and work space for students applying for college and jobs. Also, the science labs and art studio will be updated.

See "APPENDIX A - NEW DAWN CHARTER SCHOOLS" in this Limited Offering Memorandum.

(The remainder of this page is intentionally left blank.)

## SOURCES AND USES OF FUNDS

Following are the estimated sources and uses for funds (excluding investment income) associated with the Project and the issuance of the Series 2019 Bonds:

<b>Sources</b>	<b><u>Series 2019 Bonds</u></b>	<b><u>Institution Equity</u></b>	<b><u>Total</u></b>
Par Amount of Series 2019 Bonds	\$20,685,000.00		\$20,685,000.00
Net Original Issue Discount	(\$14,954.20)		(\$14,954.20)
Institution Equity		\$6,000,000.00	6,000,000.00
<b>Total Sources</b>	<b>\$20,670,045.80</b>	<b>\$6,000,000.00</b>	<b>\$26,670,045.80</b>
<b>Uses</b>			
Acquisition of Facility	\$9,064,496.13	\$4,935,503.87	\$14,000,000.00
Renovation Costs (including bonding and contingency)	8,904,475.00		8,904,475.00
Furniture and Miscellaneous	720,000.00		720,000.00
Project Soft Costs	536,718.41	301,831.59	838,550.00
Debt Service Reserve Fund	1,444,356.26		1,444,356.26
Cost of Issuance (Including Underwriter's Discount)		762,664.54	762,664.54
<b>Total Uses</b>	<b>\$20,670,045.80</b>	<b>\$6,000,000.00</b>	<b>\$26,670,045.80</b>

(The remainder of this page is intentionally left blank.)

## DEBT SERVICE SCHEDULE

The table below sets forth the amounts required to be paid with respect to the Series 2019 Bonds, assuming no prepayments or redemption prior to maturity. All amounts shown in the table below are gross debt service prior to the application of any earnings on amounts deposited in the Debt Service Reserve Fund and the other funds and accounts established under the Indenture.

<u>Year ending February 1</u>	<u>Principal</u>	<u>Interest</u>	<u>Annual Total</u>
2020		1,059,223.29	1,059,223.29
2021	295,000	1,145,106.26	1,440,106.26
2022	310,000	1,130,356.26	1,440,356.26
2023	325,000	1,114,856.26	1,439,856.26
2024	345,000	1,098,606.26	1,443,606.26
2025	360,000	1,081,356.26	1,441,356.26
2026	380,000	1,063,356.26	1,443,356.26
2027	400,000	1,044,356.26	1,444,356.26
2028	420,000	1,024,356.26	1,444,356.26
2029	440,000	1,003,356.26	1,443,356.26
2030	460,000	981,356.26	1,441,356.26
2031	485,000	958,356.26	1,443,356.26
2032	505,000	934,106.26	1,439,106.26
2033	535,000	908,856.26	1,443,856.26
2034	560,000	882,106.26	1,442,106.26
2035	590,000	850,606.26	1,440,606.26
2036	625,000	817,418.76	1,442,418.76
2037	660,000	782,262.50	1,442,262.50
2038	695,000	745,137.50	1,440,137.50
2039	735,000	706,043.76	1,441,043.76
2040	775,000	664,700.00	1,439,700.00
2041	820,000	620,137.50	1,440,137.50
2042	870,000	572,987.50	1,442,987.50
2043	920,000	522,962.50	1,442,962.50
2044	970,000	470,062.50	1,440,062.50
2045	1,025,000	414,287.50	1,439,287.50
2046	1,085,000	355,350.00	1,440,350.00
2047	1,150,000	292,962.50	1,442,962.50
2048	1,215,000	226,837.50	1,441,837.50
2049	<u>2,730,000</u>	<u>156,975.00</u>	<u>2,886,975.00</u>
TOTAL	\$20,685,000	\$23,628,442.21	\$44,313,442.21

## **CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK**

This section provides a brief overview of New York's current system for funding charter schools. Prospective purchasers of the Series 2019 Bonds should note that the overview contained below and the summary of relevant New York state law provisions contained in APPENDIX B hereto are provided for the convenience of prospective purchasers but are not and do not purport to be comprehensive. Potential purchasers should note that the law applicable to charter schools in New York has developed over time and is subject to further changes in the future. See "RISK FACTORS - Changes in Law; Annual Appropriation; Inadequate Education Aid Payments" in this Limited Offering Memorandum.

### **General**

Charter schools in New York are eligible to receive funds from State, federal and private sources. The principal source of charter school funding in New York is "Charter School Basic Tuition" which is paid directly to a charter school by the school district of residence of each student enrolled in the charter school. The enrollment of students attending charter schools is included in the enrollment, attendance, membership and, if applicable, count of students with disabilities of the school district in which the pupil resides. The amount of Charter School Basic Tuition for a particular school year paid by a school district is derived from formulas based on the school district's "Expense Per Pupil" as defined in the State Education Law. See "Charter School Basic Tuition" below for a more detailed description. In addition, the school district of residence of a student with a disability attending a charter school is required to pay directly to such charter school any federal or state aid attributable to such student in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly (any such payments, together with Charter School Basic Tuition, are referred to herein as "Education Aid Payments"). Such amounts may be reduced pursuant to an agreement between the school and the charter entity as set forth in the charter. See "Federal and State Aid Attributable to a Student with a Disability" below for further detail. In the event a school district fails to make the payments described above, the State comptroller is directed to deduct from any State funds which become due to such school district an amount equal to the unpaid obligation, which the State comptroller will then pay to the charter school. In 2014, the Charter Schools Act was amended to provide for facilities assistance to charter schools under certain circumstances. Such assistance may be in the form of co-located space within a school district facility, alternative private space or, under certain circumstances, rental subsidy payments in an amount determined pursuant to the Charter Schools Act. See "Facilities Access Payments/Rental Assistance" below for a more detailed description. See "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW" in this Limited Offering Memorandum.

### **Charter School Basic Tuition**

Charter School Basic Tuition is calculated according to a series of statutory formulas, which are detailed and complicated. By way of overview, a description of the Charter School Basic Tuition formula is provided in this section. Pursuant to Section 2856 of the Charter Schools Act, Charter School Basic Tuition is equal to the school district's "Expense Per Pupil" for the year prior to the "Base Year" (i.e., the school year immediately preceding the current year) increased by the percentage change in the state total "Approved Operating Expense" from two years prior to the Base Year to the Base Year, with certain adjustments set forth for each school year. See "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW - Financing of Charter Schools" in this Limited Offering Memorandum for a detailed description of the Charter School Basic Tuition for each school year. The calculation for Expense Per Pupil is a function of Approved Operating Expense for the year prior to the Base Year divided by the sum, computed using year prior to the Base Year pupil counts, of:



(i) "Total Aidable Pupil Units" and (ii) "Weighted Pupils With Disabilities." See "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW - Charter School Basic Tuition" in this Limited Offering Memorandum for a detailed discussion of the Charter School Basic Tuition formula and applicable definitions, including "Approved Operating Expense."

For this purpose, "Total Aidable Pupil Units" is the sum of (i) the school district's "Adjusted Average Daily Attendance" for the year prior to the Base Year multiplied by the "Enrollment Index" for the Base Year, plus (ii) the "Additional Aidable Pupil Units" for the year prior to the Base Year.

*Adjusted Average Daily Attendance.* For purposes of computing Adjusted Average Daily Attendance, the average daily attendance of public school pupils in a full-day kindergarten and grades 1-12 is counted as the basic unit, with the attendance of such pupils in one-half day kindergartens counted as one-half of such basic unit. The sum of all such units of attendance is the Adjusted Average Daily Attendance. Adjusted Average Daily Attendance is calculated by: (i) determining the number of religious holidays which fall on a school day within a school year according to regulations established by the Commissioner; (ii) deducting the aggregate attendance on such religious holidays from the total aggregate attendance, by grade level; (iii) deducting such religious holidays from the total number of days of session, by grade level; and (iv) computing the adjusted average daily attendance for the school year.

*Enrollment Index.* Enrollment Index is computed by dividing the public school enrollment for the current year by public school enrollment for the Base Year, with the result carried to three decimal places without rounding. "Enrollment" means the unduplicated count of all children registered to receive educational services in grades 9-12, including children in ungraded programs, as registered on the applicable enrollment reporting date. "Public School District Enrollment" means the sum of: (1) the number of children on a regular enrollment register of a public school district on such date; (2) the number of children eligible to receive home instruction in the school district on such date; (3) the number of children for whom Equivalent Attendance must be computed on such date; (4) the number of children with disabilities who are residents of such district who are registered on such date to attend certain programs under the New York Education Law; (5) the number of children eligible to receive educational services on such date but not claimed for aid; and (6) the number of children registered on such date to attend certain programs pursuant to the New York Education Law.

*Additional Aidable Pupil Units.* Additional Aidable Pupil Units is the sum of: (i) the attendance of summer session pupils multiplied by 12%, and (ii) the "Weighted Pupils With Special Educational Needs." Weighted Pupils With Special Educational Needs is calculated by multiplying pupils with special educational needs by 25%, with the result rounded up to the next whole number.

*Weighted Pupils With Disabilities.* Weighted Pupils With Disabilities is calculated as the attendance of pupils with disabilities who have been determined by a school district committee on special education to require any of the following types and levels of programs or services, and who receive such programs and services from the school district of attendance during the Base Year, multiplied by a special services weighting determined as follows:

(i) for placement for 60% or more of the school day in a special class, or home or hospital instruction for a period of more than 60 days, or special services or programs for more than 60% of the school day, the special services weighting is 170%;

(ii) for placement for 20% or more of the school week in a resource room or special services or programs including related services required for 20% or more of the school week, or in the case of pupils in grades 7-12 or a multi-level middle school program or in the case of pupils in grades 4-6 in an elementary school operating on a period basis, the equivalent of five periods

per week, but not less than the equivalent of 180 minutes in a resource room or in other special services or programs including related services, or for at least two hours per week of direct or indirect consultant teacher services, the special services weighting is 90%.

The Charter School Basic Tuition is set annually in June. School districts (in the case of the Institution, the NYC DOE on behalf of the New York City Community School District 15) are required to pay no later than the first business day of July, September, November, January, March and May the appropriate payment amounts as specified in the New York Education Law relating to the Charter School Basic Tuition. The payments are made in equal installments, adjusted for any supplemental payments due or overpayments to be recovered for the prior school year. See "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW - Financial Obligations of Charter Schools, Public School Districts and Education Department" in this Limited Offering Memorandum.

#### **Federal and State Aid Attributable to a Student with a Disability**

In addition to the Charter School Basic Tuition, school districts are required to pay directly to charter schools any federal or state aid attributable to a student with a disability attending the charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Such amounts may be reduced pursuant to an agreement between the school and the charter entity set forth in the charter. See "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW - Financing of Charter Schools" and "- Public School District Payments to Charter Schools" in this Limited Offering Memorandum.

State aid attributable to a student with a disability attending a charter school is calculated as the sum of: (i) "Excess Cost Aid" payable to a public school district pursuant to the New York Education Law based on the resident weighted enrollment in the charter school of pupils with disabilities receiving special services or programs provided directly or indirectly by the charter school in the current school year; and (ii) any apportionment payable to such public school district pursuant to the New York Education Law that is based on the cost of special services or programs provided directly or indirectly by the charter school to such pupil in the current school year. Excess Cost Aid is calculated as the product of: (i) excess cost aid per pupil calculated pursuant to the New York Education Law; (ii) the proportion of the weighting attributable to the student's level of service provided directly or indirectly by the charter school pursuant to the New York Education Law; and (iii) the student's enrollment in such charter school in the current school year.

Federal aid attributable to a student with a disability attending a charter school, and receiving special education services or programs provided directly or indirectly by the charter school, is calculated as follows:

(i) for the first year of operation of the charter school, the allocation that would be attributable to the charter school pursuant to 20 U.S.C. 1411 and 1419 for a pupil who is identified as a student with a disability, who is included in a report to the Commissioner of pupils so identified as of July 1st of the current school year, or for such other pupil count as specified by the federal government for the current school year, provided that the enrollment of such students in the charter school during the current school year is used for this purpose until such report, or a report of such other pupil count, has been received by the Commissioner; and

(ii) for the second year of operation of the charter school and thereafter, the allocation that would be attributable to the charter school pursuant to 20 U.S.C. 1411 and 1419 for a pupil who is identified as a student with a disability, who is included in a report to the

Commissioner of pupils so identified as of July 1st of the Base Year, or for such other pupil count as specified by the federal government.

Payments for federal or state aid attributable to a student with a disability to charter schools must be made by the school district in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. See "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW - Financing of Charter Schools" in this Limited Offering Memorandum.

#### **Facilities Access Payments/Rental Assistance**

In March 2014, Section 2853 of the Charter Schools Act was amended to grant a subset of New York charter schools a new statutory right to request access to facilities. Charter schools in New York City that commenced instruction or added grade levels in the 2014-2015 school year or thereafter are eligible to request co-location within a public school building. Upon such request, such charter school must be provided access to facilities pursuant to the Charter Schools Act, either in co-located space in a school district building, alternative private space provided by the school district at no cost to the charter school, or, upon a successful appeal by the charter school, in the form of rental assistance payments from the school district ("Facilities Access Payments"). For eligible charter schools that have expanded grade levels during the 2014-2015 school year or thereafter, the Facilities Access Payments are calculated, as the lesser of (a) actual rental cost of an alternative privately owned site selected by the charter school or (b) 30% of the product of Charter School Basic Tuition and, for a new charter school commencing instruction on or after July 1, 2014, the charter school's current year enrollment, or, for a charter school which expands its grade level, the increases in enrollment from the school year prior to the first year of the expansion, to the current school year. *As of 2019, the Institution is not eligible to receive Facilities Access Payments with respect to the Facility and the Projections in "APPENDIX A – Projected Financial Information" do not assume that the Institution will receive any Facilities Access Payments.* See also "APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW" in this Limited Offering Memorandum.

### **THE SERIES 2019 BONDS**

#### **Interest; Maturity; Payment**

The Series 2019 Bonds will be issued in the original aggregate principal amount of \$20,685,000. The Series 2019 Bonds will bear interest as set forth on the inside front cover hereof. Interest on the Series 2019 Bonds will be payable semi-annually on February 1 and August 1 (or, if any such day is not a Business Day, the immediately succeeding Business Day, each an "Interest Payment Date") of each year, commencing on August 1, 2019. Interest on the Series 2019 Bonds will be calculated on the basis of a 360-day year with twelve months of thirty days.

The Series 2019 Bonds will be issued in the form of fully registered bonds without coupons in minimum authorized denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof (an "Authorized Denomination"). The principal of, interest on, and premium, if any, on the Series 2019 Bonds will be payable when due by wire of the Trustee to The Depository Trust Company, New York, New York ("DTC"), which will in turn remit such principal, interest and premium, if any, to Participants, which Participants will in turn remit such principal, interest and premium, if any, to the Beneficial Owners of the Series 2019 Bonds as described in this Limited Offering Memorandum. See "APPENDIX J - BOOK-ENTRY ONLY SYSTEM" in this Limited Offering Memorandum.

In the event the Series 2019 Bonds are not registered in the name of Cede & Co., as nominee of DTC, or another eligible depository as described below, the principal of, Sinking Fund Installments for, and the redemption price of the Series 2019 Bonds will be payable by check or draft or wire transfer to the persons in whose names such Series 2019 Bonds are registered on the registration books maintained by the Trustee at the maturity or redemption thereof, or with respect to any payment in full of any Series 2019 Bond either at final maturity or upon redemption in whole, only be payable upon presentation and surrender of such Series 2019 Bonds at the designated corporate trust office of the Trustee, as described in the Indenture. Interest payable on each Series 2019 Bond on any Interest Payment Date will be paid by the Trustee to the registered owner of such Series 2019 Bond as shown on the bond registration books of the Trustee at the close of business on the Record Date for such interest, by check or draft mailed to such registered owner at his address as it appears on the bond registration books, or at the written request by any registered owner of Series 2019 Bonds in the aggregate principal amount of at least \$1,000,000, by electronic transfer, as described in the Indenture.

Interest on any Series 2019 Bond that is due and payable but not paid on the date due ("Defaulted Interest") shall cease to be payable to the owner of such Series 2019 Bond on the relevant Record Date and shall be payable to the owner in whose name such Series 2019 Bond is registered at the close of business on a special record date (the "Special Record Date") for the payment of such Defaulted Interest, which Special Record Date shall be fixed as provided in the Indenture.

### **Redemption of Series 2019 Bonds**

*General Optional Redemption.* The Series 2019 Bonds shall be subject to redemption, on or after February 1, 2026, in whole or in part on any Business Day (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$100,000) at the option of the Issuer (which option shall be exercised only upon the giving of notice by the Institution of its intention to prepay loan payments due under the Loan Agreement) at a redemption price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the redemption date.

*Mandatory Sinking Fund Installment Redemption.* The Series 2019 Bonds shall be subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a redemption price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the redemption date, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in the Indenture:

#### ***Series 2019 Term Bonds Maturing February 1, 2033***

Redemption Date (February 1)	Principal Amount	Redemption Date (February 1)	Principal Amount
2021	\$295,000	2027	\$400,000
2022	310,000	2028	420,000
2023	325,000	2029	440,000
2024	345,000	2030	460,000
2025	360,000	2031	485,000
2026	380,000	2032	505,000
		2033*	535,000

---

\*Final Maturity

***Series 2019 Term Bonds Maturing February 1, 2039***

Redemption Date (February 1)	Principal Amount	Redemption Date (February 1)	Principal Amount
2034	\$560,000	2037	\$660,000
2035	590,000	2038	695,000
2036	625,000	2039*	735,000

---

\* Final Maturity

***Series 2019 Term Bonds Maturing February 1, 2049***

Redemption Date (February 1)	Principal Amount	Redemption Date (February 1)	Principal Amount
2040	\$775,000	2045	\$1,025,000
2041	820,000	2046	1,085,000
2042	870,000	2047	1,150,000
2043	920,000	2048	1,215,000
2044	970,000	2049*	2,730,000

---

\*Final Maturity

*Mandatory Redemption from Excess Proceeds and Certain Other Amounts.* The Series 2019 Bonds are subject to redemption, on or after February 1, 2026, in whole or in part by lot prior to maturity in the event and to the extent:

- (i) excess Series 2019 Bond proceeds shall remain in the Project Fund after the completion of the Project,
- (ii) excess title insurance or property insurance proceeds or condemnation awards shall remain after the application thereof pursuant to the Loan Agreement and the Indenture,
- (iii) excess proceeds shall remain after the release or substitution of Facility Realty or Facility Personalty, or
- (iv) certain funds received by the Institution pursuant to any capital campaign which are earmarked for specific Project Costs shall remain with the Institution and shall not be required for completion of the Project or related Project Costs as provided in the Loan Agreement.

in each case at a redemption price equal to one hundred percent (100%) of the principal amount of the Series 2019 Bonds to be redeemed, together with interest accrued thereon to the redemption date.

*Extraordinary Redemption.* The Series 2019 Bonds are subject to redemption prior to maturity, at the option of the Issuer exercised at the direction of the Institution (which option shall be exercised only upon the giving of notice by the Institution of its intention to prepay loan payments due under the Loan Agreement), as a whole on any date, upon notice or waiver of notice as provided in the Indenture, at a

redemption price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the redemption date, if one or more of the following events shall have occurred:

(i) The Facility shall have been damaged or destroyed to such extent that, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee, (A) the Facility cannot be reasonably restored within a period of two years from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Institution is thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of two years from the date of such damage or destruction, or (C) the restoration cost of the Facility would exceed the total amount of all insurance proceeds, including any deductible amount, in respect of such damage or destruction; or

(ii) Title to, or the temporary use of, all or substantially all of the Facility shall have been taken or condemned by a competent authority which taking or condemnation results, or is likely to result, in the Institution being thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of two years from the date of such taking or condemnation, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee; or

(iii) As a result of changes in the Constitution of the United States of America or of the State or of legislative or executive action of the State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court after the contest thereof by the Institution, the Loan Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein or unreasonable burdens or excessive liabilities are imposed upon the Institution by reason of the operation of the Facility.

If the Series 2019 Bonds are to be redeemed in whole as a result of the occurrence of any of the events described above, the Institution shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution stating that, as a result of the occurrence of the event giving rise to such redemption, the Institution has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes.

*Mandatory Redemption upon Failure to Operate the Facility for the Approved Project Operations, Material Violation of Material Legal Requirements, False Representation or Failure to Maintain Liability Insurance.* The Series 2019 Bonds are also subject to mandatory redemption prior to maturity, at the option of the Issuer, as a whole only, in the event (i) the Issuer shall determine that (w) the Institution is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations (i.e., as a public charter school for over-aged and under-credited students in grades 9-12), (x) the Institution, any Principal of the Institution or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Institution has committed a material violation of a material Legal Requirement, (y) any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, or (ii) the Institution shall fail to obtain or maintain the liability insurance with respect to the Facility required under the Loan Agreement, and, in the case of clause (i) or (ii) above, the Institution shall fail to cure any such default or failure within the applicable time periods set forth in the Loan Agreement following the receipt by the Institution of written notice of such default or failure from the Issuer and a demand by the Issuer on the Institution to cure the same. Any such redemption shall be made upon notice or waiver of notice to the Bondholders as provided in the

Indenture, at the redemption price of one hundred percent (100%) of the unpaid principal amount of the Series 2019 Bonds, together with interest accrued thereon to the redemption date.

*Mandatory Taxability Redemption.* Upon the occurrence of a Determination of Taxability, the Series 2019 Bonds shall be redeemed prior to maturity on any date within one hundred twenty (120) days following such Determination of Taxability, at a redemption price equal to one hundred three percent (103%) of the principal amount thereof, together with accrued interest to the redemption date. The Series 2019 Bonds shall be redeemed in whole unless redemption of a portion of the Series 2019 Bonds Outstanding would have the result that interest payable on the Series 2019 Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of a Series 2019 Bond. In such event, the Series 2019 Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

“Determination of Taxability” means (i) (A) the adoption, promulgation or enactment of any federal statute or regulation, or any determination, decision, decree or ruling made by the Commissioner or any District Director of the Internal Revenue Service; (B) the issuance of a public or private ruling or a technical advice memorandum by the Internal Revenue Service in which the Institution has participated or has been given the opportunity to participate, and which ruling or memorandum the Institution, in its discretion, does not contest or from which no further right of judicial review or appeal exists; (C) a determination from which no further right of appeal exists of any court of competent jurisdiction in the United States in a proceeding in which the Institution has participated or has been a party, or has been given the opportunity to participate or be a party; or (D) the admission in writing by the Institution, in any case, to the effect that the interest payable on the Bond of a Holder or a former Holder thereof is includable in gross income for federal income tax purposes; or (ii) the receipt by the Trustee of a written opinion of Nationally Recognized Bond Counsel to the effect that the interest payable on the Bonds is includable in gross income for federal income tax purposes or the refusal of any such counsel to render a written opinion that the interest on the Bonds is not so includable when required pursuant to a request by a Bondholder in accordance with the procedures set forth in the Indenture; provided, however, that no such Determination of Taxability described in clauses (i)(B) or (i)(C) of this definition shall be considered to exist unless (1) the Holder or former Holder of the Bond involved in such proceeding (a) gives the Institution and the Trustee prompt notice of the commencement thereof and (b) (if the Institution agrees to pay all expenses in connection therewith) offers the Institution the opportunity to control the defense thereof and (2) either (a) the Institution does not agree within thirty (30) days of receipt of such offer to pay such expenses and to control such defense or (b) the Institution shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Institution determines to be appropriate. A Bondholder shall have the right to request the Trustee to obtain a written opinion of Nationally Recognized Bond Counsel pursuant to clause (ii) above, at the expense of the Institution, upon delivery by the Bondholder to the Institution of a letter from the Bondholder’s accountant stating that, in his or her reasonable opinion, interest on the Bonds is includable in the gross income of such Bondholder for federal income tax purposes and stating the reasons for such determination. No Determination of Taxability described above will result from the inclusion of interest on any Bond in the computation of minimum or indirect taxes.

*Purchase in Lieu of Optional Redemption.* In lieu of calling the Series 2019 Bonds for optional redemption, the Series 2019 Bonds shall be subject to mandatory tender for purchase at the direction of the Issuer, upon the direction of the Institution, in whole or in part (and, if in part, in such manner as determined by the Institution) on any date on or after February 1, 2026, at a purchase price equal to the applicable redemption price for any optional redemption of such Series 2019 Bonds as provided in the Indenture, plus accrued interest to the purchase date. Purchases of tendered Series 2019 Bonds may be made without regard to any provision of the Indenture relating to the selection of Series 2019 Bonds in a partial optional redemption. The Series 2019 Bonds purchased pursuant to any mandatory tender(s) are

not required to be cancelled, and if not so cancelled (subject to the Loan Agreement), shall, prior to any resale by or on behalf of the Institution, not be deemed Outstanding in connection with any subsequent partial optional redemption solely for purposes of those provisions of the Indenture relating to the selection of the Series 2019 Bonds in a partial redemption.

Purchases in lieu of an optional redemption shall be permitted, with the consent of the Issuer, upon the delivery to the Issuer and the Trustee of (i) an opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee substantially to the effect that (A) such purchases in lieu of optional redemption comply with the provisions of the Indenture and (B) neither such purchases in lieu of an optional redemption nor any transaction directly related thereto will adversely affect the exclusion from gross income of interest on the Series 2019 Bonds for purposes of federal income taxation, and (ii) such other opinions, certificates or documentation as the Issuer may require.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE SERIES 2019 BONDS, ALL PAYMENTS OF PRINCIPAL OR REDEMPTION PRICE OF, SINKING FUND INSTALLMENTS FOR, AND INTEREST ON THE SERIES 2019 BONDS WILL BE MADE DIRECTLY TO DTC. DISBURSEMENT OF SUCH PAYMENTS TO DIRECT PARTICIPANTS WILL BE THE RESPONSIBILITY OF DTC, AND DISBURSEMENT OF SUCH PAYMENTS TO BENEFICIAL OWNERS WILL BE THE RESPONSIBILITY OF THE DIRECT PARTICIPANTS AND INDIRECT PARTICIPANTS. SEE "APPENDIX J - BOOK-ENTRY ONLY SYSTEM" IN THIS LIMITED OFFERING MEMORANDUM.

*Notice of Redemption.* When redemption of Series 2019 Bonds is requested or required pursuant to the Indenture, the Trustee shall give notice of such redemption in the name of the Issuer, specifying the name of the Series, CUSIP number, Bond numbers, the date of original issue of such Series, the date of mailing of the notice of redemption, maturities, interest rates and principal amounts of the Series 2019 Bonds or portions thereof to be redeemed, the redemption date, the redemption price, and the place or places where amounts due upon such redemption will be payable (including the name, address and telephone number of a contact person at the Trustee) and specifying the principal amounts of the Series 2019 Bonds or portions thereof to be payable and, if less than all of the Series 2019 Bonds of any maturity are to be redeemed, the numbers of such Series 2019 Bonds or portions thereof to be so redeemed. Such notice shall further state that on such date there shall become due and payable upon each Series 2019 Bond or portion thereof to be redeemed the redemption price thereof together with interest accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable. Such notice may set forth any additional information relating to such redemption. The Trustee, in the name and on behalf of the Issuer, (i) shall mail a copy of such notice by first class mail, postage prepaid, not more than sixty (60) nor less than thirty (30) days prior to the redemption date, to the registered owners of any Series 2019 Bonds which are to be redeemed, at their last addresses, if any, appearing upon the registration books, but any defect in such notice shall not affect the validity of the proceedings for the redemption of such Series 2019 Bonds with respect to which proper mailing was effected; and (ii) cause notice of such redemption to be sent to the national information service that disseminates redemption notices.

*Effect of Notice.* Any notice mailed as provided in the Indenture shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. If any Series 2019 Bond shall not be presented for payment of the redemption price within sixty (60) days of the redemption date, the Trustee shall mail a second notice of redemption to such Holder by first class mail, postage prepaid. Any amounts held by the Trustee due to non-presentment of Series 2019 Bonds for payments on or after any redemption date shall be retained by the Trustee for a period of at least one year after the final maturity date of such Series 2019 Bonds.



If notice of redemption shall have been given in the manner provided in the Indenture and as described above, the Series 2019 Bonds called for redemption shall become due and payable on the redemption date, provided, however, that with respect to any optional redemption of the Series 2019 Bonds, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2019 Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem the Series 2019 Bonds. In the event that such notice of optional redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. If a notice of optional redemption shall be unconditional, or if the conditions of a conditional notice of optional redemption shall have been satisfied, then upon presentation and surrender of the Series 2019 Bonds so called for redemption at the place or places of payment, such Series 2019 Bonds shall be redeemed.

So long as DTC is effecting book entry transfers of the Series 2019 Bonds, the Trustee shall provide the notices specified above only to DTC. It is expected that DTC shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of DTC or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Series 2019 Bond (having been mailed notice from the Trustee, DTC, a Participant or otherwise) to notify the Beneficial Owner of the Series 2019 Bond so affected, shall not affect the validity of the redemption of such Series 2019 Bond.

*Payment of Redeemed Series 2019 Bonds.* Notice having been given in the manner provided in the Indenture and as described above, the Series 2019 Bonds or portions thereof so called for redemption shall become due and payable on the redemption dates so designated at the redemption price, plus interest accrued and unpaid to the redemption date. If, on the redemption date, moneys for the redemption of all the Series 2019 Bonds or portions thereof to be redeemed, together with interest to the redemption date, shall be held by the Paying Agent so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date, (i) interest on the Series 2019 Bonds or portions thereof so called for redemption shall cease to accrue and become payable, (ii) the Series 2019 Bonds or portions thereof so called for redemption shall cease to be entitled to any lien, benefit or security under the Indenture, and (iii) the Holders of the Series 2019 Bonds or portions thereof so called for redemption shall have no rights in respect thereof, except to receive payment of the redemption price together with interest accrued to the redemption date. If said moneys shall not be so available on the redemption date, such Series 2019 Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

*Selection of Series 2019 Bonds for Redemption.* In the event of redemption of less than all the Outstanding Series 2019 Bonds of the same maturity, the particular Series 2019 Bonds or portions thereof to be redeemed shall be selected by the Trustee in such manner as the Trustee in its reasonable discretion may deem fair, except that (i) the Series 2019 Bonds to be redeemed from Sinking Fund Installments shall be redeemed by lot, and (ii) to the extent practicable, the Trustee shall select the Series 2019 Bonds for redemption such that no Series 2019 Bond shall be of a denomination of less than the Authorized Denomination for the Series 2019 Bonds. In the event of redemption of less than all the Outstanding Series 2019 Bonds stated to mature on different dates, the principal amount of such Series 2019 Bonds to be redeemed shall be applied in inverse order of maturity of the Outstanding Series 2019 Bonds to be redeemed and by lot within a maturity. The portion of the Series 2019 Bonds to be redeemed in part shall be in the principal amount of the minimum Authorized Denomination thereof or some integral multiple thereof and, in selecting Series 2019 Bonds for redemption, the Trustee shall treat each such Series 2019 Bond as representing that number of Series 2019 Bonds which is obtained by dividing the principal

amount of such registered Series 2019 Bond by the minimum Authorized Denomination thereof (referred to below as a "unit") then issuable rounded down to the integral multiple of such minimum Authorized Denomination. If it is determined that one or more, but not all, of the units of principal amount represented by any such Series 2019 Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Holder of such Series 2019 Bond shall forthwith surrender such Series 2019 Bond to the Trustee for (a) payment to such Holder of the redemption price of the unit or units of principal amount called for redemption and (b) delivery to such Holder of a new Series 2019 Bond or Series 2019 Bonds in the aggregate unpaid principal amount of the unredeemed balance of the principal amount of such Series 2019 Bond. New Series 2019 Bonds of the same maturity representing the unredeemed balance of the principal amount of such Series 2019 Bond shall be issued to the registered Holder thereof, without charge therefor. If the Holder of any such Series 2019 Bond of a denomination greater than a unit shall fail to present such Series 2019 Bond to the Trustee for payment and exchange as aforesaid, such Series 2019 Bond shall, nevertheless, become due and payable on the date fixed for redemption to the extent of the unit or units of principal amount called for redemption (and to that extent only).

### **Deemed Representations by Holders**

Each Holder of a Series 2019 Bond, by the purchase and acceptance of such Series 2019 Bond, is deemed to have represented and agreed as follows: (a) it is a qualified institutional buyer as defined in Rule 144A ("Rule 144A") of the Securities Act of 1933, as amended (the "Securities Act") and it is aware that the sale made to it of such Series 2019 Bond has been made in reliance on Rule 144A; it has acquired such Series 2019 Bond for its own account or for the account of a qualified institutional buyer; or (ii) it is an "accredited investor" as defined in Rule 501 under the Securities Act; and (b) it understands that such Series 2019 Bond has not been registered under the Securities Act, and that, if in the future it decides to offer, resell, pledge or otherwise transfer such Series 2019 Bond, such Series 2019 Bond may be offered, resold, pledged or transferred only in accordance with the above transfer restrictions.

## **SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS**

### **Special Limited Revenue Obligations**

THE SERIES 2019 BONDS ARE SPECIAL LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE AS TO PRINCIPAL, REDEMPTION PRICE AND INTEREST, SOLELY FROM THE TRUST ESTATE. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR THE REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2019 BONDS. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY, IS PLEDGED TO SUCH PAYMENT OF THE SERIES 2019 BONDS. THE SERIES 2019 BONDS WILL NOT BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE SERIES 2019 BONDS WILL NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE CREDIT OR TAXING POWERS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY. NO RECOURSE WILL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OR THE REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2019 BONDS AGAINST ANY MEMBER, OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

## **General**

Under the Loan Agreement, the Issuer agrees to issue the Series 2019 Bonds and to lend the proceeds thereof to the Institution to finance the Project, and the Institution is obligated unconditionally to repay the loan in amounts sufficient, together with available funds held under the Indenture, to provide for the timely payment of the principal of, premium, if any, and interest on the Series 2019 Bonds when due (whether by maturity, mandatory sinking fund redemption or acceleration) and to perform certain other obligations set forth therein. The obligation of the Institution to make loan payments under the Loan Agreement sufficient to pay the Series 2019 Bonds is an absolute and unconditional obligation of the Institution. Under the Loan Agreement, the "Loan Payment Dates" are defined as the fifteenth (15th) day of each January, March, May, July, September and November, commencing March 15, 2019 (or if any such day is not a Business Day, the immediately preceding Business Day). See "APPENDIX F - FORM OF LOAN AGREEMENT" in this Limited Offering Memorandum.

Pursuant to the terms of the Mortgage, the Institution will grant to the Issuer mortgage liens on and security interests in the Mortgaged Property, including the Facility, subject to Permitted Encumbrances. The liens and security interests created by the Indenture and the Mortgage are for the equal and ratable benefit of the Series 2019 Bonds. The Loan Agreement and the Mortgage contain the general liability insurance and property insurance requirements for the Institution. See "RISK FACTORS" in this Limited Offering Memorandum for a discussion of certain limitations on the enforceability of the security for the Series 2019 Bonds.

## **Special Covenants of the Institution; Additional Indebtedness**

As used in the Loan Agreement and in this section:

(A) "Cash and Investments" means the Institution's unrestricted cash and unrestricted investments related to its operations at the Facility as shown in the Institution's audited financial statements with respect to the Facility, determined in accordance with GAAP, provided, however, that there shall be excluded from "Cash and Investments" (i) any investments that cannot readily be converted to cash within thirty (30) days, (ii) cash or investments subject to legal or contractual restrictions that prevent use thereof for payment of principal and interest on the Bonds, (iii) cash or investments held by the Trustee pursuant to the Indenture, and (iv) cash or investments with respect to any Separate Facility (as defined below).

(B) "Days Cash on Hand" means as of each June 30, commencing June 30, 2019, the quotient of (i) Cash and Investments, divided by (ii) the quotient obtained by dividing the Operating Expenses for the then-ending Fiscal Year of the Institution by three hundred sixty-five (365) (provided that for this purpose, Operating Expenses shall include interest payable by the Institution on its Long-Term Indebtedness).

(C) "Debt Service Coverage Ratio" means for any Fiscal Year, the ratio obtained by dividing the Net Income Available for Debt Service for such Fiscal Year by the Institution's Maximum Annual Debt Service.

(D) "Debt Service Requirements" means, for a specified period, the principal of and interest on Indebtedness payable during such period, or for a particular date, the amount of principal, interest and premium or penalty, if any, payable on such date.

(E) "Disability Aid" means those certain federal and State payments payable to the Institution for operations at the Facility attributable to students with disabilities.

(F) "Education Aid" means, collectively, all School District Payments, State Education Operating Aid, Disability Aid and any Other Education Aid payable to the Institution pursuant to the New York State Education Law or federal law for the payment of operations of the Institution at the Facility.

(G) "Indebtedness" means all indebtedness of the Institution for borrowed moneys, no matter how created, whether or not incurred with respect to the Facility or any Separate Facility and whether or not such indebtedness is assumed by the Institution, including any leases required to be capitalized in accordance with GAAP, installment purchase obligations and guaranties.

(H) "Long-Term Indebtedness" means Indebtedness which matures or is scheduled for payment in full within one year.

(I) "Majority Holders" means the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

(J) "Management Consultant" means an Independent management consultant or certified public accountant experienced in the management and operations of charter schools, acceptable to the Majority Holders.

(K) "Maximum Annual Debt Service" means, as of any date of calculation, the highest principal and interest payment requirements (net of any Debt Service Reserve Fund balance to be applied against Bond-related Indebtedness in the final year) on all Indebtedness of the Institution for the then current or any succeeding Fiscal Year.

(L) "Net Income Available for Debt Service" means, for any period of determination thereof, the net sum of (i) Revenues for such period, plus the interest earnings on moneys held in the Debt Service Reserve Fund established under the Indenture, minus (ii) the Operating Expenses, but excluding from such net sum (A) any profits or losses resulting from Operating Expenses or Revenues which are extraordinary items under GAAP, (B) gain or loss in the extinguishment of Indebtedness of the Institution, (C) proceeds of the Series 2019 Bonds and any other Indebtedness, (D) proceeds of insurance policies, other than policies for business interruption insurance, maintained by or for the benefit of the Institution, (E) the proceeds of any sale, transfer or other disposition of the Facility, and (F) any condemnation or any other damage award received by or owing to the Institution.

(M) "Operating Expenses" means fees and expenses of the Institution arising from its operations at the Facility, including maintenance, repair expenses, utility expenses, administrative and legal expenses, miscellaneous operating expenses, advertising costs, payroll expenses (including taxes), the cost of materials and supplies used for current operations of the Institution, the cost of vehicles, equipment leases and service contracts, taxes upon the operations of the Institution, charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but that are such as may reasonably be expected to be incurred in accordance with GAAP, all in such amounts as reasonably determined by the Institution; provided, however, "Operating Expenses" shall not include interest expense, depreciation, amortization or other non-cash expenses, or those expenses that are actually paid from any revenues of the Institution that are not Revenues. Further, in determining the "Operating Expenses," there shall be excluded unrealized investment losses and losses related to the extinguishment of Indebtedness. "Operating Expenses" shall not include expenses arising from operations of the Institution at any Separate Facility, except only to the extent of any shared costs or services reasonably allocated to the Facility which are by contract provided by employees of the Institution with respect to the Facility and the Separate Facility.

(N) "Other Education Aid" means any federal or State payments, other than School District Payments, State Education Operating Aid or Disability Aid, payable to the Institution for the purpose of funding operations of the Institution at the Facility.

(O) "Revenues" means all revenues, rentals, fees, third-party payments, charges, receipts, unrestricted donations, unrestricted contributions or other income arising from or related to the Institution's operations located at the Facility, whether now or in the future, including all the rights to receive such revenues (each subject, to the extent applicable, to Permitted Encumbrances and to the Issuer's Reserved Rights), and all rights to the payment of money, receivables, accounts, contract rights, chattel paper and instruments and all proceeds of the foregoing, including, without limitation, all Education Aid, federal grants and aid, extended daycare payments, food services sales, proceeds derived from insurance, condemnation proceeds and other rights and assets, whether now or hereafter owned, held or possessed by the Institution, all gifts, grants, bequests and contributions (including income and profits therefrom), and regardless of the source, certain revenues, rentals, fees, third-party payments, charges, receipts, unrestricted donations, unrestricted contributions or other income of the Institution arising from or related to the Institution's operations located at the Facility. "Revenues" shall not include revenues arising from operations of the Institution at any Separate Facility.

(P) "School District Payments" means any and all payments made to or for the benefit of the Institution with respect to its operations at the Facility pursuant to the Charter School Act.

(Q) "Separate Facility" or "Separate Facilities" means any charter school facility or facilities operated by the Institution under a separate charter and at a different location than the Facility, including, but not limited to, the facilities to be operated by the Institution in Queens, New York.

(R) "State Education Operating Aid" means all New York State Education Department operating aid payments appropriated for the purpose of funding operating expenses of the Institution with respect to its operations at the Facility on a per-pupil basis.

#### *Covenants of the Institution.*

*Days Cash on Hand.* The Institution covenants and agrees in the Loan Agreement that it will maintain at least 45 Days Cash on Hand tested on each June 30, commencing June 30, 2019, utilizing information from the Institution's audited financial statements for such Fiscal Year.

If the Days Cash on Hand calculated above is less than 45 Days Cash on Hand, then the Institution shall, within 30 days of the date of calculation, provide the Trustee with a detailed written explanation stating the reason for the Institution's failure to achieve the required Days Cash on Hand and its plan for compliance. In the event the Institution is unable to comply with the Days Cash on Hand requirement within 12 months of the initial non-compliance, then the Majority Holders shall have the right to direct the Trustee to require the Institution to engage a Management Consultant as described below.

If a Management Consultant is required, the Institution (at the Institution's sole expense) shall engage a Management Consultant which shall deliver a written report to the Institution and the Trustee containing recommendations concerning the Institution's: (i) operation of the Facility; (ii) investment management practices; (iii) fundraising activities; and (iv) other factors relevant to meeting such financial covenants for the next ending Fiscal Year:

(i) within forty-five (45) days after its engagement, the Management Consultant will submit its consultant report, together with a certificate of the Institution indicating the

Institution's substantial acceptance or rejection of all or any material portion of the recommendations of the Management Consultant, to the Trustee; and

(ii) so long as the Institution engages a Management Consultant as required above and accepts and continuously and substantially complies with the recommendations of the Management Consultant, failure to meet the Days Cash on Hand requirement will not in and of itself constitute an Event of Default.

*Debt Service Coverage Ratio.* The Institution covenants and agrees in the Loan Agreement that it will achieve a Debt Service Coverage Ratio with respect to its operations at the Facility of at least 1.10 for each Fiscal Year, commencing with the Fiscal Year ending June 30, 2019, compliance to be tested at the end of each Fiscal Year utilizing information from the Institution's audited financial statements for such Fiscal Year.

If the Debt Service Coverage Ratio calculated above is below 1.10 but greater than or equal to 1.0, then the Institution shall, within 30 days of the date of calculation, provide the Trustee with a detailed written explanation stating the reason for the Institution's failure to achieve the required Debt Service Coverage Ratio and its plan for compliance. In the event the Institution is unable to comply with the Debt Service Coverage Ratio requirement within 12 months of the initial non-compliance, then the Majority Holders shall have the right to direct the Trustee to require the Institution to engage a Management Consultant as described below.

If a Management Consultant is required, the Institution (at the Institution's sole expense) shall engage a Management Consultant which shall deliver a written report to the Institution and the Trustee containing recommendations concerning the Institution's: (i) operation of the Facility; (ii) investment management practices; (iii) fundraising activities; and (iv) other factors relevant to meeting such financial covenants for the next ending Fiscal Year:

(1) within forty-five (45) days after its engagement, the Management Consultant will submit its consultant report, together with a certificate of the Institution indicating the Institution's substantial acceptance or rejection of all or any material portion of the recommendations of the Management Consultant, to the Trustee; and

(2) so long as the Institution engages a Management Consultant as required above and accepts and continuously and substantially complies with the recommendations of the Management Consultant, failure to meet the Debt Service Coverage Ratio requirement will not in and of itself constitute an Event of Default; provided that, it shall constitute an Event of Default if the Debt Service Coverage Ratio for any Fiscal Year (after the engagement of such Management Consultant) is less than 1.00.

*Liens.* The Institution covenants in the Loan Agreement not to create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against (i) the Facility or any part thereof, or the interest of the Institution in the Facility, except for Permitted Encumbrances, (ii) the Revenues, or (iii) the Trust Estate or any portion thereof, the loan payments or other amounts payable under the Loan Agreement, the Promissory Note or any of the other Security Documents or the interest of the Issuer or the Institution in any Security Document. The Institution covenants to take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that there are no mortgage liens on, or security interests in, the Facility (other than Permitted Encumbrances) prior to the mortgage liens thereon, and security interests therein, granted by the Mortgage.

*Separate Facilities.* The Institution may commence operation of a Separate Facility (defined above under this section titled "Special Covenants of the Institution; Additional Indebtedness"); provided that on or prior to the commencement of operation of the Separate Facility, the Trustee and the Issuer shall be provided an Opinion of Counsel (which as to factual matters may be based upon a certificate of the Institution) to the effect that nothing in the charter for the Separate Facility, the Institution's bylaws or, to the best of such counsel's knowledge after due inquiry, any resolutions of the Board of Trustees of the Institution or any agreements, mortgages or instruments of the Institution then in effect or any court or administrative order or consent decree to which the Institution is subject (i) adversely affects the Institution's right or ability to operate the Facility under the Charter Agreement, (ii) pledges to or requires that any Revenues derived from the Institution's operation of the Facility be used for the payment of any indebtedness or other obligations related to or derived with respect to the Separate Facility, or (iii) provides for the transfer or use of the Revenues for any purpose related to the Separate Facility except only to the extent of any shared costs or services which are by contract provided by employees of the Institution with respect to the Facility and the Separate Facility.

The Institution covenants in the Loan Agreement with respect to each Separate Facility as follows:

- (a) The Institution will not pledge any Revenues derived from the Institution's operation of the Facility to the payment of any indebtedness or other obligations related to or derived with respect to the Separate Facility.
- (b) The Institution will not transfer or use any Revenues or any assets (including, without limitation, any Cash and Investments) of or derived from the Facility for any purpose related to the Separate Facility, except only to the extent of any shared costs or services which are by contract provided by employees of the Institution with respect to the Facility and the Separate Facility.
- (c) The Institution will maintain separate bank and other accounts to hold all Cash and Investments and other funds derived from its operations of the Facility and of each Separate Facility and shall in no event co-mingle any of such accounts or funds.
- (d) The Institution shall not make any loans of any Cash and Investments or other funds of the Institution derived from or related to the Facility to any funds or accounts derived from or related to any Separate Facility.
- (e) The Institution shall cause there to be provided supplemental schedules within its audited financial statements breaking out results with respect to the Facility and each Separate Facility and shall follow the reporting requirements with respect to each Separate Facility as required by the Loan Agreement.
- (f) The Institution shall not incur any Indebtedness financing or refinancing any Separate Facility or assets related thereto except as permitted by the Loan Agreement.
- (g) The insurance required by the Loan Agreement (including commercial general liability, excess liability and workers compensation) shall cover activities of the Institution at each Separate Facility.
- (h) With respect to any Separate Facility that the Institution leases from an unaffiliated third party (the "Landlord"), the Institution shall maintain such property insurance coverages as are reasonably required by the Landlord. With respect to any Separate

Facility that is owned by the Institution, the Institution shall maintain property insurance coverages which meet the requirements of Section 3.11 of the Mortgage (provided that the Institution and/or any related lender shall be required to be a loss payee or additional insured under such coverage).

*Additional Indebtedness of the Institution.* The Institution will not incur any Indebtedness, except for:

- (a) Indebtedness (including capital leases) to fund the purchase of furniture, fixtures and equipment in an aggregate outstanding principal amount of not to exceed \$500,000 at any one time (which may be secured by purchase money security interests permitted by the definition of Permitted Encumbrances);
- (b) Indebtedness incurred with the written consent of the Majority Holders;
- (c) So long as there is no Event of Default then in effect and the Institution is in compliance with current financial covenants, Indebtedness for which, (i) (A) the Debt Service Coverage Ratio for the previous two Fiscal Years for which audited financial statements were prepared was at least 1.20 for each such Fiscal Year (excluding the proposed Indebtedness), and (B) a Management Consultant reports that Net Income Available for Debt Service will equal not less than 125% of the combined annual debt service payments for the outstanding Long-Term Indebtedness and the Long-Term Indebtedness proposed to be incurred for three (3) consecutive Fiscal Years after the earlier of: (1) the date the new facility for which additional Indebtedness is being undertaken to finance is placed into service; or (2) the year in which provision for payment of debt service by capitalized interest has been made, or (ii) a Management Consultant reports that the Institution's Maximum Annual Debt Service (taking into account the proposed additional Indebtedness) does not exceed 10% of the Institution's Revenues shown on the most recent Fiscal Year's audited financial statements; or
- (d) So long as there is no Event of Default then in effect and the Institution is in compliance with current financial covenants, Indebtedness to finance or refinance any Separate Facility or any assets related to a Separate Facility, provided that such Indebtedness would otherwise meet the requirements set forth in subsections (a), (b) or (c) above and that, in determining compliance with such requirements, all definitions contained therein shall be interpreted to refer solely to such Separate Facility (e.g., the reference to "Net Income Available for Debt Service" and all definitions referred to in such definition shall be interpreted by considering the assets and operations of such Separate Facility only as a separate entity).

If any additional parity Indebtedness involves the issuance of Additional Bonds, the Institution also shall be subject to and shall satisfy any additional requirements of the Indenture described below under "Additional Bonds."

*Reporting.* The Institution covenants in the Loan Agreement to furnish or cause to be furnished to the Trustee:

- (a) as soon as available and in any event within one hundred thirty (130) days after the close of each Fiscal Year, a copy of the annual financial statements of the Institution, including balance sheets as at the end of each such Fiscal Year, and the related



statements of income, balances, earnings, retained earnings and changes in financial position for each such Fiscal Year, and containing supplemental schedules showing such financial information separately for the Institution's operations at the Facility and each Separate Facility, as audited by the Institution's Independent Accountant and prepared in accordance with GAAP, together with a copy of any management letter delivered by the auditors in connection with such financial statements; and

- (b) for posting to the Electronic Municipal Market Access ("EMMA") system at the MSRB, within forty-five (45) days after the end of each fiscal quarter, commencing with the quarter ending March 31, 2019, a quarterly report containing the following information: (i) the actual enrollment for the Institution and the actual FTE (full-time equivalency) student count as last reported to the Department of Education of the State; (ii) a copy of the unaudited financial statements of the Institution, including balance sheets as at the end of such quarter, and the related statements of income, balances, retained earnings, changes in financial position for each such quarter and containing supplemental schedules showing such financial information separately for the Institution's operations at the Facility and each Separate Facility prepared in accordance with GAAP, certified by an Authorized Representative of the Institution, (iii) for the final quarter for each Fiscal Year, commencing with the final quarter which ends on June 30, 2019, (1) a year-to-date income statement, a balance sheet, a statement of cash flows and a comparison of such to the budget of the Institution, (2) a copy of the Institution's annual budget, as amended or supplemented as of the reporting date, for the then current Fiscal Year, and (3) a summary, prepared and certified by the Executive Director of the Institution, of the activities of the Institution during the prior Fiscal Year, and (iv) the following information to the extent occurring during such quarter: (1) the individual and consolidated annual budgets of the Institution within 30 days of their adoption, (2) the results of any federal or State testing, (3) notification or any report of any potential or alleged violation of the charter by the Institution, (4) any notice or allegation of a violation of governmental approvals in connection with the operation of the Facility, and (5) until the completion of the Project, a copy of any and all monthly construction reports/updates provided to the Institution by the Institution's contractors regarding the status of the Institution's construction schedule and cost, as well as any and all monthly construction reports/updates provided to the Institution's governing board in the prior quarter.

The Institution covenants in the Loan Agreement that each year, commencing with the Fiscal Year ending June 30, 2019, it will hold an investor conference call following the release of its audited financial statements for the immediately preceding Fiscal Year for the purpose of reviewing financial results of such Fiscal Year. Such investor call will be held within eight months of the close of the Fiscal Year, and notice of such call shall be filed with the MSRB's EMMA website not less than seven (7) days prior to the date of the investor call. In addition to reviewing the financial results for the immediately preceding Fiscal Year, matters to be addressed by the Institution on the investor conference call, if material as determined in the sole but reasonable discretion of the Institution, shall include the following: (A) governance and charter status matters of the Institution, such as the charter renewal process (if a renewal is pending within the twelve months of the date on which the call is held); significant details relating to any form of revocation review or supervision plan of its charter by the School District and/or the State; and any changes in key management, third-party managers (if any), or key personnel of the Institution or within the leadership of the governing body of the Institution since the date of the last investor call; (B) the use of any short-term Indebtedness (such as cash flow financing, state aid notes or bank lines of credit) or new Long-Term Indebtedness incurred since the date of the immediately

preceding investor call; (C) capital spending plans for which the governing body of the Institution has taken official action; (D) actual enrollment or mid-year budget cuts which required revisions to the current annual budget; (E) if the Institution is subject to mid-year cuts in federal, State and/or local sources of funding, the impact on the Institution's financial position and management's responses to the cuts; (F) litigation (including any matters of criminal misconduct) against the Institution, its governing body, or employees of the Institution, to the extent such action is expected to materially affect operations and/or finances of the Institution; and (G) casualty losses, to the extent daily operations of the Institution were disrupted for more than seven (7) days, including information regarding the insurance coverage for such casualty losses.

The Institution covenants in the Loan Agreement to immediately notify the Trustee of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given shall be signed by an Authorized Representative of the Institution and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Institution shall state this fact on the notice.

The Institution covenants in the Loan Agreement to promptly deliver to the Trustee written notice if its charter for the Facility under the Charter School Act shall have expired or been amended, revoked, surrendered or terminated, or if there are any pending or threatened proceedings to that effect.

The Institution also covenants in the Loan Agreement to deliver to the Trustee all insurance-related documents required by the Loan Agreement.

Nothing in the Loan Agreement as described herein shall be deemed to constitute a requirement of the Institution under the Continuing Disclosure Agreement, and no default in compliance by the Institution with any requirement as described under this subsection shall be deemed a default under the Continuing Disclosure Agreement. Conversely, nothing in the Continuing Disclosure Agreement shall be deemed to constitute a requirement of the Institution in the Loan Agreement as described under this subsection, and no default in compliance by the Institution with any requirement under the Continuing Disclosure Agreement shall be deemed a default under the Loan Agreement.

*Restrictions on Dissolution and Merger.* The Institution covenants in the Loan Agreement that at all times during the term of the Loan Agreement, it will (i) maintain its existence as a not-for-profit education corporation constituting a Tax-Exempt Organization and a validly existing charter school under the Charter School Act, (ii) continue to be subject to service of process in the State, (iii) continue to be organized under the laws of, or qualified to do business in, the State, (iv) not liquidate, wind up or dissolve or otherwise dispose of all or substantially all of its property, business or assets ("Transfer") remaining after the Closing Date, except as described below, (v) not consolidate with or merge into another Entity or permit one or more Entities to consolidate with or merge into it ("Merge" or "Merger"), except as described below, and (vi) not change or permit the change of any Principal of the Institution, or a change in the relative Control of the Institution of any of the existing Principals, except in each case as described below. Notwithstanding the foregoing, the Institution may Merge or participate in a Transfer with the prior written consent of the Trustee (upon the written direction of the Majority Holders) if the following conditions are satisfied on or prior to the Merger or Transfer, as applicable:

(A) when the Institution is the surviving, resulting or transferee Entity,

- (1) the Institution shall have a net worth (as determined by an Independent Accountant in accordance with GAAP) at least equal to that of the Institution immediately prior to such Merger or Transfer,

- (2) the Institution shall continue to be a Tax-Exempt Organization and a validly existing charter school under the Charter School Act,
  - (3) the Institution shall deliver to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such action will not cause the interest on the Bonds to become includable in gross income for federal income tax purposes, and
  - (4) the Institution shall deliver to the Issuer a Required Disclosure Statement with respect to itself as surviving Entity in form and substance satisfactory to the Issuer; or
- (B) when the Institution is not the surviving, resulting or transferee Entity (the "Successor Institution"),
- (1) the predecessor Institution (the "Predecessor Institution") shall not have been in default under the Loan Agreement or under any other Project Document,
  - (2) the Successor Institution shall be a Tax-Exempt Organization and shall be solvent and subject to service of process in the State and organized under the laws of the State, or under the laws of any other state of the United States and duly qualified to do business in the State, and shall be a validly existing charter school under the Charter School Act,
  - (3) the Successor Institution shall have assumed in writing all of the obligations of the Predecessor Institution contained in the Loan Agreement and in all other Project Documents to which the Predecessor Institution shall have been a party,
  - (4) the Successor Institution shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion,
  - (5) each Principal of the Successor Institution shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion,
  - (6) the Successor Institution shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an Opinion of Counsel to the effect that (y) the Loan Agreement and all other Project Documents to which the Predecessor Institution shall be a party constitute the legal, valid and binding obligations of the Successor Institution and each is enforceable in accordance with their respective terms to the same extent as it was enforceable against the Predecessor Institution, and (z) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents,
  - (7) the Successor Institution shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an opinion of an Independent Accountant to the effect that the Successor Institution has a net worth (as determined in accordance with GAAP) after the Merger or Transfer at least equal to that of the Predecessor Institution immediately prior to such Merger or Transfer,
  - (8) the Successor Institution delivers to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such action will not cause the

interest on the Bonds to become includable in gross income for federal income tax purposes, and

- (9) the Successor Institution shall provide evidence to the Trustee that the entity can continue to operate the Facility as a charter school in accordance with the Charter School Act and that such entity is (or shall be upon the Merger or Transfer) entitled to receive Education Aid.

If there is a change in Principals of the Institution, or a change in the Control of the Institution, the Institution shall deliver to the Issuer prompt written notice thereof to the Issuer together with a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion.

*Waiver of Financial Covenants.* Notwithstanding any other provision in the Loan Agreement to the contrary, any covenant of the Institution referenced above relating to Liens, restrictions on dissolution and merger, reporting, financial covenants (Debt Service Coverage Ratio and Days Cash on Hand), additional Indebtedness, Separate Facilities and certain other covenants set forth in the Loan Agreement may be waived or modified by the Institution and the Issuer with the written consents of the Majority Holders.

*Special Charter Covenants.* The Institution covenants in the Loan Agreement that, for so long as any Bonds shall be Outstanding, it will be chartered by the State University of New York or the New York Board of Regents as a charter school. The Institution shall provide the Issuer and the Trustee immediate notice if the Charter is not renewed, or is otherwise terminated, revoked, amended or cancelled or expires. The Institution covenants to comply fully in all material respects with the provisions of the Charter School Act so long as any Bonds remain Outstanding. The Institution will do, or cause to be done, all things necessary to obtain, renew and secure all permits, licenses and other governmental approvals and to comply with such permits, licenses and other governmental approvals necessary for operation of the Facility as a public charter school in accordance with the Charter School Act.

*Account Direction Agreement.* On or about the date of issuance of the Series 2019 Bonds, the Institution will execute a payment direction letter to the School District and each other applicable Entity directing each such Entity to forward all Education Aid due to the Institution with respect to its operations at the Facility to the Depository Bank to be deposited in the account (the "Deposit Account") governed by the Account Direction Agreement. The Institution agrees not to revoke such direction so long as any obligations of the Institution under the Loan Agreement or any other Security Document remain outstanding or unsatisfied. In the event the Institution receives any Education Aid with respect to its operations at the Facility contrary to such direction, the Institution shall immediately deposit the same in the Deposit Account.

Pursuant to the terms of the Account Direction Agreement, the Institution shall instruct the Depository Bank to transfer amounts deposited in the Deposit Account to the Trustee the next following Loan Payment Date in the amount necessary to satisfy the Institution's debt service payment obligations under the Loan Agreement and the Promissory Note on such Loan Payment Date. The Institution may at any time make withdrawals from the Deposit Account for any of its corporate purposes, but in no event will the Institution withdraw amounts of Education Aid received by the Depository Bank to the extent such withdrawal would cause there to be insufficient amounts in the Deposit Account to transfer to the Trustee the full amount owed by the Institution to the Trustee on the next succeeding Loan Payment Date. In the event that Education Aid is not received by the Depository Bank in an amount sufficient, or in a timely manner, to permit the Depository Bank to transfer to the Trustee the amount required above by any Loan Payment Date, the Institution is nevertheless obligated to cause the full amount required to be

paid to the Trustee under the Loan Agreement in a timely manner on or prior the Loan Payment Date from whatever sources are available to the Institution.

The Institution shall not change its Depository Bank unless the Institution executes a new payment direction letter to the School District and each other applicable Entity directing each such Entity to forward all Education Aid due to the Institution with respect to its operations at the Facility to the new Depository Bank and enters into an Account Direction Agreement with such successor Depository Bank and the Trustee upon similar terms and conditions.

### **The Indenture**

The Series 2019 Bonds are to be issued pursuant to the Indenture and will be equally and ratably secured with any Series of Additional Bonds that may be issued thereby. As security for the Bonds, the Issuer has pledged and assigned to the Trustee the Trust Estate, which includes: (i) all right, title and interest of the Issuer in and to the Loan Agreement, including all loan payments, revenues and receipts payable or receivable thereunder (other than the Issuer's Reserved Rights, which Issuer's Reserved Rights may be enforced by the Issuer and the Trustee, jointly or severally); (ii) all right, title and interest of the Issuer in and to the Promissory Note; (iii) all moneys and securities from time to time held by the Trustee under the Indenture (other than the Rebate Fund), and (iv) any and all other property of every kind and nature from time to time which is delivered or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security under the Indenture, by the Issuer or by any other Person, with or without the consent of the Issuer, to the Trustee which is authorized to receive any and all such property at any time and at all times to hold and apply the same subject to the terms of the Indenture. The Indenture provides that all Series 2019 Bonds issued thereunder shall be special limited revenue obligations of the Issuer, payable solely from and secured solely by the Trust Estate. See "APPENDIX E - FORM OF INDENTURE" in this Limited Offering Memorandum.

Under the Indenture, there shall be deposited in the Revenue Fund as and when received, all loan payments and other amounts required to be paid by the Institution to the Trustee.

### **Flow of Funds; Revenue Fund**

There shall be deposited in the Revenue Fund as and when received, (i) the loan payments paid to the Trustee by the Institution pursuant to the Loan Agreement, (ii) transfers made by the Depository Bank pursuant to the Account Direction Agreement, and (iii) all other moneys to be deposited into the Revenue Fund pursuant to the Loan Agreement or the Indenture. All moneys held on deposit in the Revenue Fund shall be transferred or disbursed by the Trustee on each Loan Payment Date, in the following order of priority:

FIRST: to the Bond Fund, an amount of moneys, less any credits received against such amounts, equal to one-third (1/3) of the interest due on the Bonds on the next Interest Payment Date, plus (ii) to the Bond Fund, an amount of money equal to one-sixth (1/6) of the Sinking Fund Installment due on any Sinking Fund Installment payment date occurring in the next 12 months, plus (iii) to the Bond Fund, an amount of money equal to one-sixth (1/6) of the principal due on any principal payment date occurring in the next 12 months, plus (iv) any amount previously due under this paragraph but that remains unpaid because of an insufficiency in moneys available therefor;

SECOND: to the to the Rebate Fund, any amount of moneys required to be deposited in the Rebate Fund pursuant to the Indenture or the Tax Regulatory Agreement;

THIRD: to the Debt Service Reserve Fund, upon the determination of a deficiency in the Debt Service Reserve Fund pursuant to the Indenture, an amount of moneys equal to one-sixth (1/6) of such deficiency in that amount of moneys necessary to cause the sum on deposit in the Debt Service Reserve Fund to equal the Debt Service Reserve Fund Requirement;

FOURTH: following the Project Completion Date, \$4,166.67 to the Repair and Replacement Fund until the amount on deposit in the Repair and Replacement Fund equals the Repair and Replacement Fund Requirement; provided that, following any disbursement from the Repair and Replacement Fund, the amount required to be deposited therein shall additionally include an amount necessary to replenish the Repair and Replacement Fund by the total amount of such disbursement deposited in equal amounts on each Loan Payment Date over the 24-month period to begin on the Loan Payment Date following such disbursement;

FIFTH: with respect to a redemption pursuant to the Indenture (other than any mandatory Sinking Fund Installment redemption), to the Bond Fund, an amount of money equal to the redemption price due on the redemption date, and

SIXTH: to the Institution, all amounts of money remaining on deposit in the Revenue Fund, if any, after the Trustee has made the disbursements required in FIRST through FIFTH above; provided that if an Event of Default has occurred and is in then in effect, the Trustee shall only transfer to the Institution the amount necessary to pay operating and capital expenses required to be paid for that calendar month as provided in the Institution's annual budget as shall be certified by the Institution to the Trustee.

### **Acceleration**

Upon the occurrence of certain events, payment of the principal of and accrued interest on the Series 2019 Bonds may be accelerated under the Indenture. See "RISK FACTORS"; "APPENDIX F FORM OF LOAN AGREEMENT - Events of Default" and "- Remedies on Default"; and "APPENDIX G - FORM OF INDENTURE - Events of Default; Acceleration of Due Date" and "- Enforcement of Remedies" in this Limited Offering Memorandum.

### **Debt Service Reserve Fund**

On the date of the issuance of the Series 2019 Bonds, proceeds of the Series 2019 Bonds in an amount equal to the Debt Service Reserve Fund Requirement (defined below) will be deposited in the Debt Service Reserve Fund created by the Indenture. The "Debt Service Reserve Fund Requirement" means (a) \$1,444,356.26 with respect to the Series 2019 Bonds (provided that if the Series 2019 Bonds are redeemed in part, "Debt Service Reserve Fund Requirement" shall mean the Maximum Annual Debt Service of the Series 2019 Bonds), and (b) with respect to each Series of Additional Bonds, shall mean the Maximum Annual Debt Service of such Series of Additional Bonds.

If on any Interest Payment Date or redemption date on the Bonds the amount in the Interest Account of the Bond Fund (after taking into account amounts available to be transferred to the Interest Account from the Project Fund) shall be less than the amount of interest then due and payable on the Bonds, or if on any principal payment date on the Bonds the amount in the Principal Account shall be less than the amount of principal of the Bonds then due and payable, or if on any Sinking Fund Installment payment date for the Bonds the amount in the Sinking Fund Installment Account of the Bond Fund shall be less than the amount of the Sinking Fund Installment then due and payable on the Bonds (and after any transfers to the Bond Fund from the Earnings Fund and the Repair and Replacement Fund), in each case, after giving effect to all payments received by the Trustee in immediately available funds by 10:00 a.m. (New York City time) on such date from or on behalf of the Institution or the Issuer on account of such

interest, principal or Sinking Fund Installment (and after any transfers to the Bond Fund from the Earnings Fund and the Repair and Replacement Fund), the Trustee forthwith shall transfer moneys from the Debt Service Reserve Fund, first, to such Interest Account, second to such Principal Account, and third, to such Sinking Fund Installment Account, all to the extent necessary to make good any such deficiency.

Upon the occurrence of an Event of Default under the Indenture and the exercise by the Trustee of remedies in the Loan Agreement and the Indenture, any moneys in the Debt Service Reserve Fund shall be transferred by the Trustee to the Bond Fund and applied in accordance with the Indenture, notice of which shall be given by the Trustee to the Institution, the Issuer and the Bondholders. On the Loan Payment Date next preceding the final maturity date of the Bonds, any moneys in the Debt Service Reserve Fund shall be transferred to the Bond Fund and used to pay the principal and interest on the Bonds on the final maturity date.

The Trustee shall give to the Institution on or prior to each Loan Payment Date on which the Institution is obligated pursuant to the Loan Agreement to pay to the Trustee amounts in respect of any deficiency in the Debt Service Reserve Fund, telephonic notice (to be promptly confirmed in writing) specifying any such deficiency in the Debt Service Reserve Fund. The failure of the Trustee to deliver such notice or any defect in such notice shall not relieve the Issuer from any of its obligations under the Indenture or any other obligor from any of its obligations under any of the Security Documents.

In the event that the Institution shall deliver written notice to the Trustee of its intention to redeem Bonds, the Institution may direct the Trustee to apply such amounts in the Debt Service Reserve Fund to effect such redemption such that the amount remaining in the Debt Service Reserve Fund upon such redemption shall not be less than the reduced Debt Service Reserve Fund Requirement as will be applicable to the remainder of the Bonds Outstanding.

### **Repair and Replacement Fund**

The Trustee shall deposit into the Repair and Replacement Fund all amounts required to be deposited therein pursuant to the Indenture (described above in clause FOURTH under "THE INDENTURE - Flow of Funds; Revenue Fund") and all payments required to be made by the Institution pursuant to the Loan Agreement. Under the Loan Agreement, upon receipt by the Institution of notice from the Trustee that the amount on deposit in the Repair and Replacement Fund is less than the Repair and Replacement Fund Requirement (defined as \$250,000), the Institution shall pay to the Trustee for deposit in the Repair and Replacement Fund on the Loan Payment Date immediately following the receipt by the Institution of notice of such deficiency, and on each of the five (5) succeeding Loan Payment Dates, or over such longer time period as shall be consented to in writing by the Majority Holders, an amount equal to one-sixth (1/6) of such original deficiency in the Repair and Replacement Fund.

The Trustee shall, at the request of an Authorized Representative of the Institution, disburse moneys from the Repair and Replacement Fund in payment of the costs described below upon receipt by the Trustee of a requisition therefor. After the Project Completion Date, moneys in the Repair and Replacement Fund shall be disbursed by the Trustee (y) to the Institution or to the Institution's order to pay the cost of (i) improvements to the Facility, (ii) replacement or repair of furniture and equipment or other components of the Facility, and (iii) purchasing additional furniture and equipment for the Facility; and (z) to pay principal and interest on the Bonds to the extent payments by the Institution are insufficient therefor (prior to the use of moneys in the Debt Service Reserve Fund and after the use of moneys in the Earnings Fund for such purpose). In no event will the balance of the Repair and Replacement Fund be required to exceed the Repair and Replacement Fund Requirement. As long as no Event of Default has occurred and is continuing, if, at any time, the balance of the Repair and Replacement Fund exceeds the

Repair and Replacement Fund Requirement, at the written request of the Institution, the sum of such excess shall be delivered by the Trustee to the Institution to be applied by the Institution for any lawful purpose of the Institution.

### **Project Fund**

On the Closing Date, the Trustee shall deposit a portion of the proceeds of the Series 2019 Bonds into the Project Fund. The Trustee is authorized to disburse from the Project Fund amounts required to pay (in whole or in part) the Project Costs, upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Institution and approved by the Construction Monitor, as applicable; provided, however, that the Trustee shall retain in the Project Fund an amount specified in the Indenture, until the Project completion certificate is filed under the Loan Agreement. In connection with any requisitions under which costs under the Construction Contract are to be paid or reimbursed, the Institution shall also submit to the Trustee certificates of the Construction Manager and Architect and certain other Institution certifications required by the Indenture, and the approval of the Construction Monitor to the requisitions submitted by the Institution shall also be required. Any requisition submitted to the Trustee for costs of construction, improving and/or renovating the Facility Realty shall be accompanied by a notice of title continuation or an endorsement to the title insurance policies indicating that since the last preceding disbursement of any amounts held in the Project Fund, there has been no change in the state of title and no exceptions not theretofore approved by the Issuer and the Trustee (which approvals shall not be unreasonably withheld), which notice or endorsement shall contain no exception for inchoate mechanic's liens (and such affirmative insurance relating thereto as the Issuer and/or the Trustee shall reasonably require) and shall have the effect of redating such policies to the date of the disbursement then being made and increasing the coverage of the policies by an amount equal to the disbursement then being made if the policies do not by their terms provide for such an increase. The Construction Monitor shall not approve any requisition under which costs under the Construction Contract will be paid or reimbursed unless (i) all necessary permits have been obtained in order for construction of the Facility to commence, except for an aggregate amount not to exceed \$1,620,000 which may be approved for "soft" costs and costs of pre-ordering materials and equipment under the Construction Contract for the Project, and (ii) the Construction Monitor receives a notice of title continuation or an endorsement to the title insurance policies as required under the Indenture. No disbursement shall be made unless Bond proceeds in the Project Fund are "in balance" with the construction budget for the Project in existence as of the Closing Date. The Institution covenants that if the Project Fund is not "in balance" the Institution shall deposit funds with the Trustee in an amount sufficient so that the Project Fund will be "in balance." The Project Fund shall be deemed "in balance" if the Remaining Sources (defined below) equal or exceed the Remaining Uses (defined below) as certified by the Institution in connection with each disbursement from the Project Fund. "Remaining Sources" shall mean the amount on deposit in the Project Fund, and "Remaining Uses" shall mean all amounts on the Budget which have not theretofore been paid.

The completion of the Project shall be evidenced as set forth in the Loan Agreement including the filing of a certificate of an Authorized Representative of the Institution. Upon the filing of such certificate, the balance in the Project Fund in excess of the amount, if any, stated in such certificate for the payment of any remaining part of the costs of the Project, shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and the Loan Agreement, be deposited by the Trustee in the Redemption Account of the Bond Fund. Upon payment of all the costs and expenses incident to the completion of the Project, any balance of such remaining amount in the Project Fund, together with any amount on deposit in the Earnings Fund derived from transfers made thereto from the Project Fund, shall, after making any such transfer to the Rebate Fund, and after depositing in the Debt Service Reserve Fund an amount equal to any deficiency therein, be deposited in the Redemption



Account of the Bond Fund to be applied to the redemption of Bonds at the earliest practicable date as set forth in the Indenture.

### **Additional Bonds**

So long as the Promissory Note, the Loan Agreement and the other Security Documents are each in effect, one or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of (i) completing the Project, (ii) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, the purpose of which shall be for the Approved Project Operations, or (iv) refunding Outstanding Bonds. Such Additional Bonds shall be payable from the loan payments, receipts and revenues of the Facility including such extensions, additions and improvements thereto. Prior to the issuance of a Series of Additional Bonds and the execution of a Supplemental Indenture in connection therewith, the Issuer and the Institution shall enter into an amendment to the Loan Agreement, and the Institution shall execute a new Promissory Note, which shall provide, among other things, that the loan payments payable by the Institution under the Loan Agreement and the aggregate amount to be paid under all Promissory Notes shall be increased and computed so as to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith. In addition, the Institution and the Issuer shall enter into an amendment to each Security Document with the Trustee which shall provide that the amounts guaranteed or otherwise secured thereunder be increased accordingly.

Each Series of Additional Bonds shall be equally and ratably secured under the Indenture with the Series 2019 Bonds and all other Series of Additional Bonds, if any, issued pursuant to the Indenture, without preference, priority or distinction of any Bond over any other Bonds except as expressly provided in or permitted by the Indenture.

Additional Bonds may only be issued upon receipt by the Trustee of certain items specified in the Indenture, including, without limitation (a) an amount of money for deposit in the Debt Service Reserve Fund such that the aggregate amount on deposit in such Fund shall be at least equal to the Debt Service Reserve Requirement after giving effect to the issuance of such Series of Additional Bonds, and (b) evidence satisfactory to the Trustee that the additional Indebtedness of the Institution incurred in connection with the issuance of the Additional Bonds complies with the requirements of the Loan Agreement described herein under "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS - Special Covenants of the Institution; Additional Indebtedness" in this Limited Offering Memorandum.

### **Defeasance**

Upon certain terms and conditions specified in the Indenture, including provision for the payment of such Series 2019 Bonds, the Series 2019 Bonds or portions thereof will be deemed to be paid and the security provided in the Indenture and the Mortgage may be discharged prior to maturity or redemption of the Series 2019 Bonds. In that case, the Series 2019 Bonds will be secured solely by the cash and securities deposited with the Trustee for such purpose. See "APPENDIX E - FORM OF INDENTURE - Discharge of Indenture; Defeasance" in this Limited Offering Memorandum.

### **Mortgage**

Pursuant to the Mortgage, to be executed by the Institution in favor of the Issuer and Trustee, as beneficiaries, and assigned by the Issuer to the Trustee, the payment of the principal of, premium, if any, and interest on the Series 2019 Bonds will be secured by mortgage liens on and security interests in the

Mortgaged Property, including the Facility, subject to certain Permitted Encumbrances. Under the Mortgage, the Institution also will assign all leases and rents with respect to the Facility to the Trustee as further security for the Series 2019 Bonds. The Mortgage also contains the property and casualty insurance requirements for the Facility. See "APPENDIX G - FORM OF MORTGAGE" in this Limited Offering Memorandum.

### **RISK FACTORS**

No person should purchase any Series 2019 Bonds without carefully reviewing the following information, which summarizes some, but not all, factors that should be carefully considered before such purchase.

#### **Nature of Special, Limited Obligations**

THE SERIES 2019 BONDS ARE SPECIAL LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE AS TO PRINCIPAL, REDEMPTION PRICE AND INTEREST, SOLELY FROM THE TRUST ESTATE AND CERTAIN FUNDS AND ACCOUNTS ESTABLISHED UNDER THE INDENTURE. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2019 BONDS. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY, IS PLEDGED TO SUCH PAYMENT OF THE SERIES 2019 BONDS. THE SERIES 2019 BONDS WILL NOT BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE SERIES 2019 BONDS WILL NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE CREDIT OR TAXING POWERS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY. NO RECOURSE WILL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OR REDEMPTION PRICE OF, OR INTEREST ON, THE SERIES 2019 BONDS AGAINST ANY MEMBER, OFFICER, DIRECTOR, EMPLOYEE OR AGENT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

#### **Dependence on Institution's Ability to Pay Loan Payments**

Payment of principal of, premium, if any, and interest on, the Series 2019 Bonds is intended to be made from loan payments made by the Institution under the Loan Agreement, except to the extent payment is intended to be made from other amounts held under the Indenture such as Series 2019 Bond proceeds or investment earnings. See "APPENDIX A - NEW DAWN CHARTER SCHOOLS" in this Limited Offering Memorandum.

The Institution's general revenues are a combination of state payments provided under several State and federal programs, including the Education Aid Payments. See "CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK" in this Limited Offering Memorandum. Prior enrollment history of the Institution is no guarantee of future enrollment and revenues. See "APPENDIX A - NEW DAWN CHARTER SCHOOLS" in this Limited Offering Memorandum.

The amounts and the timing of future revenues of the Institution cannot be determined with assurance. Prior revenues and expenditures of the Institution are no guarantee as to future revenue and expenditures of the Institution. Any event that would cause a delay, reduction or elimination of Education Aid Payments would have a material adverse effect on the ability of the Institution to make loan payments under the Loan Agreement representing debt service on the Series 2019 Bonds.

## **No Taxing Authority; Dependence on Education Aid Payments**

The Institution does not possess any taxing authority and the Institution is substantially dependent upon the State to continue to provide funding for public charter schools. The obligation of the State under the Charter School Act and State law to fund the Institution is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. In the event the State were to withhold the payment of money from the Institution for any reason, even a reason that is ultimately determined to be invalid or unlawful, it is likely that the Institution would be forced to cease operations.

## **Failure of New York City Department of Education to Make Education Aid Payments to the Institution**

The regulations adopted by the New York State Commissioner of Education (the “Commissioner”) provide that a charter school shall notify the Commissioner in the event that a school district (the NYC DOE on behalf of the New York City Community School District 15 with respect to the Institution) fails to make a required bi-monthly Education Aid Payment to a charter school such as the Institution. Such notice shall be given subsequent to the date a bi-monthly payment is due, but in no event later than May 31 of the school year in which such payments are due. Upon receipt of such notice, the Commissioner must certify to the State Comptroller (the “Comptroller”) the amount of the unpaid obligation of the school district, which said amount shall be deducted from any Education Aid Payment due to such school district (the NYC DOE on behalf of the New York City Community School District 15 with respect to the Institution) and instead will be paid directly by the Comptroller to the Institution. There can be no assurance of the timing of receipt of any such amounts so paid by the Comptroller.

## **Delay in or Termination or Reduction of Education Aid Payments**

Even though New York State is obligated under its Constitution to provide for the maintenance and support of a system of free common schools, it is not obligated either to continue to authorize the operation of charter schools or to continue its current system of Education Aid Payments. Any change in the Charter Schools Act or in the provisions of the New York State Education Law relating to the appropriation of Education Aid Payments or failure by the State Legislature to appropriate funds sufficient to fund the operation of charter schools could have a material adverse effect on the ability of the Institution to make loan payments under the Loan Agreement.

Although State law prescribes a detailed process applicable to the adoption by the State of its annual budget, the annual budgetary process has resulted in recent years in the adoption of annual budgets later, and in some instances substantially later, than April 1, which is the start of the State’s fiscal year. No assurance can be given as to the date of adoption of future annual budgets or as to the availability of funds for public education purposes while the annual budget is pending. In addition, the State has had well publicized budget issues and deficits and such State budgetary pressures could continue and cause revisions to the funding of charter schools in the State.

## **Projections**

The Financial Projections (the “Projections”) prepared by the Institution and contained in APPENDIX A – Projected Financial Information” are based upon certain assumptions made by the Institution. No assurance can be given that the results described in the Projections will be achieved. The Institution does not intend to issue additional Projections and, accordingly, there are risks inherent in using the Projections in the future as the Projections become outdated. The Projections are only for fiscal years ending June 30, 2019 through June 30, 2023 and do not cover the entire period during which the Series 2019 Bonds may be outstanding. The Projections have not been updated to reflect the final pricing

of the Series 2019 Bonds. See “APPENDIX A – Projected Financial Information” in this Limited Offering Memorandum.

*No guarantee can be made that the Projections will correspond with the results actually achieved in the future by the Institution because there is no assurance that actual events will correspond with the assumptions made by the Institution. For example, the Projections makes certain assumptions as to continued demand for educational facilities such as the Facility and future enrollment at the Institution. Actual operating results of the Institution may be affected by many factors, including, but not limited to, increased costs, lower than anticipated enrollment, reduced State funding, changes in demographic trends, and local and general economic conditions. The Projections, which appear in “APPENDIX A – Projected Financial Information” in this Limited Offering Memorandum, should be read in their entirety.*

### **Termination, Revocation or Nonrenewal of the Charter**

The Charter may be terminated by the Board of Regents for the grounds set forth in the Charter Schools Act. The Charter also provides that it may be terminated and revoked by mutual agreement of the parties. For more information regarding conditions under which the Charter may be revoked, the revocation procedure, and other information regarding the Charter and the Charter Schools Act, see “CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK,” “APPENDIX A - NEW DAWN CHARTER SCHOOLS - The Charter,” and “APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW” in this Limited Offering Memorandum.

While the Institution believes that it is in good standing with the Authorizer and is in material compliance with the Charter, no assurance can be given that the Institution will be able to maintain such good standing in the future. In addition, even though the Institution does not anticipate any non-renewal or revocation of its Charter, there can be no assurance that the Authorizer or the Board of Regents will not revoke the Charter in the future or choose not to renew the Charter when it ends. The current Charter has a term through June 30, 2022.

### **Queens School and Separate Facilities**

As described in APPENDIX A hereto, the Institution has received a Charter from the Board of Regents to operate a transfer charter school in Queens, New York (the “Queens Facility”). The charter for the Queens Facility is separate from the Charter under which the Institution operates the Facility. However, the Queens Facility will be controlled by the Board of Trustees of the Institution. In addition, the Loan Agreement permits the Institution to open facilities for charter schools at other locations (which other facilities, together with the Queens Facility, are referred to collectively as “Separate Facilities”) under certain conditions as described herein under “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS - Special Covenants of the Institution; Additional Indebtedness – *Separate Facilities*” in this Limited Offering Memorandum. In addition, as described therein, the Institution will make various covenants in the Loan Agreement to ensure that no Revenues or assets (including, without limitation, Cash and Investments) derived from the Institution’s operation of the Facility will be transferred or loaned to, or pledged to secure obligations with respect to, any Separate Facility. In addition, the Loan Agreement provides, among other covenants, certain limitations on the ability of the Institution to incur Indebtedness financing or refinancing any Separate Facility or assets related thereto and that all Cash and Investments related to the Facility be maintained in separate accounts and not commingled. Nevertheless, in the event of a bankruptcy or insolvency of the Institution, a bankruptcy court would likely treat all assets and revenues of the Institution not specifically pledged and secured to specific creditors pursuant to applicable law as available for the disposition to all unsecured creditors of the Institution, regardless of whether the creditors’ claims resulted from the Institution’s operation of the Facility or any Separate Facility; provided that the Trustee’s first security interest under the Mortgage in

the Facility could be expected to be honored. In addition, it is possible that a judgment or other creditor of the Institution whose claim arose in relation to the Institution's operation of a Separate Facility, could seek to enforce its judgment against Revenues or other unencumbered assets of the Institution related to the Facility. Accordingly, it cannot be certain that the Institution's operation of the Queens Facility or any Separate Facility will not adversely affect the ability of the Institution to pay debt service under the Loan Agreement in amounts sufficient to pay the Series 2019 Bonds.

### **Need to Relocate School During Renovations**

The Institution will need to rent alternate space to operate the School while renovations of the Facility are progressing during the 2019-2020 school year. The Institution is actively engaged in discussions with a potential landlord for an alternate site in Brooklyn. As another possibility, the Institution believes it could co-locate the School with the Queens school at the Queens Facility if necessary. Final arrangements for such alternate space have not been made as of the date of this Limited Offering Memorandum, although the Institution believes that it will be able to procure such space on reasonable terms. The cost of the Renovation Project described in APPENDIX A - THE PROJECT - Renovations" and "- Construction Contract" in this Limited Offering Memorandum have been arrived at on the basis that no "phasing" of the Renovation Project will be necessary (i.e., the School will operate out of an alternate facility during the pendency of the Renovation Project). See "APPENDIX A - THE PROJECT - Renovations" in this Limited Offering Memorandum. There can be no assurance, however, that the Institution will be able to procure alternate space to operate the School or that the rental and terms for the lease of such alternate space will be favorable to the Institution. The Institution's projected results for fiscal year 2019-2020 assume a rental expense of \$800,000 (see "APPENDIX A - Table 19" in this Limited Offering Memorandum), but there can be no assurance that the actual rental will not be in excess of such amount. In addition, the fixed price cost of the Renovation Project described in this Limited Offering Memorandum was derived assuming that no "phasing" of the Renovation Project will be necessary (i.e., the School will operate out of an alternate facility during the pendency of the Renovation Project). If the School were unable to rent alternate space on acceptable terms, and the Institution needed to operate out of the Facility during the Renovation Project, it could be expected that the cost of the Renovation Project would increase materially and the completion date would be delayed.

### **Construction Risks; Permitting**

A portion of the Series 2019 Bond proceeds will be used to renovate the Facility as described herein under "THE PROJECT AND PLAN OF FINANCE" and in APPENDIX A- THE PROJECT" in this Limited Offering Memorandum. Construction is subject to all typical construction related risks. Such risks include, among others, filing of mechanic's liens (which may be ruled superior to the liens of the Mortgage), labor disputes, defective building materials, schedule delays, severe weather, shortages in various labor trades, fire or other property or casualty damage, unanticipated subsoil conditions and financial difficulties on the part of or disputes with the construction manager, key suppliers, contractors or subcontractors. There can be no assurance that construction problems of the types described above, or other problems, will not frustrate the planned completion of any part of the renovation of the Facility.

In addition, since the Institution will not own the Facility until the date of issuance of the Series 2019 Bonds, the Institution will not begin applying for permits until such date. While the Institution is not aware of any reason why permits might be delayed and the current construction schedule contemplates permits being applied for on or after the Closing Date, there can be no assurance that the required permits will be obtained on time or without conditions that increase the cost of the Project. See the discussion in APPENDIX A - THE PROJECT - Zoning and Permitting" in this Limited Offering Memorandum.

## **No Pledge of Revenues by the Institution**

Under New York law, the Institution may not legally assign or pledge any interest in public education aid payable to the Institution pursuant to the Charter Schools Act to secure its obligations under the Loan Agreement. In the event of a bankruptcy or insolvency of the Institution, the lack of a revenue pledge could adversely impact the Trustee's ability to secure revenues for the benefit of the Bondholders.

## **Factors Associated with Education**

There are a number of factors affecting schools in general, including the Institution, that could have an adverse effect on the Institution's financial position and its ability to make the payments required under the Loan Agreement and therefore on the ability of the Institution to make loan payments under the Loan Agreement. These factors include, but are not limited to (i) the ability to attract a sufficient number of students; (ii) future legislation and regulations affecting charter schools and the educational system in general; (iii) increasing costs of compliance with federal or State regulatory laws or regulations, including, without limitation, laws or regulations concerning environmental quality, work safety and accommodating persons with disabilities; (iv) increased costs of attracting and retaining or a decreased availability of a sufficient number of teachers, including as related to any unionization of the Institution's work force with consequent impact on wage scales and operating costs of the Institution; (v) cost and availability of insurance for charter schools in the State; and (vi) changes in existing statutes pertaining to the powers of the Institution and legislation or regulations which may affect program funding. The Institution cannot assess or predict the ultimate effect of these factors on its operations or the financial results of operations.

## **Potential Unionization**

The teachers and staff at the School are not unionized, although no assurance can be given that they will not unionize or attempt to unionize in the future. John V. Lindsay Wildcat Academy Charter School in Manhattan and the Bronx (the school on whose educational model the School's model is based) is unionized.

## **Competition for Students**

As a charter school in New York City, the Institution's catchment area is the entire city. However, 85% of all of the Institution's students come from Brooklyn. Because the Institution enrolls throughout the year and will take anyone with no age credit accumulation or Board of Regents requirements (except that students must be older than 15), the Institution believes it has little direct competition. Wildcat Academy, located in Manhattan, is the exception since the Institution is based on the Wildcat Academy academic model. See "APPENDIX A - NEW DAWN CHARTER SCHOOLS - Competition" in this Limited Offering Memorandum. No assurance, however, can be given that the Institution will attract and retain the number of students that are needed to produce revenue necessary to pay the principal of and interest on the Series 2019 Bonds, or that additional competing schools will not be created in or near the Institution's service area.

## **Foreclosure Delays and Deficiency**

Should loan payments be insufficient to pay the principal of and interest on the Series 2019 Bonds, the Trustee may seek to foreclose on or sell the Facility securing the Series 2019 Bonds. However, no assurance can be given that the value of the Facility at the time of such foreclosure or sale would be sufficient to meet all remaining principal and interest payments on the Series 2019 Bonds. In addition, the time necessary to institute and complete such proceedings could substantially delay receipt of funds from

a foreclosure or sale. There could also be delays in regaining possession of the Facility from the Institution in the event of any default or dispute under the Loan Agreement.

### **Effect of Federal Bankruptcy Laws on Security for the Series 2019 Bonds**

Bankruptcy proceedings and equity principles may delay or otherwise adversely affect the enforcement of Bondholders' rights in the property granted as security for the Series 2019 Bonds. Furthermore, if the security for the Series 2019 Bonds is inadequate for payment in full of the Series 2019 Bonds, bankruptcy proceedings and equity principles may also limit any attempt by the Trustee to seek payment from other property of the Institution, if any. Also, federal bankruptcy law permits adoption of a reorganization plan, even though it has not been accepted by the holders of a majority in the aggregate principal amount of the Series 2019 Bonds, if the Bondholders are provided with the benefit of their original lien or the "indubitable equivalent." In addition, if the bankruptcy court concludes that the Bondholders have "adequate protection," it may (i) substitute other security subject to the lien of the Bondholders, and (ii) subordinate the lien of the Bondholders (a) to claims by persons supplying goods and services to the Institution after bankruptcy and (b) to the administrative expenses of the bankruptcy proceeding. The bankruptcy court may also have the power to invalidate certain provisions of the Mortgage that make bankruptcy and related proceedings by the Institution an event of default thereunder.

### **Key Personnel**

The Institution's creation, curriculum, educational philosophy, and day-to-day operations reflect the vision and commitment of the individuals who serve on the Institution's Board of Trustees and as the Institution's administrators (the "Key Personnel"). The loss of any Key Personnel could adversely affect the Institution's operations, its ability to attract and retain students and ultimately its financial results. For more information regarding the Institution's Key Personnel, see "APPENDIX A - NEW DAWN CHARTER SCHOOLS - Government and Management" in this Limited Offering Memorandum.

### **Additional Indebtedness**

In the Loan Agreement, the Institution is permitted to incur additional Indebtedness in accordance with the restrictions imposed by the Loan Agreement. No assurance can be given that the Issuer will not issue Additional Bonds for the benefit of the Institution or that the Institution will not incur additional Indebtedness in the future. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS - Special Covenants of the Institution; Additional Indebtedness" and "Additional Bonds" in this Limited Offering Memorandum.

### **Forward-Looking Statements**

This Limited Offering Memorandum contains certain statements that are "forward-looking" statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical facts included in this Limited Offering Memorandum, including without limitation statements that use terminology such as "estimate," "plan," "budget," "expect," "intend," "anticipate," "believe," "may," "will," "continue," and similar expressions, are forward-looking statements. These forward-looking statements include, among other things, the discussions related to the Institution's operations and expectations regarding student enrollment, future operations, revenues, capital resources, and expenditures for capital projects. Although the Institution believes that the assumptions upon which the forward-looking statements contained in this Limited Offering Memorandum are based are reasonable, any of the assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions also could be incorrect. All phases of the operations of the Institution involve risks and uncertainties, many of which are

outside the control of the Institution and any one of which, or a combination of which, could materially affect the results of the Institution's operations and whether the forward-looking statements ultimately prove to be correct. Factors that could cause actual results to differ from those expected include, but are not limited to, general economic conditions such as inflation and interest rates, both nationally and in New York where the Facility is located; the willingness of the State to fund charter school operations at present or increased levels; competitive conditions within the Institution's market, including the acceptance of the education services offered by the Institution; lower enrollments than projected; unanticipated expenses; the capabilities of the Institution's management; changes in government regulation of the education industry; future claims for accidents at the Facility and the extent of insurance coverage for such claims; and other risks discussed in this Limited Offering Memorandum. THE PROJECTIONS CONTAINED IN APPENDIX A ATTACHED TO THIS LIMITED OFFERING MEMORANDUM ARE NOT A HISTORICAL STATEMENT OF FINANCIAL PERFORMANCE OF THE SCHOOL, BUT ARE A FORWARD LOOKING FORECAST OF FUTURE, PROJECTED FINANCIAL PERFORMANCE OF THE INSTITUTION.

No representation or assurance can be given that the Institution will realize revenues in an amount sufficient to make the required payments under the Loan Agreement. No market study or demand analysis has been prepared for the Institution to analyze the existing or future demand for the Institution's charter school educational services. The realization of future Revenues is dependent upon, among other things, the matters described in the foregoing paragraphs and future changes in economic and other conditions that are unpredictable and cannot be determined at this time. The Underwriter makes no representation as to the accuracy of the projections contained herein or as to the assumptions on which the projections are based.

### **Property Tax Exemption**

Under present State law and rulings, property used for charter school purposes is exempt from property taxes levied by political subdivisions of the State so long as such property is used for the exempt purpose of the Institution. After acquiring the Facility, the Institution must file an application for exemption from real property taxes based on the fact that it is a charitable organization using the property in connection with its charitable purposes. Assuming such exemption is granted (and the Institution expects that it will be), such property tax exemption will be retroactive to the date the Institution acquired the Facility. Therefore, it is anticipated that the Facility will remain exempt from property taxes. Nevertheless, such laws, regulations and rulings are subject to change, and no assurance can be given that any future change in exempt status would not have a material adverse effect on the Institution. If the Institution is required to pay property taxes with respect to the Facility in the future, it would have a negative impact on the cashflow of the Institution. The Institution has assumed for purposes of the Projections that the Institution will be exempt from property taxes with respect to the Facility; however, no assurance can be given that such exemption will be granted.

### **Tax-Exempt Status of the Institution**

The Institution is a public charter school and a New York not-for-profit education corporation. The Institution has been determined by the Internal Revenue Service to be an organization described in Section 501(c)(3) of the Code. Under present federal law, regulations and rulings, the income and revenue of not-for-profit, 501(c)(3) qualified exempt organizations are exempt from federal income tax, except for any unrelated business income as defined in the Code, and their revenues are exempt from the State sales tax except for certain services. If the Institution fails to meet the requirements necessary to preserve its status as a not-for-profit education corporation and a tax-exempt charitable organization under Section 501(c)(3) of the Code, the Institution could experience expenses which are greater than those projected in "APPENDIX A – Projected Financial Information" and revenues which are lower than those projected in



“APPENDIX A - Projected Financial Information,” which would adversely affect the Institution’s ability in the future to pay the amount due under the Loan Agreement. In addition, if the Institution were to lose its tax-exempt status, the tax-exempt status of the Series 2019 Bonds also would be adversely affected and would cause a mandatory redemption of the Series 2019 Bonds. The Institution will covenant in the Loan Agreement that it will not take any actions or fail to take any actions, the result of which would adversely affect the Institution’s status as a not-for-profit corporation and its status as a tax-exempt charitable organization under Section 501(c)(3) of the Code.

### **IRS Compliance Program**

The Internal Revenue Service has an active program of conducting examinations of tax-exempt bonds through its Tax-Exempt and Government Entities Division (the “TE/GE Division”). Bond Counsel will render an opinion with respect to the tax-exempt status of interest on the Series 2019 Bonds, as described under the caption “TAX MATTERS” in this Limited Offering Memorandum. However, the Institution has not sought and is not expected to seek, a ruling from the Internal Revenue Service with respect to the tax-exempt status of the Series 2019 Bonds. No assurance can be given that the Internal Revenue Service will not examine the Series 2019 Bonds. If the Internal Revenue Service examines the Series 2019 Bonds, such examination may have an adverse impact on the marketability and price of the Series 2019 Bonds. See “TAX MATTERS” in this Limited Offering Memorandum.

### **Tax-Exempt Status of the Series 2019 Bonds**

The tax-exempt status of the interest on the Series 2019 Bonds is conditioned upon the Institution complying with the requirements of the Code and applicable Treasury Regulations as they relate to the Series 2019 Bonds. Failure of the Institution to comply with the terms and conditions of the Loan Agreement, the Tax Regulatory Agreement, the Indenture, and other documents as described herein may result in the loss of the tax-exempt status of the interest on the Series 2019 Bonds retroactive to the date of issuance of the Series 2019 Bonds. If interest on the Series 2019 Bonds should become includable in gross income for purposes of federal income taxation, the Series 2019 Bonds would be mandatorily redeemed. See “TAX MATTERS” in this Limited Offering Memorandum.

### **Lack of Rating/ Secondary Market**

The Series 2019 Bonds have not been rated by any recognized rating agency. The absence of a credit rating could adversely affect the ability of holders to sell the Series 2019 Bonds or the price at which the Series 2019 Bonds can be sold. There is no guarantee that a secondary trading market will develop for the Series 2019 Bonds. Consequently, prospective bond purchasers should be prepared to hold their Series 2019 Bonds to maturity or prior redemption.

### **Changes in Law; Annual Appropriation; Inadequate Education Aid Payments**

Future changes to the Charter Schools Act by the State Legislature could be adverse to the financial interests of the Institution and could adversely affect the security and sources of payment for the Series 2019 Bonds. There can be no assurance given that the State Legislature will not in the future amend the Charter Schools Act in a manner which is adverse to the interests of the registered owners of the Series 2019 Bonds.

As in many states, lawsuits are occasionally filed in New York challenging the State’s system of funding public schools. The outcome of any such public school funding cases in the State in the future cannot be known.

New York may experience downturns in its economy and tax revenues in the future. The provisions of the Charter Schools Act are subject to amendment by the State Legislature, including the reduction of State funding, which could adversely affect the Institution.

STATE BUDGET CONSIDERATIONS MAY ALSO ADVERSELY AFFECT APPROPRIATIONS FOR CHARTER SCHOOL FUNDING.

### **Damage or Destruction**

The Loan Agreement and the Mortgage require that the Facility be insured against certain risks. There can be no assurance that the amount of insurance required to be obtained with respect to the Facility will be adequate or that the cause of any damage or destruction to the Facility will be as a result of a risk which is insured. Further, there can be no assurance of the ongoing creditworthiness of the insurance companies from which the Institution obtains insurance policies. The Institution believes that the risks associated with its properties and its operations are adequately provided for through the insurance policies it maintains. The Institution will provide property insurance on the Facility through a standard commercial insurance policy. In addition, in the event that the Facility is damaged or destroyed, no assurance can be given that the Institution would be able to find a similar replacement school facility at a comparable cost or in a comparable location.

### **Environmental Risks**

The Facility is subject to various federal, State and local laws and regulations relating to human health and safety and the environment. In general, these laws and regulations could require the owner of the Facility to implement mitigation to reduce the environmental impacts of the Facility or to remediate adverse environmental conditions on or relating to the Facility, regardless of whether arising from preexisting conditions or arising because of the activities conducted in connection with the ownership and operation of the Facility. Moreover, these laws and regulations can and often do change through legislative, judicial, or regulatory activities.

### **Environmental Regulations**

Federal, state, and local environmental and health and safety laws, regulations, and standards regulate the Facility. Conditions or mitigation as required by these laws and regulations may be imposed either through permitting or by audit, either of which could result in increased costs to the Institution. While the Institution believes that it is in material compliance with applicable environmental laws for the Facility, there is no assurance that the Institution, in operation of the Facility as currently contemplated, is now or will always be in compliance with these regulations. In addition, the costs incurred by the Institution with respect to compliance with human health and safety and environmental laws and regulations could adversely affect its financial condition and its ability to own and operate the Facility.

### **Hazardous Materials**

Hazardous materials laws, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), impose joint and several liability, without regard to fault, for investigation and clean-up costs on persons who have disposed of or released hazardous substances into the environment and on current and former owners and operators of real property. In this case, the Institution will own the Facility, and the Facility will serve to secure the Series 2019 Bonds pursuant to the Mortgage which is granted to the Issuer and the Trustee and assigned to the Trustee.

## **Enforcement of Remedies**

The remedies available to the Trustee or the registered owners of the Series 2019 Bonds upon an Event of Default under the Indenture or the Loan Agreement are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, the remedies provided in the Indenture and the Loan Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2019 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by the valid exercise of the sovereign powers of the State and the constitutional powers of the United States of America, bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

## **Failure to Provide Ongoing Disclosure**

The Institution will enter into the Continuing Disclosure Agreement pursuant to Rule 15c2-12, promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Rule"). The Institution has not previously been subject to a continuing disclosure undertaking under Rule 15c2-12. Failure by the Institution to comply with the Continuing Disclosure Agreement and the Rule may adversely affect the liquidity of the Series 2019 Bonds and their market price in the secondary market. See "CONTINUING DISCLOSURE" and "APPENDIX I - FORM OF CONTINUING DISCLOSURE AGREEMENT" in this Limited Offering Memorandum.

## **Private School Vouchers**

Various proposals offering private school vouchers to families to assist with the cost of private schools have been considered by the State Legislature and will likely be introduced again in the future.

## **Redemption Prior to Maturity**

The Series 2019 Bonds are subject to redemption at the option of the Institution and in the event of certain occurrences. See "THE SERIES 2019 BONDS - Redemption of Series 2019 Bonds" in this Limited Offering Memorandum.

## **Summary**

The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Series 2019 Bonds. In order for potential investors to identify risk factors and make an informed decision, potential investors should be thoroughly familiar with this entire Limited Offering Memorandum including the appendices hereto.

## **AUDITED FINANCIAL STATEMENTS OF THE INSTITUTION**

The audited financial statements of the Institution as of and for the fiscal year ended June 30, 2018 (including June 30, 2017 comparative information) (the "Audited Financial Statements"), are included in APPENDIX C to this Limited Offering Memorandum. These are the most recent audited financial statements available for the Institution. The Audited Financial Statements were audited by Schall & Ashenfarb LLC, independent auditors, as stated in their report thereon. See "APPENDIX C - AUDITED FINANCIAL STATEMENTS OF THE SCHOOL FOR THE FISCAL YEAR ENDED JUNE 30, 2018 (INCLUDING JUNE 30, 2017 COMPARATIVE INFORMATION)" in this Limited Offering Memorandum.

## **UNAUDITED FINANCIAL STATEMENTS OF THE INSTITUTION**

APPENDIX D to this Limited Offering Memorandum contains the unaudited statement of activities of the Institution for the six months ended December 31, 2018 with comparative unaudited statements of activities for the six months ended December 31, 2017. The unaudited financial statements contained in APPENDIX D have not been reviewed, audited, or examined by any independent accounting firm. See "APPENDIX D - UNAUDITED FINANCIAL STATEMENTS OF THE SCHOOL FOR THE SIX MONTHS ENDED DECEMBER 31, 2018 (INCLUDING DECEMBER 31, 2017 COMPARATIVE INFORMATION)" in this Limited Offering Memorandum.

## **THE PROJECTIONS**

The Institution has prepared the Projections and related assumptions included in APPENDIX A-Projected Financial Information" in this Limited Offering Memorandum. The Projections are based on the assumptions made by management of the Institution as to, among other things, future enrollment levels, future costs and future revenues. The Projections are for the five fiscal years of the Institution ending June 30, 2019 through June 30, 2023. The Projections have not been updated to reflect the final pricing of the Series 2019 Bonds. The Projections (including the notes thereto) should be read in their entirety. Both projected results and projected breakeven results for such period are included in the Projections.

The Projections are based on various assumptions that represent only the beliefs of the Institution's management as to the most probable future events and are subject to material uncertainties. No assurances can be given that the Institution will, in fact, be able to generate sufficient revenue and attain the enrollment levels as stated in the Projections, and variations from the Projections for each of such matters should be expected to occur. Accordingly, the operations and financial condition of the Institution in the future will inevitably vary from those set forth in the Projections, and such variance may be material and adverse. See "RISK FACTORS - Projections" in this Limited Offering Memorandum.

The Institution has not assumed any responsibility to update the Projections or to provide any financial forecasts or projections in the future. The Underwriter and the Issuer have made no independent inquiry as to the assumptions on which the Projections is based and assume no responsibility therefor.

## **TAX MATTERS**

### **Opinion of Bond Counsel**

In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Issuer ("Bond Counsel"), under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described herein, (i) interest on the Series 2019 Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Series 2019 Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code. In rendering its opinion, Bond Counsel has relied on certain representations, certifications of fact, and statements of reasonable expectations made by the Issuer, the Institution and others, in connection with the Series 2019 Bonds, and Bond Counsel has assumed compliance by the Issuer and the Institution with certain ongoing covenants to comply with applicable requirements of the Code to assure the exclusion of interest on the Series 2019 Bonds from gross income under Section 103 of the Code. In addition, in rendering its opinion, Bond Counsel has relied on the opinion of counsel to the Institution regarding, among other matters, the current qualifications of the Institution as an organization described in Section 501(c)(3) of the Code.

In addition, in the opinion of Bond Counsel to the Issuer, under existing statutes, interest on the Series 2019 Bonds is exempt from personal income taxation imposed by the State of New York or any political subdivision thereof.

Bond Counsel expresses no opinion as to any other federal, state or local tax consequences arising with respect to the Series 2019 Bonds, or the ownership or disposition thereof, except as stated above. Bond Counsel renders its opinion under existing statutes and court decisions as of the issue date, and assumes no obligation to update, revise or supplement its opinion to reflect any action thereafter taken or not taken, any fact or circumstance that may thereafter come to its attention, any change in law or interpretation thereof that may thereafter occur, or for any other reason. Bond Counsel expresses no opinion as to the consequence of any of the events described in the preceding sentence or the likelihood of their occurrence. In addition, Bond Counsel expresses no opinion on the effect of any action taken or not taken in reliance upon an opinion of other counsel regarding federal, state or local tax matters, including, without limitation, exclusion from gross income for federal income tax purposes of interest on the Series 2019 Bonds.

### **Certain Ongoing Federal Tax Requirements and Covenants**

The Code establishes certain ongoing requirements that must be met subsequent to the issuance and delivery of the Series 2019 Bonds in order that interest on the Series 2019 Bonds be and remain excluded from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to use and expenditure of gross proceeds of the Series 2019 Bonds, yield and other restrictions on investments of gross proceeds, and the arbitrage rebate requirement that certain excess earnings on gross proceeds be rebated to the federal government. Noncompliance with such requirements may cause interest on the Series 2019 Bonds to become included in gross income for federal income tax purposes retroactive to their issue date, irrespective of the date on which such noncompliance occurs or is discovered. The Issuer and the Institution have covenanted to comply with certain applicable requirements of the Code to assure the exclusion of interest on the Series 2019 Bonds from gross income under Section 103 of the Code.

### **Certain Collateral Federal Tax Consequences**

The following is a brief discussion of certain collateral federal income tax matters with respect to the Series 2019 Bonds. It does not purport to address all aspects of federal taxation that may be relevant to a particular owner of a Series 2019 Bond. Prospective investors, particularly those who may be subject to special rules, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the Series 2019 Bonds.

Prospective owners of the Series 2019 Bonds should be aware that the ownership of such obligations may result in collateral federal income tax consequences to various categories of persons, such as corporations (including S corporations and foreign corporations), financial institutions, property and casualty and life insurance companies, individual recipients of Social Security and railroad retirement benefits, individuals otherwise eligible for the earned income tax credit, and taxpayers deemed to have incurred or continued indebtedness to purchase or carry obligations the interest on which is excluded from gross income for federal income tax purposes. Interest on the Series 2019 Bonds may be taken into account in determining the tax liability of foreign corporations subject to the branch profits tax imposed by Section 884 of the Code.

## **Original Issue Discount**

"Original issue discount" ("OID") is the excess of the sum of all amounts payable at the stated maturity of a Bond (excluding certain "qualified stated interest" that is unconditionally payable at least annually at prescribed rates) over the issue price of that maturity. In general, the "issue price" of a maturity (a bond with the same maturity date, interest rate, and credit terms) means the first price at which at least 10 percent of such maturity was sold to the public, i.e., a purchaser who is not, directly or indirectly, a signatory to a written contract to participate in the initial sale of the Series 2019 Bonds. In general, the issue price for each maturity of Series 2019 Bonds is expected to be the initial public offering price set forth on the inside cover page of this Limited Offering Memorandum. Bond Counsel further is of the opinion that, for any Series 2019 Bonds having OID (a "Discount Bond"), OID that has accrued and is properly allocable to the owners of the Discount Bonds under Section 1288 of the Code is excludable from gross income for federal income tax purposes to the same extent as other interest on the Series 2019 Bonds.

In general, under Section 1288 of the Code, OID on a Discount Bond accrues under a constant-yield method, based on periodic compounding of interest over prescribed accrual periods using a compounding rate determined by reference to the yield on that Discount Bond. An owner's adjusted basis in a Discount Bond is increased by accrued OID for purposes of determining gain or loss on sale, exchange, or other disposition of such Bond. Accrued OID may be taken into account as an increase in the amount of tax-exempt income received or deemed to have been received for purposes of determining various other tax consequences of owning a Discount Bond even though there will not be a corresponding cash payment.

Owners of Discount Bonds should consult their own tax advisors with respect to the treatment of original issue discount for federal income tax purposes, including various special rules relating thereto, and the state and local tax consequences of acquiring, holding, and disposing of Discount Bonds.

## **Bond Premium**

In general, if an owner acquires a bond for a purchase price (excluding accrued interest) or otherwise at a tax basis that reflects a premium over the sum of all amounts payable on the bond after the acquisition date (excluding certain "qualified stated interest" that is unconditionally payable at least annually at prescribed rates), that premium constitutes "bond premium" on that bond (a "Premium Bond"). In general, under Section 171 of the Code, an owner of a Premium Bond must amortize the bond premium over the remaining term of the Premium Bond, based on the owner's yield over the remaining term of the Premium Bond determined based on constant-yield principles (in certain cases involving a Premium Bond callable prior to its stated maturity date, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on such bond). An owner of a Premium Bond must amortize the bond premium by offsetting the qualified stated interest allocable to each interest accrual period under the owner's regular method of accounting against the bond premium allocable to that period. In the case of a tax-exempt Premium Bond, if the bond premium allocable to an accrual period exceeds the qualified stated interest allocable to that accrual period, the excess is a nondeductible loss. Under certain circumstances, the owner of a Premium Bond may realize a taxable gain upon disposition of the Premium Bond even though it is sold or redeemed for an amount less than or equal to the owner's original acquisition cost. Owners of any Premium Bonds should consult their own tax advisors regarding the treatment of bond premium for federal income tax purposes, including various special rules relating thereto, and state and local tax consequences, in connection with the acquisition, ownership, amortization of bond premium on, sale, exchange, or other disposition of Premium Bonds.

## **Information Reporting and Backup Withholding**

Information reporting requirements apply to interest paid on tax-exempt obligations, including the Series 2019 Bonds. In general, such requirements are satisfied if the interest recipient completes, and provides the payor with, a Form W-9, "Request for Taxpayer Identification Number and Certification," or if the recipient is one of a limited class of exempt recipients. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to "backup withholding," which means that the payor is required to deduct and withhold a tax from the interest payment, calculated in the manner set forth in the Code. For the foregoing purpose, a "payor" generally refers to the person or entity from whom a recipient receives its payments of interest or who collects such payments on behalf of the recipient.

If an owner purchasing a Series 2019 Bond through a brokerage account has executed a Form W-9 in connection with the establishment of such account, as generally can be expected, no backup withholding should occur. In any event, backup withholding does not affect the excludability of the interest on the Series 2019 Bonds from gross income for federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the owner's federal income tax once the required information is furnished to the Internal Revenue Service.

## **Miscellaneous**

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the federal or state level, may adversely affect the tax-exempt status of interest on the Series 2019 Bonds under federal or state law or otherwise prevent beneficial owners of the Series 2019 Bonds from realizing the full current benefit of the tax status of such interest. In addition, such legislation or actions (whether currently proposed, proposed in the future, or enacted) and such decisions could affect the market price or marketability of the Series 2019 Bonds.

Prospective purchasers of the Series 2019 Bonds should consult their own tax advisors regarding the foregoing matters.

The form of the approving opinion of Bond Counsel is attached to this Limited Offering Memorandum as APPENDIX H - "FORM OF BOND COUNSEL OPINION."

## **LEGAL MATTERS**

Certain legal matters incident to the issuance and sale of the Series 2019 Bonds and with regard to the tax-exempt status of interest on the Series 2019 Bonds under existing laws are subject to the legal opinion of Hawkins Delafield LLP, New York, New York, as Bond Counsel to the Issuer. Certain legal matters will be passed upon for the Issuer by its General Counsel, for the Institution by its special counsel, Davidoff Hutcher & Citron LLP, New York, New York, and for the Underwriter by its counsel, Greenberg Traurig, LLP, Chicago, Illinois.

## **CONTINUING DISCLOSURE**

The Rule imposes continuing disclosure obligations on the issuers of certain state and municipal securities to permit participating underwriters to offer and sell the issuer's securities. In order to comply with the requirements of the Rule, the Institution will enter into a Continuing Disclosure Agreement, dated as of the date of issuance of the Series 2019 Bonds, between the Institution and the Trustee, as dissemination agent. The Institution has not been subject to any prior continuing disclosure undertakings

under Rule 15c2-12. See "APPENDIX I - FORM OF CONTINUING DISCLOSURE AGREEMENT" in this Limited Offering Memorandum.

The Issuer does not have any obligation with respect to the Continuing Disclosure Agreement because the Issuer is not an "obligated party" under the terms of Rule 15c2-12. The Issuer will not monitor the compliance by the Institution with the terms of the Continuing Disclosure Agreement.

### **NO RATING**

The Series 2019 Bonds are not rated. See "RISK FACTORS – Lack of Rating/Secondary Market" in this Limited Offering Memorandum.

### **LITIGATION**

#### **The Issuer**

There is no pending litigation of which the Issuer has notice restraining or enjoining the issuance or delivery of the Series 2019 Bonds or questioning or affecting the validity of the Series 2019 Bonds or the proceedings and authority under which the Series 2019 Bonds are to be issued or the validity or enforceability of the Indenture, the Loan Agreement or the Bond Purchase Agreement. Neither the creation, organization or existence of the Issuer, nor the title of the present directors or other officials of the Issuer to their respective offices, is, to the best knowledge of the Issuer, being contested.

#### **The Institution**

No litigation, investigations or proceedings are now pending or, to the best knowledge of the Institution, are any threatened against the Institution which would have a materially adverse effect on the financial condition or operations of the Institution or in any manner challenge or adversely affect the corporate existence or power of the Institution to enter into and carry out the transactions described in or contemplated by, or the execution, delivery, validity or performance by the Institution under the Loan Agreement, the Mortgage, the Continuing Disclosure Agreement, the Tax Regulatory Agreement, the Account Direction Agreement, or the Bond Purchase Agreement, as appropriate.

The Institution is not aware of any pending or threatened litigation that would have a material financial or operational impact on the Institution.

### **UNDERWRITING**

The Series 2019 Bonds will be purchased by B.C. Ziegler and Company, Chicago, Illinois (the "Underwriter"). The Underwriter has agreed to purchase the Series 2019 Bonds, for a purchase price of \$20,670,045.80, which amount represents the principal amount of the Series 2019 Bonds (\$20,685,000.00), less a net original issue discount of \$14,954.20. The Borrower will pay from its own funds an underwriting fee in the amount of \$206,850 (and certain expenses) to the Underwriter. The Underwriter is purchasing the Series 2019 Bonds pursuant to the terms of a Bond Purchase Agreement (the "Bond Purchase Agreement") among the Issuer, the Institution, and the Underwriter. The Bond Purchase Agreement also provides that the Institution will pay miscellaneous out-of-pocket expenses of the Underwriter. The Bond Purchase Agreement provides that the Underwriter will purchase all Series 2019 Bonds if any are purchased, and that the obligation to make such purchase is subject to certain terms and conditions set forth in the Bond Purchase Agreement, the approval of certain legal matters by counsel, and certain other conditions. Expenses associated with the issuance of the Series 2019 Bonds are being paid by the Institution from proceeds of the Series 2019 Bonds and from other funds available to



the Institution. The right of the Underwriter to receive compensation in connection with the Series 2019 Bonds is contingent upon the actual sale and delivery of the Series 2019 Bonds. The initial offering prices set forth on the inside front cover hereof may be changed from time to time by the Underwriter. The Underwriter reserves the right to join with dealers and other investment banking firms in offering the Series 2019 Bonds to the public. The Institution has agreed under the Bond Purchase Agreement to indemnify the Underwriter and the Issuer against certain liabilities, including certain liabilities under federal and state securities laws.

### **MISCELLANEOUS**

The foregoing does not purport to be comprehensive or definitive, and all references to any document herein are qualified in their entirety by reference to each such document. All references to the Series 2019 Bonds are qualified in their entirety by reference to the forms thereof and the information with respect thereto included in the aforesaid documents. Copies of these documents are available for inspection during the period of the offering at the offices of the Underwriter in Chicago, Illinois and thereafter at the principal corporate trust office of the Trustee. In addition to certain information provided herein, all information contained in Appendices A, B, C, D, and E has been provided by the Institution or been derived from information provided by the Institution. The Underwriter makes no representations or warranties as to the accuracy or completeness of the information in any of the Appendices.

#### **No Registration of the Series 2019 Bonds**

Registration or qualification of the offer and sale of the Series 2019 Bonds (as distinguished from registration of the ownership of the Series 2019 Bonds) is not required under the Securities Act. THE INSTITUTION ASSUMES NO RESPONSIBILITY FOR QUALIFICATION OR REGISTRATION OF THE SERIES 2019 BONDS FOR SALE UNDER THE SECURITIES LAWS OF ANY JURISDICTION IN WHICH THE SERIES 2019 BONDS MAY BE SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED.

#### **Interest of Certain Persons Named in this Limited Offering Memorandum**

The fees to be paid to counsel to the Institution, counsel to the Underwriter, the Trustee and the Underwriter are contingent upon the sale and delivery of the Series 2019 Bonds.

(The remainder of this page is intentionally left blank.)

### Limited Offering Memorandum Certification

The Institution and the Issuer have authorized and approved the use and distribution of this Limited Offering Memorandum. The Issuer has not reviewed or approved any matters herein and assumes no responsibility for the accuracy or completeness of the information herein except for the information under the caption "THE ISSUER" and "LITIGATION - The Issuer" in this Limited Offering Memorandum.

The preparation of this Limited Offering Memorandum and its distribution has been authorized by the Institution. This Limited Offering Memorandum is not to be construed as an agreement or contract between the Institution and any purchaser, owner or holder of any Series 2019 Bond.

NEW DAWN CHARTER SCHOOLS, a New  
York not-for-profit education corporation

A handwritten signature in cursive script, reading "Sara M. Asmussen".

By: /s/ Sara Asmussen

Its: Executive Director

---

**APPENDIX A**

**NEW DAWN CHARTER SCHOOLS**

---

## TABLE OF CONTENTS

INTRODUCTION.....	1
General.....	1
History .....	1
Future Plans; Queens Charter .....	2
MISSION AND CURRICULUM.....	2
Mission Statement .....	2
Mission Specific Goals .....	2
School Improvement Engine .....	2
Key Design Elements .....	4
Curriculum Selection, Development and Alignment .....	6
Curriculum Selection, Organization and Revision.....	7
Curriculum Materials.....	7
Curricular Innovations and Alignment to Key Design Elements.....	8
Research-Supported Curriculum.....	9
Supplemental Curriculum.....	9
Instructional Strategies .....	9
Rigor and Engagement .....	10
Research Behind the Instructional Model.....	10
THE PROJECT .....	10
Acquisition of Leased Property .....	10
Renovations .....	10
Architect .....	11
Construction Manager .....	12
Construction Contract.....	12
Environmental.....	12
Zoning and Permitting.....	13
Real Estate Tax Exemption.....	13
THE CHARTER.....	13
GOVERNANCE AND MANAGEMENT .....	14
Board of Trustees.....	14
Administration .....	15
Conflict of Interest Policy.....	17
ACADEMIC PERFORMANCE .....	18
Regents Results.....	18
Focus School Designation .....	18
New Dawn Accountability Plan.....	19
FACULTY AND FACULTY RETENTION .....	25
Faculty and Other Employees.....	25
Teacher Tenure and Certification .....	26
Full-Time Equivalent Employees Academic Year 2018-2019 .....	26
Faculty Retention.....	27
Benefits.....	27
ADMISSIONS AND ENROLLMENT .....	28
Enrollment, Applications & Wait Lists .....	28
Student Retention Rates.....	29
SPED Services and Demographics .....	29
COMPETITION .....	31
LITIGATION .....	32
MANAGEMENT'S DISCUSSION OF FINANCIAL PERFORMANCE.....	32
Budget Process.....	32
History of Per Pupil Funding .....	32
Indebtedness .....	33
Historical Financial Information.....	33
Days Cash on Hand .....	35
Projected Financial Information .....	36

## INTRODUCTION

### General

New Dawn Charter Schools (formerly known as New Dawn Charter High School) ("New Dawn" or the "Institution") is a New York nonprofit corporation which was established on or about September 13, 2011. On May 17, 2013, the Institution received a determination letter from the Internal Revenue Service stating it is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (the "Code") as an organization described in Section 501(c)(3) of the Code and is not a private foundation under Section 509(a) of the Code. The Institution currently operates a single public charter school under the terms of the Initial Charter (the "Initial Charter") with the Board of Regents of the State of New York (the "Board of Regents") and the New York Charter School Act of 1998, codified as Article 56 of the Education Law (the "Charter School Act"). The Initial Charter was approved by the Board of Regents at a meeting on September 12-13, 2011 and renewed pursuant to an Extension to Provisional Charter dated May 9, 2017 (the "Renewed Charter" and, together with the Initial Charter, the "Charter"). The Institution and the Board of Regents executed a First Renewal Charter, for a term commencing on the expiration of the Institution's Initial Charter through June 30, 2022. For more information regarding the Charter, see "THE CHARTER" herein. The Charter is subject to termination by the Board of Regents as set forth in the Charter or pursuant to the Charter School Act. See "APPENDIX B – Summary of Certain Provisions of New York Education Law" in this Limited Offering Memorandum for additional information concerning the Charter School Act and the Board of Regents.

The Institution opened its high school (the "School") in 2012 serving 150 students in grades 9-12. The School has since grown to approximately 250-350 students in grades 9-12. The Institution currently operates the School in an approximately 24,000 square feet leased building located at 242 Hoyt Street in Brooklyn, New York (the "School Facility") pursuant to a Lease with a commencement date of July 1, 2016 (the "Lease"). The Institution will be exercising its option to purchase the School Facility under the Lease at a purchase price of \$14,000,000. It is anticipated that the closing of the purchase will occur on the date of issuance of the Series 2019 Bonds and will be funded with proceeds of the Series 2019 Bonds and Institution equity. In addition, proceeds of the Series 2019 Bonds will fund renovation costs of the School Facility in the approximate amount of \$10,458,550. See "THE PROJECT" below and "SOURCES AND USES" in the body of this Limited Offering Memorandum for more information.

### History

In 2010, Ronald Tabano and Dr. Sara Asmussen worked at the John V. Lindsay Wildcat Academy Charter School in Manhattan and the Bronx ("Wildcat"). Mr. Tabano was the CEO/Principal and Dr. Asmussen was the Director of Accountability and Compliance of Wildcat. Wildcat was and is a transfer school serving students aged 15-21 who had failed at other schools. After receiving a five-year charter renewal at Wildcat, Mr. Tabano and Dr. Asmussen decided to duplicate Wildcat by founding the Institution as a new transfer school in Brooklyn. The Institution was created with its own separate Board of Trustees and, while its curriculum and educational model is based on the Wildcat model, the two are not affiliated in any way.

The Institution was chartered in September 2011 to begin enrollment in September 2012 through June 2017. Dr. Asmussen began work in February 2012 as the Institution's Founding Executive Director and Mr. Tabano became the Founding Board Chair of the Institution. The Institution began operations with a Board of Trustees consisting of five members, three of whom are still on the Board of Trustees. Board members serve a two-year term and are automatically nominated for another year term every June. It is at this point that Board members may opt to resign from the Board.

Various founders are still working at the school as described below under "GOVERNANCE AND MANAGEMENT."

## **Future Plans; Queens Charter**

New Dawn does not have any current plans to increase capacity at the School. However, New Dawn has applied for and been granted a charter to operate a transfer school (the “Queens School”) in Jamaica, Queens. The Queens School was chartered in May 2018 and will begin enrollment in September 2019 for a five-year term. New Dawn anticipates that the Queens School will grow to approximately 400 students by its fourth year. The Queens School will be overseen by the current New Dawn Board of Trustees and Dr. Asmussen will oversee the operations of both the School and the Queens School.

The charter for the Queens School is separate from the Charter under which New Dawn operates the School. In addition, the Loan Agreement permits New Dawn to open facilities for charter schools at other locations under certain conditions as described in the body of this Limited Offering Memorandum under “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS – Separate Facilities.” The Queens School will be controlled by the Board of Trustees of New Dawn. However, as described in the body of this Limited Offering Memorandum under “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS – Separate Facilities,” New Dawn will make various covenants in the Loan Agreement to ensure that no Revenues or assets (including, without limitation, Cash and Investments) derived from the New Dawn’s operation of the School will be transferred or loaned to, or pledged to secure obligations with respect to, the Queens School. In addition, the Loan Agreement provides, among other covenants, certain limitations on the ability of New Dawn to incur Indebtedness financing or refinancing the Queens School or assets related thereto and that all Cash Investments related to the Queens School and the School be maintained in separate accounts and not commingled. New Dawn’s audited financial statements will provide supplemental schedules breaking out results among the Facility and each Separate Facility.

## **MISSION AND CURRICULUM**

### **Mission Statement**

The School provides over-aged and under-credited students aged 15-21 years, including those who are English Language Learners (“ELL”) and those with special needs, the opportunity to return to school and obtain a high school diploma through a New York State Education Department (“NYSED”) standards-based education program. Within the framework of the education program, three programs are offered: (1) interventions for those with fewer than 10 credits, and for those with 10 or more credits; (2) internships in the community and (3) college enrollment.

### **Mission Specific Goals**

The goals of New Dawn are established and reflective of the elements in its mission statement: a second chance at attaining a high school diploma through (1) interventions for those with fewer than 10 credits, and for those with 10 or more credits; (2) internships in the community, (3) career planning, and (4) college enrollment. To achieve these goals, New Dawn follows the implementation of the School Improvement Engine (“SIE”) to help meet the benchmarks established with the NYSED team.

### **School Improvement Engine**

New Dawn is designed using the SIE, which was developed with 10 New York City charter schools through the Partnership for Innovation in Compensation for Charter Schools (“PICCS”), a U.S. Department of Education program funded through the Teacher Incentive Fund. The desired outcome of SIE is to establish a “Sustainable Data Culture” which is characterized by facilitative leadership, collaborative inquiry, and self-initiated learning, and impacts two domains, the “Data Culture” and the “Sustainable Culture.” Data Culture is defined as the effective use of data driven instruction resulting in students attaining or exceeding proficiency while Sustainable Culture is defined as the best governance and

operational practices resulting in fiscal and compliance well-being. The core components of the SIE are diagnosis, prescription, monitoring, and remedying. The best practices used include: (1) data driven decision making, (2) professional learning communities, (3) teacher growth and professional development, (4) teacher and administrator evaluations, and (5) compensation based on student outcomes.

Meeting its goals requires that New Dawn continually use its data to track its progress in all areas of school viability. The components of the SIE Data Culture are research-based strategies that lead to student growth and proficiency. Diagnostic assessments are administered to students upon enrollment. The prescription is the use of balanced instruction integrated into the workshop model to ensure effective differentiated instruction among students. Throughout the year, student and staff performance is monitored through the use of in-class and benchmark assessments. Based on the outcomes of the assessments, remedies are implemented, such as modifications to instruction, reorganization of curriculum, tutoring, etc. After remedies are implemented, the SIE cycle begins again: diagnose, prescribe, monitor and remedy. This same process is applied to the viability of the organizational structures. The diagnostic component consists of identifying those areas of greatest concern: fiscal, compliance and support services. Prescription is the use of best practices in these areas to ensure success. Monitoring is done by implementing rigorous methods of tracking and strong Board oversight. During the monitoring phase, if the school falls short of any benchmarks, the Board and staff may implement immediate remedies and the SIE cycle begins again. To fully integrate the SIE Data Culture, a cadre of tools and strategies are used. A data warehouse is used that allows staff to drill down to the individual teacher and student levels and includes data on the curriculum, lessons, New York State Learning and Common Core Standards, assessments, and student goals (diagnostic and monitoring). The Professional Learning Communities protocol will provide structure for discussions around identified areas of concern (prescription). From the prescription arises the remedies which might include embedded professional development, providing support to teachers struggling with issues such as instruction or management, coupled with a rigorous teacher evaluation and growth plan. Ensuring organizational viability will entail the integration of established systems, both electronic and through policies and procedures in support services, compliance, and fiscal.

The goals align with the following New Dawn benchmarks, annually:

#### ***Educational Success***

- at least 75% of all students who attempt a New York State Regents examination ("Regents") in each of the five areas will pass; for students with IEPs, this will include those who pass with the safety net
- 80% of students will successfully complete their internship
- of the students with 33 credits or more in September, 80% will graduate by August
- 90% of the graduating class will have a career plan
- 60% of the graduating class will apply to college
- teachers will show growth on either the Danielson or Marshall rubric for Classroom Observations

#### ***Organizational Soundness***

- the School will submit a clean audit by November 1
- the School will operate on a balanced budget
- the Board of Trustees will meet every month

### ***Faithfulness to Charter & Law***

- the School will enroll and retain the proportion of special population in the school district
- the School will have met all legal compliance obligations

### **Key Design Elements**

New Dawn's key design elements include (1) curriculum and instruction, (2) social/emotional learning and support, (3) college and career readiness, (4) school improvement engine and (5) intensive staff professional development using a facilitative leadership model, as set forth below:

#### ***Curriculum and Instruction***

*Literacy-Rich Education Program.* Literacy is inherent in all academic areas and within social-emotional contexts, and it is New Dawn's belief that all teachers are literacy teachers. Students who engage with high interest, grade-level appropriate text demonstrate the ability to think and communicate critically with content material.

*Full Inclusion Special Needs Program.* All students benefit from being in the classroom, rather than being pulled out for services away from peers and their content teachers. New Dawn's program helps students meet benchmarks by achieving in the least restrictive environment. This includes providing services to ELL students inside the classroom.

*Intensive 9th Grade Intervention Program.* New York City ("NYC") data on transfer schools has shown that the cohort of students who have demonstrated the most struggles are those who are over-aged and under-credited with fewer than 10 credits. Students with fewer than 10 credits attend school full-time each week, learning to mold their behavior to academic expectations.

*Balanced Instruction Integrated into the Workshop Model.* The workshop model facilitates differentiated and individualized instruction and is highly effective with at-risk populations as well as with academically gifted students. The workshop model is based on the work of Howard Gardner and his theory of multiple intelligences and Benjamin Bloom and his work with various levels of intellectual thought processes and challenging individuals to engage in the highest levels of thinking: analysis, evaluation and creation.

This key design element of curriculum and instruction aligns with New Dawn's mission to provide a NYSED standards aligned education for struggling students. It supports the Charter School Act by providing at-risk students an opportunity to learn and achieve success. It also affords parents another option when options are limited or nonexistent due to age and credit accumulation of the student.

#### ***Social Emotional Learning/Support (Positive Behavior Interventions & Supports)***

*Daily Advisories for Social-Emotional Needs.* The advisory experience is designed to get to the root of each individual student's struggles and provide opportunity for academic and socio-emotional growth.

*Mentoring Program.* The mentoring program was designed at New Dawn to provide students a point of contact to serve as an accountability partner regarding their academic progress, attendance, or general concerns. All staff members are assigned a caseload of students as their mentees and are expected to have weekly, check-in meetings via telephone or in person to monitor student progress.

*Progressive Discipline Policy.* New Dawn's goal is to keep students in school instead of pushing them out for low-level infractions. As a result, the discipline policy is not used as a punitive measure but as a means for students to learn from their mistakes and progressively make improvements. New Dawn



further implements the PBIS (Positive Behavioral Interventions and Supports) framework to assist staff in adopting preventative behavioral strategies for students.

This key design element of social/emotional learning addresses New Dawn's mission goals by impacting the ability of students to control their behavior to maximize learning, positively maintain their internships in the community, and to successfully apply and attend college. It supports the Charter School Act by providing opportunities for the most at-risk students to become successful.

### ***College and Career Readiness***

*Internship Program.* Students with more than 10 credits are assigned a placement to work in the community. As part of a holistic educational approach, the Internship Program at New Dawn provides students with the essential job training and leadership development opportunities needed to prepare and transition into a successful career pathway of their choice. New Dawn aims for students to build long-term, professional connections while developing skills such as critical thinking, teamwork, time management, problem solving, communication and professionalism.

*College Now with CUNY.* CollegeNow is a city-wide, collaborative program with the City University of New York ("CUNY") and more than 350 NYC public high schools. New Dawn partners with the Borough of Manhattan Community College ("BMCC") for students to gain advantage in college and simultaneously help them improve their academic achievement.

College and Career Readiness further supports New Dawn's mission goals by addressing this key design element of New Dawn's program, the Charter School Act by providing at-risk students with high educational expectations, and offering a choice not available in the community prior to New Dawn.

### ***School Improvement Engine***

The implementation of the SIE is integral to monitoring New Dawn's accountability goals. The SIE's prescriptive model allows stakeholders to identify a problem, construct a remedy, evaluate the implementation and results, and then start the process over again. By engaging in this process, New Dawn monitors all areas of the School. This supports New Dawn's mission goals by ensuring that the School is appropriately aligned and achieving its goals. It supports the Charter School Act by focusing on constant attention to outcomes and developing the most meaningful assessments.

### ***Professional Development ("PD")***

*Regularly Embedded PD.* New Dawn works with coaches to provide on the ground support for content area teachers. In addition, school leadership may co-facilitate courses with less experienced teachers to provide live coaching and modeling within the classroom.

*Digitalized Curriculum & Aligned Lesson Planning.* All staff have access to the Common Core Aligned curriculum and daily lesson plans from New Dawn. These plans are located within the software platform PerformancePlus by PowerSchool Group.

*Daily Common Planning Time.* In addition to all teachers receiving one to two preparatory periods per day, common planning time is scheduled into the work day between the hours of 4:00 p.m. and 5:00 p.m.

*TERC: Using Data to Inform Instruction.* When analyzing data such as student work and Regents results, New Dawn will use the TERC Using Data protocol. Applying this approach allows the teaching staff to view data without bias while creating strategies to improve instruction.

*Staff Compensation Based on HEDI Scores & Student Performance.* New Dawn bases compensation on student performance (40%) and classroom observations (60%).

*PD in Danielson and Marshall Classroom Observations, Professional Learning Community Coaching, & Peer Review.* Through protocols from the National School Reform Faculty, the staff individually and as a group set professional goals through the Danielson and Marshall Rubric and Professional Learning Communities allow staff to collaborate and provide targeted feedback for personal growth and development.

*Access to Other Schools for Shared Support.* New Dawn holds the view that collaborating with other charter schools, particularly transfer schools, is vital to planning and engaging in the data culture of the School.

*Facilitative Leadership Opportunities.* A facilitative leadership fosters staff involvement with the governance of the School.

This key element provides New Dawn's staff with continuous, professional growth so they can be the most effective teachers, mentors, and support staff, to uphold New Dawn's mission goals. It meets the criteria for the Charter School Act by creating exciting opportunities for staff to become the student for the betterment of instruction.

### **Curriculum Selection, Development and Alignment**

New Dawn's curriculum is aligned to the NYC Department of Education's ("NYC DOE") Scope and Sequence and Common Core Learning Standards for English Language Arts ("ELA") and Math. New Dawn's Advisory Curriculum is aligned to the Career Development and Occupational Studies (CDOS) Standards and relevant Common Core ELA Standards. The School Curriculum is reviewed on a regular basis in PerformancePlus (PerfPlus) in case a prescription based on test results or changes in the City or State curriculum is necessary, or changes recommended by the NYC DOE and NYSED (such as the new Social Studies Framework and Next Generation Science Standards). Lesson plans are in PerfPlus and will be reviewed and revised weekly during individual teacher and department meetings with either consultants or the principal to adhere to certain timelines, such as the implementation of the Next Generation Standards ratified by New York State in 2017. Teachers work in tandem with consultants and the principal in collaborative effort for revision and maintaining current requirements.

The curricular alignment at New Dawn is not a traditional progression; a traditional 9th grader takes 9th grade ELA for a year and moves to 10th grade courses the following year and so on. New Dawn's students enter with a variety of credit accruals in different subject areas; therefore, New Dawn create schedules individually tailored to each student for an expedient graduation and progression to college. As a result, traditional, year-long courses will be aligned but sections may not be taken at New Dawn so New Dawn will focus on the entire course in Regents classes. Horizontal alignment occurs in courses that are traditionally two semesters, or one year in length. Algebra I, Living Environment, Earth Science, and U.S. History and Government are examples where a horizontal alignment is reviewed annually for changes and consistency. These courses, except Common Core Algebra, are reviewed against the NYC DOE's Scope and Sequence, and for U.S. History and Government, the new Social Studies Framework under Common Core.

In ELA and Global History, the scope and sequence span multiple years so vertical alignments are non-traditional. Once students have accrued enough credits in these course sequences, comparative to requirements for a student in a traditional setting, students will take the Regents exams. The Global History sequence, just like U.S. History and Government, is designed based on the NYC DOE's scope and sequence and the Common Core Social Studies Framework. The ELA sequence is based on the Common Core modules. Non-academic courses are generally one semester in length, and aligned to Common Core

Standards in ELA, New York State Standards, and NYC Scope and Sequence (such as Physical Best and the Blueprint for the Arts). LOTE (Languages Other than English) sequences are based on student ability and follow guidelines from the NYC Scope and Sequence and guidance on acquisition levels by ACTFL (American Council on the Teaching of Foreign Languages).

Teachers will also meet with the principal and special education coordinator for lesson plan review and development. Instructional coaches in reading and math will be on site bi-monthly to confer, model and provide feedback on differentiation to teachers. Department meetings are held weekly to discuss curricular challenges with getting students who are far-below grade level to master skills and concepts at grade-level. Full staff meetings are held to share and discuss different teaching methods, such as conferencing in the workshop model. Peer groups work on different problems of practice related to differentiating instruction. Support from individual meetings, instructional coaching, peer support, embedded PD, and whole staff training will provide opportunities for teachers to hone their ability to differentiate instruction and provide feedback on the implementation in the classroom.

### **Curriculum Selection, Organization and Revision**

Curriculum is aligned to Common Core, and is in transition to the Next Generation Learning Standards, within PerfPlus. This provides the CORE maps (the plan that informs teachers what content area must be addressed and by what date) across the school and all content areas, for all teachers and their subsequent courses. Teachers see what should be taught and align their diary maps, or weekly lesson plans, to the overarching goals of the units outlined in the CORE maps. The CORE maps are adapted from various pacing guides: Common Core modules for ELA and Math, the NYC DOE scope and sequence for social studies and science, plus scope and sequence documents provided from consultants like NTN Math, Read 180 and Math 180. The principal creates these CORE maps and works closely with individual teachers to develop lesson plans in response to the individual needs of the classroom. The pacing of the CORE maps is annually reviewed by the principal and teachers; feedback is exchanged and changes made accordingly to accommodate testing dates, current standard alignment, and the needs of students.

### **Curriculum Materials**

New Dawn uses a variety of instructional materials. In all instances, the principal is the chief architect of the materials to be used, with teachers providing feedback during the annual curriculum reviews. All materials are aligned to Common Core, New York State Learning Standards and the future implementation of the Next Generation Learning Standards. They include:

*English Language Arts:* The curricular materials used to deliver instruction are quite varied across classes. Novels (such as *Of Mice and Men*), plays (such as *Romeo and Juliet*), short stories from the Common Core modules (such as *The Short Happy Life of Francis Macomber*), Read 180, and other print media (ads, videos, newspaper articles, etc.) are introduced by the teachers and utilized to foster critical thinking about communication and the purposes of it.

*Mathematics.* The curricular materials have been developed with consultant company NTN Math. Teachers use a combination of the Common Core modules and the NTN curriculum entitled, *KEAS Math*. Math 180 has been introduced to students at New Dawn.

*Social Studies.* The curriculum is derived from the pacing calendar from the NYC DOE scope and sequence and is aligned to the text, *United States History* [Prentice Hall]) for US history, *World History: Patterns of Interaction* for Global Studies, and *Economics* [AGS Publishing] for Economics. New Dawn has introduced *Edfi*, an online course that provides supplemental materials to Economics and Personal Finance classes.

*Science.* Science follows the scope and sequence of the NYC DOE. The materials used include textbooks (*Living in the Environment* [Cengage], *Earth Science* [McDougal Little], *Forensic Science: From the Crime Scene to the Crime* [Pearson], *Anatomy and Physiology* [John Wiley & Sons, Inc.]), lab materials, and other trade books to serve as supplemental materials.

*Advisory.* Advisory focuses on building skills students will need to prepare for the internship experience. Students will take curriculum courses, such as *Career Choices*, that dictate the lesson sequence over the course of a semester. Other courses, such as *Road Trip Nation* and *Leadership and Character Development* also use established curriculum but are adapted to meet the needs of the students.

*PE, Health, Art, and Spanish.* The NYC DOE scope and sequence are starting points for these courses. The teachers work closely with the principal to establish pacing guides based on these resources, and incorporate trade books and other supplemental software to remain current.

### **Curricular Innovations and Alignment to Key Design Elements**

New Dawn's strategic vision is to provide a least restrictive learning environment for students who are struggling in school and who are over-aged and under-credited, focusing particularly on those most at risk of dropping out. The timing of a student's graduation is unimportant, but the student graduating in and of itself is imperative.

*Key Design Element #1: Curriculum and Instruction.* The curriculum, a fluid document, is adapted to different teaching and learning styles. The ongoing curriculum review, the collaboration between teachers and the principal, as well as the continuous evaluation of the alignment to standards makes New Dawn's curricular approach unique.

*Key Design Element #2: Social/Emotional Learning and Support.* Children do not learn from adults that they do not trust or like. Relationship building is the key component to establishing trust and breaking down the walls that these students have built up in response to a continued pattern of failure that has followed them for years. The advisory program and New Dawn's mentoring program help New Dawn's students build on success. This motivates students to remain focused on their goals and persist when obstacles arise. New Dawn's mentoring program connects New Dawn's students with a "go-to" adult in the building that checks in weekly to monitor progress and reflect on their accomplishments in their internship and advisory. The school also uses the PBIS Framework to inform New Dawn's discipline policy. This is integral to New Dawn's school culture. Students know that infractions are handled in a way that focuses on improvement, not punitive measures.

*Key Design Element #3: College and Career Readiness.* New Dawn utilizes curriculum focusing on developing college and career-minded students. This begins in the ninth grade in their Career Choices advisory. Students monitor and adjust their goals based on their academic progress and reflection on the issues that are acting as roadblocks in courses like RoadTrip Nation. The Internship program connects career minded students will work experience.

*Key Design Element #4: School Improvement Engine.* The School Improvement Engine allows the School to identify gaps in performance and operations, develop a solution with stakeholders, administer the solution, then reflect on the success of the intervention. This demonstrates the School's commitment to ongoing improvement, as the cycle dictates. After a cycle has been completed, the School can use various sources of data, such as the Charter School Performance Framework, the NYSED Annual Report, the NYC DOE School Quality Snapshot and Survey, and New Dawn's in-house reviews, such as New Dawn's progress in the PICCS consortium of charter schools engaged in Instructional Rounds.

*Key Design Element #5: Professional Development.* Staff professional development is another way to incorporate the cycles of the SIE. Using a facilitative leadership approach, school leadership

highlights the unique talents of the staff. By empowering teachers and staff to develop their strengths and mentor their peers, ownership of school-wide success is the burden of all stakeholders and puts different teachers and staff in charge of managing their peers in a productive manner that results in positive change for students.

### **Research-Supported Curriculum**

At New Dawn the workshop model of instruction is used. This model is the key to engaging students in the curriculum as a transfer school. Teachers can respond to individual student need and reflect on that success with the principal to make evolving changes to the curriculum. When a curriculum is fluid, positive student results are achieved. The workshop model also builds teachers' capacity to differentiate instruction which has an impact on classroom management because all students are engaged in the instruction, which is highly effective with at-risk populations and gifted students.

### **Supplemental Curriculum**

The principal works in tandem with teachers and special education teachers, to provide additional support materials as they are appropriate for students. An example is the implementation of Math 180, which was introduced at New Dawn to provide additional opportunities for special education students and low performing math students with a resource that will close the gap in their math education. Another example is the employment of sign language and Spanish. Some students are primarily tactile learners so sign language provides them with an alternative opportunity to develop fluency in a second language based on their learning styles.

In addition to these academic supplemental materials, New Dawn's social/emotional learning is integral to connecting the student to the school community. As mentioned above, New Dawn's mentoring program, PBIS system, and advisory program, all part of Key Design Element #2 Social/Emotional Learning and Supports, and Key Design Element #3 College and Career Readiness and Key Design Element #4 School Improvement Engine, enable a unified approach to curriculum development, implementation, and review. They participate in advisories to set short and long-term goals, and to become reflective of their relationships with themselves, their peers, and the community at large. Students learn to develop professional soft-skills like communicating responsibly in the workplace, to fill out college applications, and take college courses through internships and CollegeNOW. New Dawn's students connect to their emotional, academic, and professional growth, and become well-rounded graduates ready for their future.

### **Instructional Strategies**

The Workshop Model of Instruction with a balanced approach is a mainstay in working with transfer students, because instruction can be differentiated based on factors such as non-academic interventions. Balanced instruction and the workshop model are useful when teaching students at a wide range of proficiency levels. The expectations for all students are the same as exemplified through the mini-lesson when the teacher provides instruction and modeling for the daily lesson. Students then break into groups where they work at their proficiency level, while receiving either remediation or enrichment, or learning basic skills in an authentic setting.

The workshop model is also preferred because of New Dawn's philosophy on teaching students with disabilities and ELL and the approach to both groups is the same. When teachers present content and key pieces of the curriculum to the whole class, and then break the class down into small groups, it is then that the teacher and special education teacher can work directly with special education students and provide additional support commensurate with the designations and goals of their IEP. When ELL students are in smaller groups, teachers can provide additional scaffolds and supports to the student needing additional context in their home language.

## **Rigor and Engagement**

Key to the success of the workshop model is the use of assessment. Teachers use data to inform both individual conferencing with students as well as the groupings of students for guided instruction. Once these analyses have been formed, the workshop model with a balanced approach, builds capacity in teachers to differentiate instruction, and impacts classroom management. Differentiation of instruction is highly effective with at-risk populations and with academically gifted students.

When students have issues, or come to class late, or have trouble understanding the content, the workshop model allows students to discreetly address these issues with their teacher without being in the spotlight of their peers. The workshop model allows teachers and students to work together to get at the core of their deficiencies and overcome negative connotations they may harbor with not understanding content. Using the workshop model aids in breaking down these walls and gives students opportunity to build their skills and trust their instructions in getting them to mastery level.

## **Research Behind the Instructional Model**

Based on the wide range of academic proficiencies of students, balanced instruction will be integrated in all subject areas and will involve teaching students the basics such as phonics, numerical computation, strategies for making meaning and memory development by embedding these concepts in real-world settings. Instruction focusing on memorization as the strategy to develop the basic skills needed to complete higher order processes are not successful with older students.

Teachers use data from qualitative and quantitative assessments to inform both individual conferencing with students as well as in the groupings of students for guided instruction. Teachers are then expected to utilize the workshop model to: (1) help students become proficient in reading, writing, and speaking the language of the content area; (2) feel comfortable using technology; (3) provide connections to prior knowledge, other subject areas, careers, and student interests; (4) develop an array of teaching strategies for students with different learning styles; (5) continue to improve their own knowledge of content curriculum; (6) improve their questioning scaffolds by guiding students to higher order thinking, allowing for think time, and encouraging students to give full answers; (7) be confident in their ability to teach all students; and (8) know that all students want to learn, and the teacher's role makes it so.

## **THE PROJECT**

### **Acquisition of Leased Property**

New Dawn currently leases, occupies and operates out of a 24,000 square foot, four-story building located at 242 Hoyt Street in Brooklyn, New York. The land and building (the "Property") are currently owned by an unrelated limited liability company (the "Lessor") and leased to New Dawn pursuant to the Lease that had a commencement date of July 1, 2016. New Dawn is exercising a purchase option under the Lease pursuant to which it will purchase the Property for a purchase price of \$14,000,000. New Dawn has provided a \$1,000,000 earnest money deposit with the Lessor which will be applied against the purchase price at closing. The closing of the purchase of the Property will occur on the date of issuance of the Series 2019 Bonds and will be funded with a portion of the proceeds of the Series 2019 Bonds and Institution equity.

### **Renovations**

A portion of the proceeds of the Series 2019 Bonds will also be used to pay costs of renovating the Property (the "Renovation Project"), which renovations are expected to cost approximately \$10,458,550. The building was constructed in the 1960's and has not been materially renovated since that time. All building infrastructure (HVAC, elevator, wiring, plumbing) is reaching the end of its useful life. The

Renovation Project will include retrofitting the building with sprinklers consistent with building code. Much of the building will be reconfigured to make more efficient use of the space. This will include upgrades, including adding more classrooms and reconfiguring office space on the first floor to include a culinary teaching kitchen. This will also allow New Dawn to expand its College and Career Readiness Program by providing office space for staff and work space for students applying for college and jobs. Also, the science labs and art studio will be updated.

The Institution will need to rent alternate space to operate the School while renovations of the Facility are progressing during the 2019-2020 school year. The Institution is actively engaged in discussions with potential landlords for alternate sites. As another possibility, the Institution believes it could co-locate the School with the Queens school at the Queens Facility if necessary. Final arrangements for such alternate space have not been made as of the date of this Limited Offering Memorandum. The cost of the Renovation Project described below and under “– Construction Contract” below was derived assuming that no “phasing” of the Renovation Project will be necessary (i.e., the School will operate out of an alternate facility during the pendency of the Renovation Project). See “RISK FACTORS – Construction Risks; Permitting” in the body of this Limited Offering Memorandum.

New Dawn expects that the Renovation Project will be completed by August 1, 2020. The Institution covenants in the Loan Agreement to complete the Project in all events by February 1, 2021. The preliminary budget for the Renovation Project is set forth in the table below.

PROJECT COMPONENT	ESTIMATED AMOUNT
Architectural, Engineering, Consulting, Owner’s Representative and Miscellaneous Soft Costs	\$838,550
Furniture and Miscellaneous Costs	720,000
Construction Costs, General Conditions, Fees and Insurance	8,348,492
Bonding	151,508
Construction Contingency	<u>400,000</u>
TOTAL	\$10,458,550

## Architect

New Dawn has retained Gerner Kronick + Valcarcel, Architects, DPC, New York, New York, as the architect for the Renovation Project (the “Architect”). The Architect will be paid a fee of \$221,000. Compensation for the Renovation Project lighting design will be \$20,000.

Founded in 1995, the Architect has completed work on 40 million square feet of space. It has a large portfolio of commercial and residential interior design projects, new residential and commercial buildings, and hospitality and historic preservation projects, with a client roster including AvalonBay Communities Inc., Allianz Global Investors, Silverstein Properties, The Durst Organization, Tishman Speyer Properties, Equity Residential, Hyatt International and Kushner Companies. The Architect also has experience working on numerous public-sector projects, primarily for The City of New York, as well as such commissions for The Beekman Hotel and Residences and for the restoration and design of the lobby and administrative office for the New York Foundling Hospital. Recently completed projects include TEN23, a 111-unit luxury rental tower adjacent to the New York’s elevated High Line Park, the 32BJ SEIU union headquarters, and, at Grand Hyatt Istanbul, the Mansion meeting and event rooms. Current clients include 1 World Trade Center, Avalon Bay Communities and Bank of New York Mellon.

The Architect’s three founding principals, Randy Gerner, AIA, Richard N. Kronick, AIA, and Miguel Valcarcel, AIA, have been collaborating for over 32 years. Principals Benita Welch, AIA, Joe Barbagallo, AIA, and Michael Fontaine, AIA, round out a staff of 50. The Architect also provides LEED consulting and lighting design services.

Top projects have been featured in *Architectural Digest*, *Interior Design*, *Interior Design's Best of Hospitality*, *the New York Times*, *Interiors*, *Architectural Record*, *Contract Design*, *the New American Apartment*, *Building Design & Construction*, and *Real Estate Weekly*. The firm has garnered multiple industry awards for outstanding residential and commercial design.

### **Construction Manager**

The construction manager for the Renovation Project is Benchmark Builders, Inc., New York, New York (the "Construction Manager"). Incorporated on January 16, 2008 in New York State, it is a wholly owned subsidiary of FTE Networks, Inc., a publicly traded company. It is a full-service construction management and general contracting firm.

The Construction Manager has a workflow breakdown of 65% Construction Management and 35% General Contracting. The Construction Manager's projects include, among others, interior renovations for Under Armour, MCSI, FXDD, HAVAS, Haynes & Boone, Li & Fung, Nord LB Odyssey Reinsurance, EmblemHealth, Dow Jones and Company, Coty Inc. It received the Design 100 2015 Design Awards—Google: YouTube & Brand iLab, IFMA NY Chapter 2015—Best New Facility Under 75,000 SF (CementBloc), and IFMA NY Chapter 2013—Best New Facility Under 100,000 SF (Aegis Media).

### **Construction Contract**

In connection with the Renovation Project, the Institution has entered into a construction contract (the "Construction Contract") with the Construction Manager. The stipulated maximum fixed price for the Renovation Project under the Construction Contract is \$8,900,000 including \$400,000 for construction contingency and approximately \$151,508 for bonding. The Construction Contract will require that the work under the Construction Contract be finally completed by August 1, 2020. Payment and performance bonds will be required to be provided for the Renovation Project.

The Institution has engaged Elevated Studio, New York New York, to act as owner's representative in connection with the Renovation Project.

### **Environmental**

The Institution obtained a Phase I Environmental Site Assessment Report dated January 21, 2019 (the "Assessment") issued by French & Parrello Associates related to the land on which the Facility is located. The scope of work included a review of available historical documents and environmental databases, letter requests from governmental agencies, a site reconnaissance and general characterization of the area and interviews; the work did not include any field testing (e.g., suspected asbestos-containing materials, lead based-paint, mold, radon, air, soil, soil gas or groundwater). The Assessment did not identify any recognized environmental conditions requiring additional investigation or remediation. There can be no assurance given, however, that the Institution will not encounter environmental risks in the future. See "RISK FACTORS – Environmental Risks" in the main body of this Limited Offering Memorandum.

The Institution also obtained an asbestos investigative survey (the "Survey") of the accessible interior and exterior locations of the Facility. The Survey was dated September 17, 2018 and issued by Advanced Environmental Corp. EC, New York, New York. The purpose of the Survey was to identify and sample accessible suspect asbestos containing materials that are present at and will be impacted by planned demolition and renovation activities. The Survey did note the presence of asbestos in the interior wall (waterproofing) tar in the interior perimeter walls and in floor tiling and floor tile mastics throughout floors 1-4. Federal, State and local law requires removal of the material since it will be impacted or disturbed in the renovation process. The Renovation Project budget described above under "- Renovations" includes the sum of \$201,804 for asbestos removal.



## **Zoning and Permitting**

According to the Facility's Certificate of Occupancy, the legal use of the Facility is a community facility, which includes a school. Effective October 28, 2009, the premises was rezoned to an R6B district, and the C1-3 overlay was changed to a C2-4 overlay. R6B/C2-4 districts permit a maximum Floor Area Ratio ("FAR") of 2.0 for residential, commercial, and community facility uses. The zoning change resulted in a reduction of FAR and the maximum permitted floor. New Dawn believes that the Facility's floor area is approximately 24,240 square feet, and the FAR is approximately 3.23. Thus, the building is overbuilt under current zoning. Pursuant to the applicable zoning resolution, the Facility is deemed to be legally non-complying with respect to its floor area; however, there may be no changes (without a waiver) that increase the degree of non-compliance or create a new non-compliance. New Dawn is not contemplating any such change.

New Dawn will begin applying for permits for the Renovation Project upon acquisition of the Facility on the date of issuance of the Series 2019 Bonds. The Institution has retained Metropolis Group, Inc., New York, New York to assist it in obtaining the necessary permits. The Institution will submit an Alteration 2 Application to the New York City Department of Buildings which will cover the mechanical, structural and plumbing portions of the Renovation Project; this application is used because there is no contemplated material change in use in any space in the Facility. The Institution will also file applications to the New York City Department of Buildings for place of assembly and for sprinklers, as well as applications to the New York City Fire Department for fire alarms, to the New York City Department of Environmental Protection for the asbestos control program and to the New York City Department of Transportation for sidewalk repairs. The Institution anticipates that all necessary permits will be issued within two to three months following the acquisition of the Property, in time for the scheduled construction start date in July or August 2019. Prior to then, however, the Institution anticipates spending approximately \$979,000 on Project soft costs and pre-ordering equipment in the amount of approximately \$641,000, which amounts are expected to be funded with disbursements from the Project Fund. As described in the body of this Limited Offering Memorandum under "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2019 BONDS – Project Fund", the Indenture provides that the Construction Monitor shall not approve any requisition under which costs under the Construction Contract will be paid or reimbursed unless all necessary permits have been obtained in order for construction of the Facility to commence, except for an aggregate amount not to exceed \$1,620,000 which may be approved for "soft" costs and costs of pre-ordering materials and equipment under the Construction Contract for the Project.

## **Real Estate Tax Exemption**

As a nonprofit corporation formed for educational purposes, New Dawn is exempt as of right from real estate property taxation pursuant to Section 420-a of the New York State Real Property Tax Law. New Dawn will apply for the real property tax exemption upon acquisition of the Facility and expects that the exemption will be affirmed.

## **THE CHARTER**

New Dawn was initially chartered pursuant to the Initial Charter between Dr. Sara Asmussen, as applicant, and the NYSED Board of Regents (the "Board of Regents" or the "Authorizer"). The Initial Charter was effective for a term of five years through June 30, 2017. The Initial Charter was renewed pursuant to the First Renewal Charter for a full five-year term ending June 30, 2022. The maximum enrollment permitted by the Initial Charter was 500. The Charter contains various requirements, including, without limitation, those relating to the operation of the School, the education of the students, governance, certain policies, students with disabilities, personnel, finance and management, audits and reporting, oversight plans and renewal and revocation. No later than July 1 in the year prior to the expiration of the Charter, New Dawn may apply to the Board of Regents to renew the Charter in accordance with the Charter School Act. The Charter may be revoked by the Authorizer in accordance with Section 2855 of the Charter

School Act or by mutual agreement of the parties. Should the Authorizer determine that one or more of the grounds set forth in Section 2855(1) of the Charter School Act exists, the Authorizer may in its discretion revoke the Charter in accordance with Section 2855(2) of the Charter School Act or place New Dawn on probationary status pursuant to Section 2855(3) of the Charter School Act and cause New Dawn to implement a remedial action plan which, if not abided by, could lead to summary revocation of the Charter. The Charter may not be assigned or delegated by New Dawn. In the event that the Charter is not renewed, the School shall be dissolved in accordance with the Charter School Act.

See "APPENDIX B – General Information Regarding New York Charter Schools" in this Limited Offering Memorandum.

## **GOVERNANCE AND MANAGEMENT**

### **Board of Trustees**

The Charter requires that prior to the appointment of any new Trustee on New Dawn's Board of Trustees (the "Board"), who is not a founding Board Trustee, the appointment be submitted for approval to the State Education Department, which may approve or reject the application within 45 days (and failure to act within 45 days means the proposed member may be seated on the Board). New Dawn's bylaws require that the Board consist of at least five members and no more than 15 members (each a "Trustee" and collectively, "Trustees"). Each Trustee elected to the Board holds office for a term of one year and can be nominated for additional terms. The Board currently meets monthly.

There are currently six Trustees consisting of the following individuals:

<b>Trustee Name</b>	<b>Profession</b>	<b>Board/Officer</b>	<b>Years</b>
Ronald Tabano	Education/CEO	Chair	8
Leslie Winter	Real Estate	Vice Chair	8
Jane Y. Sun	Data Engineer	Member	1
Darlene Anderson	Nonprofit CEO	Member	2
Katharine Urbati	Finance	Treasurer	0
Amit Bahl	Education	Secretary	0

**Ronald Tabano.** Mr. Tabano has over 40 years' experience in education beginning his work as a 6<sup>th</sup> grade teacher, moving to teaching social studies and ELA at the middle and high school levels, eventually becoming an Assistant Principal. Following this, he worked in the community creating job opportunities for struggling adolescents and was a founding member of both Wildcat Academy, which opened in 1992 under the NYC DOE and the first Second Opportunity School (SOS) in the Bronx which opened in 1997. Mr. Tabano also founded the first New Beginnings School in 1999 in Queens. He marshaled Wildcat Academy through the charter conversion process in 2000. Today as CEO/Principal of Wildcat, Mr. Tabano is responsible for a budget of \$9.5 million and a staff of 54. He received his Bachelor of Arts from St. Bonaventure University, a Master of Arts from New School for Social Research and a Professional Diploma in Supervision and Administration from Queens College.

**Leslie Winter.** Mr. Winter is the former Executive Director of the Achilles Foundation, the Assistant Commissioner for Planning in the Division of Real Property in NYC and the Director of Real Estate Programs for NYU's Real Estate Institute. He is involved in commercial real estate in New York City and is the chairperson and/or president of two economic development not-for-profit organizations and a member of two other not-for-profit boards. He is a founding Board member of New Dawn.

**Jane Y. Sun.** Ms. Sun is the lead data engineer at The Center for Educational Innovation in New York City. In her position, Ms. Sun has designed powerful integrated software tools for schools and teachers that explain business rules and analytical priorities. She has helped schools consolidate school

data thereby resolving any data issues resulting from the consolidation of school data and data errors. She has provided evaluation of data management policies, procedures and other documentation requested by software companies, the Federal Education Department, and the NYC DOE. Ms. Sun has supported school improvement through teacher evaluation, assessment data analysis, and the use of data. She has also conducted and supported data-use training, software tool-use training and growth target setting as requested by various schools. Ms. Sun also oversees the supervision and work of data engineers in her company. Ms. Sun holds a Bachelor of Arts in Mathematics from Tianjin Normal University, Tianjin, China and a Master of Science in Applied Mathematics from City College of New York of the City University of New York.

***Darlene Andersen:*** Ms. Anderson is the CEO of Utopia Network Inc., a New York City community based nonprofit organization that offers a wide range of services to the community; inclusive of economic enhancement, education, vocational and employment opportunities, youth development, family support services, health and wellness resources and housing linkage. Ms. Anderson is also a motivational speaker, a personal and professional development coach, a philanthropist and author of the autobiographical empowerment book titled, "Not Without A Fight: 10 Ways To Win When It Appears You've Already Lost."

***Katharine Urbati, MBA:*** Ms. Urbati is the Treasurer of the Board of Trustees. She currently is Director of Finance for Older Adults Technology Services (OATS). Previously, she was the Bookkeeper/Administrator at the Magnum Foundation, the Finance Associate at Gavin Brown's Enterprise, the Interim Finance Associate for Doctors Without Borders and a Senior Associate for Kiwi Partners. She has a Bachelor of Arts in Art History from Boston University, and Ed.M. from the Harvard Graduate School of Education; and a Master of Business Administration from the Zicklin School of Business at CUNY Baruch in Accounting. She is currently obtaining her CPA.

***Amit Bahl, MS:*** Mr. Bahl is a certified NYS Secondary Social Studies Teacher grades 7-12 and NYS School Building Leader. He began his career 16 years ago as a social studies teacher at High School of Art and Design and the F.H. LaGuardia High School of Music & Art and Performing Arts, moving to the Delhi Public School district as a teaching consultant. Following this, he returned to NYC and Global History and Social Studies at The Heritage School, opened in collaboration with Columbia University and then at the East-West School of International Studies. In March 2012, he became the Founding Director of Operations for Urban Dove Team Charter School, another NYC transfer school also authorized by NYSED Board of Regents. In January 2014 he was promoted to Director of Curriculum & Instruction, and in August 2014 he was promoted to School Leader where he remains today. He has extensive experience at all levels of school instruction and operations. In September 2018, Urban Dove opened its second school in the Bronx. Mr. Bahl has a Bachelor of Arts in History & Secondary Education from Hunter College, a Master of Science in Social Studies Education from Queens College, and an MS in School Leadership from Touro College.

## **Administration**

***Sara M. Asmussen, Ph.D., Founder and Founding Executive Director.*** Dr. Asmussen's background is in the field of community mental health research with extensive experience managing large scale research projects, budgets, and grant work. She began her work in education at the Beginning with Children Foundation as the Director of Research, moving to John V. Lindsay Wildcat Academy Charter School working as the Director of Compliance and Accountability. Dr. Asmussen was also the original lead data engineer on the PICCS project at CEI, a federally funded Teacher Incentive Grant, and worked with a number of other charter schools developing data models which incentivized teachers whose students showed academic growth throughout the year. Working with Mr. Tabano, she conceptualized the program and authored the New Dawn charter application. As the Founding Executive Director, she is responsible for oversight of all legal, compliance, pedagogy, facilities, staffing and program expenditures as well as budgeting. She liaisons with the New York State Education Department and just successfully ushered the School through its first five-year renewal. She has a Bachelor of Arts in Psychology/Minor in Literature

from Boise State University; a Master of Arts in Psychology and a Ph.D. in Experimental Psychology from the University of Toledo; and has completed a Postdoctoral Fellowship through the Institute for Health, Health Care Policy, and Aging Research at Rutgers University.

***Jose Obregon, Director of Operations.*** Jose Obregon joined New Dawn as Director of Operations in September 2017. Jose was born in Colombia, South America and immigrated to the United States with his parents when he was one year old. Mr. Obregon served in the United States Army for over 22 years on active duty, where he held numerous assignments and participated in three combat tours during his military career. After retiring from the military in 2006, Mr. Obregon joined the public charter school system in New York City. After teaching in the NYC DOE school system for a year, he helped organize and open a new charter school in the Bronx and served as the new school's business manager and the founding Principal's senior administrator at Icahn Charter School. Later, he became the facilities manager for the Icahn Charter School Network and was responsible for facility and security oversight of seven schools. In a subsequent assignment, Mr. Obregon performed in an operations role at The Metropolitan Lighthouse Charter School also located in the Bronx, New York where he was responsible for various functions including oversight of daily operational tasks such as school foods, transportation, finance, facilities, and compliance reporting. In the absence of the Principal, he was the senior administrator in charge for six months before being selected in his current role at New Dawn. Mr. Obregon graduated from Excelsior College in Albany earning a Bachelor of Science degree in history and political science and holds a Master of Science degree in Security Management from John Jay College of the City University of New York. Finally, he completed the NYC DOE Teaching Fellows.

***Lisa DiGaudio, Ph.D., Founding Principal.*** Dr. DiGaudio began her work in the charter school sector in 2005 at Merrick Academy Charter School in Queens Village where she worked as a Social Studies teacher. In 2011, Dr. DiGaudio joined Dr. Asmussen in opening New Dawn as a founding board member. In 2012, she became the Founding Principal. She leads professional development sessions with larger cohorts of teachers and administrators through the PICCS project. Dr. DiGaudio is a graduate of Adelphi University, class of 1997, where she was a History major and graduate of the Honors College. She earned a Masters in Curriculum, Instruction and Assessment from Walden University, an Advanced Certificate in Education Leadership from Stony Brook University and a Ph.D. in Leadership, Policy and Change in Education from Walden University.

***Amanda Morton, Instruction and Curriculum Specialist.*** Ms. Morton joined the New Dawn staff in August 2017. She brings over 20 years of classroom and leadership experience ranging from kindergarten to high school. Ms. Morton is New York State certified in Education and has received recognition as a Master Teacher. She is a National Counsel Teaching Mathematics member and has experience as a Curriculum Developer and Coordinator, Math Coordinator, Teacher Leader and Mentor Teacher. Ms. Morton has been a Principal's Cabinet Member, School Leadership Team Chairperson, Varsity and Junior Varsity girls' volleyball and soccer coach, and middle school boys' basketball coach. Ms. Morton received a Bachelor of Arts in Psychology from Iona College, a Master of Science in Education from The College of Saint Rose and a Master of Arts in Education Leadership from New York University.

***Donna Lobato, Director of Support Services.*** Ms. Lobato joined New Dawn in March 2013 as the Special Education Coordinator and in 2018 took the position of Director of Support Services. Ms. Lobato has been teaching special education for the past 20 years, including early intervention services with a variety of populations. Her experience also ranges from classroom teaching assignments to administrative roles both in public and private school settings. In her current roll she oversees all counselors, the Internship Program, the Special Education Program, and the College Readiness Program. Ms. Lobato holds a Bachelors in Elementary Education and a Master of Science in Special Education from Dowling College.

***Rivka Miller, Manager of College and Career Readiness.*** In this position, Ms. Miller oversees New Dawn's college and career readiness initiatives which are highlighted by New Dawn's city-wide in-house operated internship and New Dawn's partnership with CUNY College Now at the Borough of

Manhattan Community College. In addition, Ms. Miller is also responsible for the School's strategy in other areas such as college and local business partnerships, interview and resume preparedness, and transcript auditing. Prior to joining New Dawn, Ms. Miller worked in a variety of capacities within the educational and non-profit sectors for more than 15 years specializing in Human Resources and has taught for the last five years in a high school as an English teacher. She received a Bachelor of Arts in English from Montclair University and an MA in English from Columbia University.

***Michelle D. Millán, Office and Human Resource Manager.*** Ms. Millan has been the Office & Human Resource Manager at New Dawn since April 2013. Her responsibilities include purchasing, fiscal management, accounts payable, benefits management and Human Relations related duties. Similar to the students of New Dawn, Ms. Millan was involved in the school's Co-op Program which had alternating academic and work weeks. This was Ms. Millan's introduction to the workforce. While working full-time at Catholic Charities as a Secretary, Ms. Millan enrolled in Borough Manhattan Community College as a part-time student and received her Associate's Degree in Business Administration. After receiving her degree, she was promoted to Operations Coordinator, and then received her Bachelor's Degree in Business Administration from Baruch College with a focus in Operations Management.

***Zachary Flory, Dean of School.*** Mr. Flory has been one of the New Dawn Science teachers, joining the team in September 2013 during the School's second year of operations. In 2016, he became the first responder through the School Administrator Management (SAM) program to the Principal of the School. In 2017, he became the Professional Learning Community (PLC) coach and Teacher Leader at the School. In 2018, he took on the responsibility of Dean of School where he is responsible for all student behavior, training teachers on Data Driven Instruction, overseeing the testing program, and assisting teachers with classroom management as well as modeling appropriate instructional techniques. Mr. Flory has a BS in General Science from Penn State University, an Instructional Certificate from East Stroudsburg University, and an MA in Teaching Biology from Western Governors University.

### **Conflict of Interest Policy**

The Board has adopted a Conflict of Interest Policy (the "Policy"). The purpose of the Policy is to protect the interests of New Dawn when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Trustee, officer, or key employee. New Dawn will not enter into any such transaction or arrangement unless it is determined by the Board in the manner described in the Policy to be fair, reasonable and in the best interests of New Dawn at the time of such determination. Failure to disclose to the Board a known financial interest or a known potential related party transaction may be grounds for removal from the Board or termination of employment by the School.

If the contemplated related party transaction pertains to compensation for services or the transfer of property or other economic benefit to a related party, the Board must determine that the value of the economic benefit provided by New Dawn to the related party does not exceed the value of the consideration received in exchange by obtaining and reviewing appropriate comparable data prior to entering the transaction. In those instances where the contemplated related party transaction does not involve compensation, transfer of property or benefits to a related party, the Board must consider alternative transactions to the extent possible, prior to entering into such transaction. No related party shall vote, act, or attempt to influence improperly the deliberations on any matter in which he or she has been determined by the Board to have a financial interest. Each Trustee, officer, and key employee shall annually sign and submit to the Executive Director a statement which affirms such person: (a) has received a copy of the Policy, (b) has read and understands the Policy, and (c) has agreed to comply with the Policy.

## ACADEMIC PERFORMANCE

### Regents Results

New Dawn believes that the most relevant measure of academic performance for its students is their performance on the New York State Regents examinations. Set forth below is a Table setting out Regents results for New Dawn, New York State and NYC School District 15 (in which the School resides). Test results for the 2017-2018 years are embargoed. However, the School's results submitted by New Dawn on the NYSED Annual Report are: Common Core ELA: 92.5% of students taking the exam were proficient; CC Algebra: 80% were proficient; U.S. History & Government: 93.2% were proficient; Living Environment: 80.4% were proficient; and Global History & Geography: 81.7% were proficient (see <http://www.p12.nysed.gov/psc/csdirectory/NewDawnCharterHighSchool/DAWNAR1718.pdf>). The School's goal is 75% proficiency for those taking the exam, so the School achieved that objective for the 2017-2018 school year. Since results at this time are embargoed, there are no district, city, or state comparisons.

**TABLE 1: REGENTS PROFICIENCY BY SCHOOL YEAR**

Year: Exam:	School Year 2016-2017			School Year 2015-2016			School Year 2014-2015		
	State	District	School	State	District	School	State	District	School
ELA	81%	77%	85%	87%	78%	88%	80%	70%	80%
Math	74%	64%	69%	72%	60%	36%	63%	60%	22%
Science	74%	86%	82%	78%	86%	72%	77%	63%	58%
US History	81%	89%	81%	82%	88%	75%	84%	70%	65%
Global History	68%	61%	77%	68%	58%	57%	67%	59%	49%
Comprehensive ELA	-	-	-	53%	62%	NA	83%	73%	50%
Integrated Algebra	-	-	-	58%	50%	48%	62%	55%	NA

Source: Institution Annual Report  
(<http://p12.nysed.gov/psc/csdirectory/NewDawn/CharterHighSchool/home.html>)

### Focus School Designation

Under federal law, New York State is required by the United States Department of Education to identify low performing schools. NYSED identifies low performing districts as "Focus Districts." Low performing schools within these districts are identified as "Focus Schools." Schools with the lowest overall academic performance are called "Priority Schools." A school becomes a "Focus School" based on a two-stage process. First, the state will identify the districts with the lowest-performing student subgroups and designates them as Focus Districts. Student subgroups include: English language learners, low income students, special education, and various racial designations (black or African American, Latino, etc.). Second, the district identifies schools that had one or more student subgroups in ELA and math and/or graduation rate that are at or below the performance cut points established for identification and these schools are identified as Focus Schools. Priority Schools are schools with the overall lowest student academic performance on state assessments and persistently low graduation rates. For the 2017-2018 school year (the latest year for which designations are provided), New Dawn was listed as a Focus School. New Dawn had been listed as a "Priority School" for the 2016-2017 school year under the predecessor No Child Left Behind Act.

It is important to note that schools are evaluated and designated as described above in a pool consisting of all schools in the district, and not just schools serving special populations; i.e., New Dawn believes a more appropriate comparison would be to evaluate New Dawn against other transfer schools serving over-aged, under-credited students. Included in the original Benchmark Accountability plan

released by the NYSED CSO, was a request for completion of a table for “similar schools.” This table was completed, and was populated with 2016-2017 results for 56 New York City transfer schools taken from the [www.data.nysed.gov](http://www.data.nysed.gov) website. The results are as follows:

**Graduation:** Based on the 4-year graduation rate, New Dawn outperformed 57.1% of the other transfer schools in the City. However, 23 of the 32 schools performing less proficient than New Dawn had a status as “Good”. On the 5-year graduation rate, New Dawn only outperformed 42% of the other schools but, of the 18 schools who underperformed New Dawn, 11 had a status as a “Good”

**Common Core ELA Regents:** For the 49 schools that administered Common Core testing, New Dawn general education Students outperformed all but four of them (92%) with a proficiency rate of 89% above both the state average, district average, and required average for college and career ready schools. Thirty-seven schools below New Dawn’s performance outcomes had a status of “Good.” New Dawn special education Students outperformed all 49 schools that administered the Common Core test, with a proficiency rate of 100%. All schools with a status of “Good” scored below New Dawn.

**Common Core Algebra Regents:** Of the 33 schools administering the Algebra Common Core, New Dawn general education students outperformed 24.2% of them. No school below New Dawn had a status of anything other than “Good.” Of the 29 schools that administered CC Algebra Regents to special education students, New Dawn special education students outperformed 79.3% of the schools with a proficiency rate of 89%. The only school above New Dawn with a status of anything other than “Good” was New Dawn’s sister school, Wildcat, which employs the same model as New Dawn. New Dawn had 100% of their special education students pass the CC Algebra Regents.

New Dawn contends from these results that, had New Dawn been compared to a pool of schools consisting of transfer schools (as it believes appropriate), it too would have received a status of “Good.”

## **New Dawn Accountability Plan**

### ***General***

New Dawn has prepared an alternate accountability plan (the “Accountability Plan”) in response to its prior designation as a “Priority School” as described above under “Focus School Designation”. A major component of any alternative accountability plan is a description of the students served. While New Dawn agrees that a basic accountability plan should exist for all transfer schools, the reality is that all schools have different entry points for enrollment which impacts how and when outcomes are measured. Therefore, New Dawn’s plan is aligned with both the current NYSED Charter School Office’s (“NYSED CSO”) Transfer School Accountability Template as well as the NYSED 9<sup>th</sup> Grade Cohort.

New Dawn enrolls students throughout the year from September through April, with no upper age, credit accumulation, or Regents exam success rates for enrollment. New Dawn is no student’s first high school and thus only enrolls students who have been unsuccessful in high school. New Dawn never recruits from the 8<sup>th</sup> grade. From September 2012 through June 2016, New Dawn has served 642 students with an enrollment age range of 14 years 6 months to 21 years of age with an average age of 17 years and 5 months. In order to graduate with a NYSED diploma, a student must accumulate 44 credits and pass five content area Regents exams. At enrollment, New Dawn students have attempted, on average, 37.4 credits for only accumulated 16.1 credits—this results in an average credit accumulation of a “sophomore” in high school but someone who should be a “senior.” Based on these averages, students are two years behind their federal 9<sup>th</sup> grade cohort.

Reviewing other indicators shows that other students are even further behind. The 642 students referenced above attempted anywhere from 7 to 88.8 credits prior to enrollment at New Dawn but had only accumulated 0 to 47.31 credits. Regents exams are another hurdle for New Dawn students. Students had attempted anywhere from 0 to 28 Regents exams (average 4.2 tries) but had actually only passed 0 to 8 Regents (average .9 exam). Because of this, students are given individualized schedules at enrollment which addresses their specific academic needs.

Of the 642 students who have enrolled through June 2016, 91.2% are economically disadvantaged, 4.8% are classified as ELL, and 34.6% are classified as students with disabilities. Students are administered the Scantron Reading and Math assessments, and the following are the enrollment grade level results:

**TABLE 2: GRADE LEVEL OUTCOMES**

Skill	2 <sup>nd</sup> – 4 <sup>th</sup> Grade	5 <sup>th</sup> – 6 <sup>th</sup> Grade	7 <sup>th</sup> – 8 <sup>th</sup> Grade	High School
Reading	33.0%	44.1%	13.6%	9.4%
Math	46.8%	37.2%	10.6%	5.3%

Source: Scantron Testing Series

Students are clearly enrolling in the School significantly behind their 9<sup>th</sup> grade cohorts and with very low content skills in reading and math.

### ***Graduation Rates***

Using the NYC DOE Peer Target Graduation Rate, New Dawn compared it's results to the results of the City based on graduation rates as of June 2016. (The abbreviations in the Tables have the following meanings: "OA/UC" means over-aged/under-credited". "MAT" means most-at-risk.)

**TABLE 3: GRADUATION RATES  
(By School Cohort Year)**

School Cohort 2012 N = 140	% of Cohort	NYC DOE Peer Target Graduation Rate	New Dawn Graduation Rate	Difference New Dawn – DOE
Non OA/UC	26.4%	67%	89.2%	+22.2%
15-year-old OA/UC	14.3%	30%	70.0%	+40%
OA/UC	13.6%	50%	63.2%	+13.2%
MAT	45.7%	25%	37.5%	+12.5%
Non-Dropout Rate		55%	63.6%	+8.6%

Source: NYC DOE, Department of Accountability

School Cohort 2013 N = 105	% of Cohort	NYC DOE Peer Target Graduation Rate	New Dawn Graduation Rate	Difference New Dawn – DOE
Non OA/UC	23.8%	67%	64%	-3%
15-year-old OA/UC	5.7%	30%	50.0%	+20%
OA/UC	21.9%	50%	70%	+20%
MAT	48.6%	25%	27.5%	+2.5%
Non-Dropout Rate		55%	64.8%	+9.8%

Source: NYC DOE, Department of Accountability



The following students have only been at New Dawn two-years and one-year but already show healthy trends towards graduation. There are no NYC DOE predictions for these groups yet.

<b>School Cohort 2014</b>	<b>% of</b>	<b>Graduation Rate as</b>
<b>N = 156</b>	<b>Cohort</b>	<b>of June 2016*</b>
Non OA/UC	16.7%	73.1%
15-year-old OA/UC*	6.4%	40.0%
OA/UC	25.0%	43.6%
MAT	51.9%	16.0%
Non-Dropout Rate		90.4%

---

Source: The Institution; NYC DOE ATS (Automate the Schools)

\*There are still 88 (56.4%) active students in the School from this cohort who may graduate. There is no Peer Target Graduation Rate for this cohort.

<b>School Cohort 2015</b>	<b>% of</b>	<b>Graduation Rate as</b>
<b>N = 132</b>	<b>Cohort</b>	<b>of June 2016*</b>
Non- OA/UC	19%	40.0%
15-year-old OA/UC*	4.5%	0.0%
OA/UC	25.0%	9.1%
MAT	51.5%	4.4%
Non-Dropout Rate		96.2%

---

Source: The Institution; NYC DOE ATS (Automate the Schools)

\*There are still 114 (86.2%) active students in the School from this cohort who may graduate. There is no Peer Target Graduation Rate for this cohort.

### ***Special Education and ELL Students***

Due to the fact there is no DOE data available to compare these outcomes to other Transfer High Schools or other peer groups, the borough and citywide graduation rates for students classified as students with disabilities and ELL are being used. All data is taken from the data.nysed.gov website and is averaged from 2013 on for the District and Brooklyn averages. The 5-year graduation rate was used as a comparison, even though not all students in these cohorts has been in high school for 5 years.

**TABLE 4: GRADUATION RATES FOR SPED AND ELL STUDENTS**

	<b>School Cohort of 2012</b>	<b>School Cohort of 2013</b>	<b>Overall Combined Total</b>	<b>District Average*</b>	<b>Brooklyn Average*</b>
% of SPED Students	30.7%	35.2%	32.7%	4.0%	5.0%
% of ELL Students	9.3%	4.8%	7.3%	2.0%	3.0%
Graduation Rate for Students classified SPED	51.2%	37.8% (8 still enrolled)	45% (8 still enrolled)	47.5%	42.8%
Graduation Rate for Students classified with ELL	38.5% (1 still enrolled)	40%	38.9% (1 still enrolled)	36.8%	48.8%

Source: The Institution; NYC DOE ATS (Automate the Schools); NYSED's <https://data.nysed.gov/>

\*SPED and ELL averages are for high schools only.

### ***College Enrollment***

While New Dawn tracks its own students after graduation, the college data below comes directly from the Naviance system which is a comprehensive college and career readiness system. Naviance collects data directly from colleges and reports their findings in a series of reports. New Dawn has used these college reports for the data for the table below.

**TABLE 5: DATA AFTER GRADUATION**

#### **College Enrollment Data 6 Months After Graduation**

	<b>Class of 2013</b>	<b>Class of 2014</b>	<b>Class of 2015</b>	<b>Class of 2016</b>	<b>Overall Combined</b>
% Enrolled*	39%	56%	52%	40%	40.5%

#### **Post-Secondary Data 7 to 24 Months or More After Graduation**

	<b>Class of 2013</b>	<b>Class of 2014</b>	<b>Class of 2015</b>	<b>Class of 2016</b>	<b>Overall Combined</b>
% Enrolled*	67%	64%	40%	Not available	57%
% Preparing to Enroll**	0%	10%	17%	14%	10%
% Working	5%	15%	34%	31%	21%
% Not Enrolled/Status Unknown***	28%	11%	26%	26%	22%

Source: Naviance

\* From Naviance

\*\*These can be duplicate numbers—a student can be working and preparing to enroll in college.

\*\*\*Outreach is ongoing.

The table above reflects New Dawn's college enrollment 6 months after graduation in addition to enrollment beyond 6 months. Many of New Dawn's graduates choose to take a 1 semester to 1 year off from their education before deciding to enroll in college. As the data shows, the college readiness team has worked with many students after they graduate to ensure they enroll into college. In the following table New Dawn sees the enrollment based on two- and four-year colleges. Further, New Dawn's perseverance (continued college enrollment) is high for this age group and after just four years of opening, New Dawn already has New Dawn's first college graduates.

**TABLE 6: COLLEGE ATTAINMENT**

	<b>Class of 2013</b>	<b>Class of 2014</b>	<b>Class of 2015</b>	<b>Class of 2016</b>	<b>Overall Combined</b>
Two Year Colleges	45%	45%	70%	65%	56%
Four Year Colleges	54%	54%	30%	35%	44%
1 <sup>st</sup> year to 2 <sup>nd</sup> year perseverance (students continued into second year)	55%	58%	NA	NA	NA
Graduated	11.1%	NA	NA	NA	NA

---

Source: Naviance

### ***Internship Program***

Students with more than 10 credits are assigned a placement to work in the community. As part of a holistic educational approach, the Internship Program at New Dawn provides students with the essential job training and leadership development opportunities needed to prepare and transition into a successful career pathway of their choice. Students participating in the Internship Program alternate weeks in the classroom and at the internship site. Attendance is mandatory for students participating in the program and is tracked by both the internship site through time sheets and the School through check-ins with the internship site. Internship sites are reviewed each year. Examples of internship partners include local businesses such as Hopkins Senior Center, Wyckoff Hospital, Rebound Vocational and Job Training, Youth Stands United, Young Boss Media, ELO—Organic Cosmetics, Public School 156, John V. Lindsay Wildcat Academy Charter School, Urban Dove Team Charter School, and Yosh Yoga Studio. New Dawn aims for students to build long-term, professional connections while developing skills such as critical thinking, teamwork, time management, problem solving, communication and professionalism; however, the intent of the Internship Program is not for students to move on to full-time positions at the internship site. Students are not paid by the internship partner, but are provided a stipend for lunch and travel by the School.

**TABLE 7: INTERNSHIPS**

<b>School Cohort Year</b>	<b>Total Number of students engaged in internship</b>	<b>Total amount of students who completed internship</b>	<b>Percentage of students who completed their internship</b>
2012	75	58	77%
2013	84	52	62%
2014	152	109	72%
2015	<u>87</u>	<u>58</u>	67%
All Cohort Years	398	277	70%

---

Source: The Institution

### ***NYC DOE School Quality Snapshot***

The NYC DOE has begun to release School Quality Snapshots for Transfer Schools. This mechanism allows New Dawn to compare its student outcomes to the outcomes of similar students citywide. This data is for the 2017-2018 school year and available online at: <https://tools.nycenet.edu/snapshot/2018/84K486/HST/> and is summarized below.

New Dawn achieved an Overall Ratings of Good for Student Achievement, Rigorous Instruction, Collaborative Teachers, Effective School Leadership, Strong Family-Community Ties, and an Excellent Rating for Trust (there was no rating for Supportive Environment due to missing data).

#### Credits Accumulated Towards Graduation

Students entering school with < 23 credits: 5.3 credits accumulated (comparison 5.9)

Students entering school with > 22 credits: 8.2 credits accumulated (comparison 9.1)

#### Regents Results

ELA and Social Studies: Excellent

Algebra: Good

Living Environment: Fair

#### Graduation

All Students: 44% (47% Comparison)

Most at Risk: 39% (37% Comparison)

OA/UC: 26% (57% Comparison)

#### Closing the Achievement Gap

ELL: Not Reported

SPED: Fair

OA/UC: Fair

High School Persistence: 57% (54% Comparison)

#### College & Career Readiness:

Successfully completed approved college or career preparatory courses & exams: 8% (Comparison 6%)

Graduated from HS and enrolled in college or other postsecondary program within 6 months: 16% (Comparison 19%)

## **FACULTY AND FACULTY RETENTION**

### **Faculty and Other Employees**

The Institution's staffing for the 2018-2019 academic year consists of 33.5 full-time equivalent employees ("FTEs"), which includes all leadership, teaching, support faculty and clerical personnel. For the 2018-2019 academic year, the student to teacher ratio at the School is 20:1.

Teachers are paid based on experience. New Dawn pay is based on the city's teacher salary schedule plus 10% because New Dawn teachers work an eight-hour day from 9:00 a.m. to 5:00 p.m. New Dawn has a rigorous hiring process to maximize good hires and has a strenuous embedded professional development plan that provides supports for teachers in a variety of areas. New Dawn has a facilitative leadership program which engages teachers in the School, and works with a group of people who identify staff and have them certified during the year to work as teaching assistants. New Dawn has an Employee Handbook which outlines how it interacts with employees including hiring/firing, benefits, time off, salary increases, evaluation, as well as signed notifications regarding harassment at the work site. All staff are fingerprinted and prints are sent to the FBI for processing. This data is contained on the NYSED TEACH system. No employee may work in the School without clean fingerprints.

The Institution currently employs 12 subject-area teachers, 4 special education teachers, 2 teaching assistants, 6 Support Staff (counselors, social workers, internship staff), 2.5 office staff, and 7 administrators. The costs of special education teachers are supplemented by additional state funding equal to approximately \$10,000 per qualified student for the 2018-2019 academic year.

(The remainder of this page is intentionally left blank.)

## Teacher Tenure and Certification

**TABLE 8: TEACHER TENURE AND CERTIFICATION**

Teacher #	Tenure	Certification	Degree
Teacher #1	5 years	Highly Qualified—experience*	Masters of Science
Teacher #2	3 years	NYSED SPED	MA in Special Education
Teacher #3	17 years	NYSED ELA	MA in English
Teacher #4	3 years	NYSED Art	BA in Art
Teacher #5	2 years	NYSED SPED	MA in Special Education
Teacher #6	2 years	NYSED Social Studies	MA of Public Administration BA in Education and History
Teacher #7	3 years	Highly Qualified--College Prof*	MA in Writing BA in English
Teacher #8	2 years	NYSED Social Studies	MA in History Museum Studies BS in Adolescent Education Social Studies
Teacher #9	2 years	NYSED SPED in process	MS in Adolescent Education BA in Political Science
Teacher #10	2 years	New Jersey Social Studies*	MA in History
Teacher #11	4 years	NYSED Math	MS in Education BA in Math
Teacher #12	2 years	NYSED Math	BA in Mathematics Education
Teacher #13	4 years	Highly Qualified--experience Canadian SPED certification*	BA in Psychology
Teacher #14	18 years	Highly Qualified—3 or more years teaching experience*	MA in Social Studies
Teacher #16	5 years	NYSED Science	MED in Elementary Education BS in Biology
Teacher #17	4 years	NYSED Science	MS in Science Education

\* Uncertified in New York State

Source: The Institution

## Full-Time Equivalent Employees Academic Year 2018-2019

The Table below depicts the Institution's FTEs for the 2018-2019 academic year by staff category.

**TABLE 9: FULL TIME EQUIVALENT EMPLOYEES**

	Full-Time Equivalents
Instructional Staff (Teachers, Teacher Assistants)	18
Leadership Staff (Principal, Assistant Principals)	7
Support Staff	6
Administrative Staff	2.5
Total	33.5

Source: The Institution

## Faculty Retention

The Table below outlines the School's teacher retention for the past five academic years.

**TABLE 10: FACULTY RETENTION**

Year	# of Teachers	Retention Rate
Fall 2014	13	88%
Fall 2015	13	23%
Fall 2016	14	62%
Fall 2017	14	93%
Fall 2018	15	93%

---

Source: The Institution

There are a variety of reasons a charter school may suffer shifts in the retention of teachers. As a startup charter school, it is difficult to find effective teachers because founding teachers of a new charter school are required to put in significantly more work than a teacher from an operational school. Moreover, charter schools also have portable retirement plans (i.e., 403 or 401 rather than pensions). Accordingly, teachers do not need to remain at the organization based on saving retirement funds, instead charter school teachers can easily transfer their retirement accounts. Studies have shown that of all first-year charter school teachers, 40% of them leave within the first five years. New charter schools almost exclusively hire new, first year teachers. Finally, in a charter school as small as New Dawn, there are limited opportunities for a teacher to advance. Therefore, as teachers become more proficient, some leave New Dawn to join organizations where they can be hired in an administrative capacity.

In the Fall of 2015, New Dawn experienced a low retention rate. During that year, four teachers were not offered a renewal contract because they did not meet the standards required to continue teaching at the School, which standards are set by New Dawn. Since that time, New Dawn has strengthened its onboarding process of new staff to ensure that teachers understand the evaluation and the expectations for evaluation. New Dawn embeds in its staff development support for teachers to understand these expectations. In 2015, other teachers also left the School due to their own individual reasons. Besides the programs to help teachers meet the standards set by New Dawn, New Dawn also improved their Facilitative Leadership Model to establish clear guidelines around the program so that all teachers have the opportunity to participate in the running of the School, which aids in teacher retention. As shown in the retention table above, the retention rates have since normalized and is higher than in years past (please see Regents Proficiency Table Test Scores above).

## Benefits

New Dawn offers a full range of benefits: health (physical, mental, dental, vision) insurance, short-term disability, long-term disability (65% of person's full salary), the various AFLAC plans, vacations, holidays, and personal days. Further, New Dawn adheres, and many times exceeds the benefits mandated by NYC and NYS such as the family leave act, bereavement time, jury duty, and voting. New Dawn also offers a Section 403(b) retirement plan whereby eligible employees are automatically enrolled with an automatic 1% of employee salary being contributed with employer contributions of 3% or 5% subject to a one year waiting period and 20% vesting per year.

## ADMISSIONS AND ENROLLMENT

### Enrollment, Applications & Wait Lists

New Dawn is very different from both traditional district and traditional charter schools. New Dawn is not graded and therefore has neither projections nor actual enrollment by grade. New Dawn enrolls all students who apply to the School. New Dawn then develops class schedules based on the classes needed for graduation. Unlike traditional charter schools, New Dawn has never held a lottery. The reason for this is the way the lottery must be administered by law. To be included in the lottery, students must apply by April 1 after which a lottery is held for the upcoming September. If the student is not assigned a seat through the lottery, they are then added to the wait list. At New Dawn, if a student applies on March 15, they are not put into the lottery. They are offered a seat and start school on March 16. The end result of this practice is that there are no students on the wait list in April. There are no students on the lottery list either because they are all attending school already. New Dawn does this through May. If a student applies on May 2, he or she is expected to be in class on May 3. New Dawn engages in this practice because a student who applies in March will not come to school in September. These students need to be in school as soon as they decide they want to return to school.

The Table below sets out the School's actual enrollment for its first six years and projected enrollment for the next five years.

**TABLE 11: ENROLLMENT**

<b>School Year</b>	<b>Grades Served</b>	<b>Approved Enrollment</b>	<b>Actual Funded Full Time Equivalent ("FTE")</b>
2012-2013	Ungraded High School	150	161
2013-2014	Ungraded High School	250	230
2014-2015	Ungraded High School	350	305
2015-2016	Ungraded High School	400	327
2016-2017	Ungraded High School	500	329
2017-2018	Ungraded High School	500	257
<b>School Year</b>	<b>Grades Served</b>	<b>Approved Enrollment</b>	<b>Projected Funded FTE (for budgeting only)</b>
2018-2019	Ungraded High School	500	316
2019-2020	Ungraded High School	500	335
2020-2021	Ungraded High School	500	375
2021-2022	Ungraded High School	500	375
2022-2023	Ungraded High School	500	375

---

Source: The Institution

The discrepancies in approved and actual/projected numbers results from the nature of New Dawn's very transient population. Further, New Dawn has graduation three times during the year and has rolling enrollment through May. For this reason, New Dawn has in the past estimated 350 students for budgeting purposes; for the 2019-2020 fiscal year, this number was decreased to 335 to more closely reflect the 2018-2019 projected enrollment.

The number of applications received is approximately 5% more than the number of students who enroll. Students change their minds, go to other schools, or just enroll to keep their parents/judges/probation



officers satisfied but with no intent to actually attend school. Thus there are a small number of enrollees who, even after extensive outreach by the School, do not actually attend New Dawn.

New Dawn draws the majority of its students from the Sunset Park, Bedford-Stuyvesant and East New York neighborhoods of Brooklyn as shown in the map below.



Source: The Institution

### Student Retention Rates

This number is very difficult to derive since New Dawn does not have students in “grades.” Therefore, it is difficult to calculate the retention rate by comparing how many students returned who were in a non-terminal grade the prior year, e.g., how many sophomores returned the next year as juniors. Therefore, New Dawn looks at graduation and drop-out rates and calculates New Dawn’s retention rates from this information. According to the NYC DOE, New Dawn outperforms other transfer schools in its geographic area with student retention rates between 79% and 82%. The drop-out rate over the first 6 years was 18%.

### SPED Services and Demographics

Upon enrollment at New Dawn, students are asked on the application if they receive special education or ELL services. Based on the history of New Dawn, most students are forthcoming with this information. Regardless of information presented, all students will be entered into the Child Find process utilizing SESIS (Special Education Student Information System) and ATS (Automate the Schools) to see

if the student does indeed require services. SESIS is specifically used for students who have IEPs; New Dawn can determine if there is a current or an out-of-date IEP as well as if a student was declassified or if the case was closed. ATS is used to identify if a student requires ELL services. For students who have Section 504 accommodations or supports, the School will rely on the student and family to inform the School since this information is not entered nor tracked on SESIS or ATS.

New Dawn has always had a large percentage of its student population as students with disabilities.

**TABLE 12: STUDENTS WITH DISABILITIES**

<b>Year</b>	<b>Percentage Students with Disabilities</b>
2012-2013	26%
2013-2014	32%
2014-2015	38%
2015-2016	36%
2016-2017	39%
2017-2018	41%
2018-2019	40%

---

Source: The Institution

Set out in the Table below is demographic information of the School's student population since the School's opening, as compared to that of New York State and the school district (CSD #15). Please note that the State and CSD numbers include grades K-12. This really only impacts the ELL percentages, particularly in CSD #15. Elementary and middle schools have ELL rates in the 30% range while high schools in the area average 6%.

(The remainder of this page is intentionally left blank.)

**TABLE 13: DEMOGRAPHICS BY SCHOOL YEAR AND LOCATION**

<b>Year: Race</b>	<b>School Year 2012-2013</b>			<b>School Year 2013-2014</b>			<b>School Year 2014-2015</b>		
	<b>State</b>	<b>District</b>	<b>New Dawn</b>	<b>State</b>	<b>District</b>	<b>New Dawn</b>	<b>State</b>	<b>District</b>	<b>New Dawn</b>
American Indian	1%	0%	1%	1%	0%	1%	1%	0%	0%
African American	18%	17%	53%	18%	16%	61%	18%	16%	63%
Hispanic	24%	42%	32%	25%	41%	33%	25%	40%	33%
Asian	9%	15%	3%	9%	15%	1%	9%	16%	1%
White	47%	24%	4%	46%	25%	3%	45%	26%	3%
Multi-Racial	1%	1%	4%	1%	2%	1%	2%	2%	0%
GROUPS									
ELL	8%	19%	11%	8%	18%	7%	8%	19%	5%
SPED	15%	18%	26%	16%	20%	32%	17%	20%	38%
FRL	54%	72%	83%	53%	61%	83%	54%	58%	67%
GENDER									
Female	49%	50%	51%	49%	50%	52%	49%	50%	45%
Male	51%	50%	49%	51%	50%	48%	51%	50%	55%

<b>Year: Race</b>	<b>School Year 2015-2016</b>			<b>School Year 2016-2017</b>		
	<b>State</b>	<b>District</b>	<b>New Dawn</b>	<b>State</b>	<b>District</b>	<b>New Dawn</b>
American Indian	1%	0%	1%	1%	0%	0%
African American	18%	15%	64%	17%	15%	61%
Hispanic	26%	39%	32%	26%	38%	35%
Asian	9%	16%	1%	9%	16%	1%
White	45%	27%	2%	44%	28%	3%
Multi-Racial	2%	2%	0%	2%	3%	1%
GROUPS						
ELL	8%	17%	4%	9%	18%	4%
SPED	17%	21%	36%	17%	21%	39%
FRL	54%	56%	64%	55%	55%	78%
GENDER						
Female	49%	50%	46%	49%	50%	50%
Male	51%	50%	54%	51%	50%	50%

Source: The Institution

### COMPETITION

As a charter school in New York City, New Dawn's catchment area is the entire city. However, 85% of all New Dawn's students come from Brooklyn. Because New Dawn enrolls throughout the year and will take anyone with no age credit accumulation or Regents or other enrollment requirements (except that students must be older than 15), New Dawn has little direct competition. Wildcat, located in Manhattan, is the exception since New Dawn is based on the Wildcat academic model. For example, as referenced in the Table 14 below, Urban Dove Team Charter School admits students who are 14 years old, but requires that students have at least 10 credits.

**TABLE 14: COMPETITORS**

<b>Top Competitors</b>	<b>Grades Served</b>	<b>Distance from School</b>
John V. Lindsay Wildcat Academy Charter High School	9-12	2.5 miles
Urban Dove Team Charter School (only for those with less than 10 credits)	9-12	2.4 miles
Brooklyn Frontiers High School (only enrolls 9 <sup>th</sup> graders)	9-12	< 1 mile
South Brooklyn Community HS (regents & credit requirements)	9-12	1.5 miles
Brooklyn Academy HS (regents & credit requirements)	9-12	2.75 miles

---

Source: The Institution

## **LITIGATION**

Charter schools are, from time to time, subject to various lawsuits, claims, and other legal actions or proceedings in the normal course of conducting its school operations, which may be filed as tort, employment, workers' compensation, contract and/or vendor claims. As of the date of this Limited Offering Memorandum, the Institution is not aware of any lawsuits, actions or administrative, arbitration or other proceedings or governmental investigations pending against the Institution.

## **MANAGEMENT'S DISCUSSION OF FINANCIAL PERFORMANCE**

### **Budget Process**

Prior to the start of each fiscal year, the Executive Director, Principal, and other relevant school staff develop a budget proposal. This proposal is then reviewed by the Finance and Audit Committees of the Board of Trustees. The final budget proposal is then presented to the entire Board for full Board approval. The Board then reviews the expenditures as compared to the budget monthly to determine if any interventions are needed. The Institution's budget is subject to ultimate approval by the Board. Following budget approval, any material changes to the budget may only be amended by a majority vote of the Board.

### **History of Per Pupil Funding**

New Dawn receives funding from New York State through the NYC Department of Education. The history of per pupil funding shows small, but steady increases each year. For more information on such payments, see "APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW" in this Limited Offering Memorandum for a discussion of levels of State payments and other related matters. See also "RISKS TO BONDHOLDERS — Changes In Law; Annual Appropriation; Inadequate Education Aid Payments" in the body of this Limited Offering Memorandum.

Table 15 below outlines the Institution's historical payments per pupil received from the Board of Regents, excluding base special education payments.

**TABLE 15: HISTORICAL PER PUPIL PAYMENTS**

<b>Year</b>	<b>Per Pupil Funding</b>
2012-2013	\$13,527
2013-2014	\$13,527
2014-2015	\$13,777
2015-2016	\$13,877
2016-2017	\$14,027
2017-2018	\$14,527
2018-2019	\$15,307

---

Source: NYC DOE invoicing system and  
[https://stateaid.nysed.gov/charter/html\\_docs/prior\\_years\\_charter\\_rates.htm](https://stateaid.nysed.gov/charter/html_docs/prior_years_charter_rates.htm)

New Dawn also receives funding for special education students. From 2013-2014 through 2017-2018, New Dawn received average per pupil special education funding ranging from a low of approximately \$9,685 to a high of approximately \$19,986 per pupil. This has translated to total special education annual funding ranging from approximately \$767,000 to approximately \$1,323,000. Based on data through January 2019, New Dawn anticipates receiving approximately \$1,241,000 in special education funding in fiscal year 2018-2019 at an average per pupil amount of approximately \$10,945.

No representation or assurance can be given that the Institution will realize revenues in amounts sufficient to make the required payments under the Loan Agreement. The realization of future revenues is dependent upon, among other things, the matters described in the foregoing paragraph and future changes in economic and other conditions that are unpredictable and thus cannot be determined at this time. See “RISKS TO BONDHOLDERS” in the body of this Limited Offering Memorandum.

### **Indebtedness**

The Institution has no outstanding long-term indebtedness as of the date of this Limited Offering Memorandum.

### **Historical Financial Information**

New Dawn historically outperforms its budgets, resulting in a positive change in net assets in each of the past five fiscal years. New Dawn’s unrestricted net assets grew from \$1,930,188 at the 2014 fiscal year end to \$9,891,657 by the 2018 fiscal year end, with unrestricted cash growing from \$1,495,849 to \$9,189,223 over the same period. Over the past five years, New Dawn has achieved strong historical maximum annual debt service coverage for the Series 2019 Bonds, with coverage as high as 2.21x in fiscal year 2017.

In response to feedback from its authorizer and in order to maintain compliance with its Charter requirements, New Dawn tightened its internship requirements for the 2017-2018 academic year and dropped students who were unwilling to participate in the internship program. This resulted in a decline in enrollment for that year. As a result of these changes, New Dawn’s revenues declined from \$6,496,730 in the 2017 fiscal year to \$5,362,712 in the 2018 fiscal year. Despite the decline in revenues, New Dawn saw a positive change in net assets of \$1,023,396 for the 2018 fiscal year and would have achieved a maximum annual debt service coverage on the Series 2019 Bonds (“MADS Coverage”) of 1.24x.

Table 16 below provides New Dawn’s Historical Summary Statement of Activities for the five fiscal years ended June 30, 2014 through June 30, 2018, based on the audited financial statements of New Dawn included as APPENDIX D in this Limited Offering Memorandum. Table 17 provides the New Dawn’s Historical Summary Statement of Activities and Historical Debt Service Coverage for New Dawn for the six-month periods ended December 31, 2018 and 2017.

**TABLE 16: HISTORICAL SUMMARY STATEMENT OF ACTIVITIES  
FISCAL YEARS ENDED JUNE 30, 2018**

	<b>Fiscal Year Ending June 30,</b>				
	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>
	<b>(Audited)</b>	<b>(Audited)</b>	<b>(Audited)</b>	<b>(Audited)</b>	<b>(Audited)</b>
<b>Enrollment</b>	<b>230</b>	<b>305</b>	<b>327</b>	<b>329</b>	<b>257</b>
Public School District - Per Pupil	\$ 3,115,363	\$ 4,197,005	\$ 4,550,268	\$ 4,618,740	\$ 3,766,749
Public School District - Special Education	775,570	1,147,926	1,116,076	1,304,306	1,010,022
Government Grants	338,722	265,971	192,508	494,522	438,630
Contributions	7,844	200	2,773	73,603	98,832
Other Income	25	11,656	15,569	5,559	48,479
Settlement Income	-	34,200	-	-	-
<b>Total Public Support and Revenue</b>	<b><u>\$ 4,237,524</u></b>	<b><u>\$ 5,656,958</u></b>	<b><u>\$ 5,877,194</u></b>	<b><u>\$ 6,496,730</u></b>	<b><u>\$ 5,362,712</u></b>
Regular Education	1,429,532	1,453,759	1,582,599	1,821,941	1,804,204
Special Education	943,139	1,281,051	1,394,709	1,483,848	1,695,732
Management and General	550,113	668,051	652,206	754,645	839,380
<b>Total Expenses</b>	<b><u>\$ 2,922,784</u></b>	<b><u>\$ 3,402,861</u></b>	<b><u>\$ 3,629,514</u></b>	<b><u>\$ 4,060,434</u></b>	<b><u>\$ 4,339,316</u></b>
<b>Change in Net Assets</b>	<b><u>\$ 1,314,740</u></b>	<b><u>\$ 2,254,097</u></b>	<b><u>\$ 2,247,680</u></b>	<b><u>\$ 2,436,296</u></b>	<b><u>\$ 1,023,396</u></b>
Lease Expense	533,280	557,520	630,240	715,080	732,957
Depreciation & Amortization	65,694	54,134	32,615	34,035	29,210
<b>Income Available for Debt Service</b>	<b>\$ 1,913,714</b>	<b>\$ 2,865,751</b>	<b>\$ 2,910,535</b>	<b>\$ 3,185,411</b>	<b>\$ 1,785,563</b>
MADS - Series 2019 Bonds <sup>1</sup>	1,444,356	1,444,356	1,444,356	1,444,356	1,444,356
<b>MADS Coverage</b>	<b>1.32x</b>	<b>1.98x</b>	<b>2.02x</b>	<b>2.21x</b>	<b>1.24x</b>

*Source: The Institution*

<sup>1</sup> Based on final pricing and structure of the Series 2019 Bonds.

**TABLE 17: HISTORICAL SUMMARY STATEMENT OF ACTIVITIES AND DEBT SERVICE  
COVERAGE RATIO FOR  
SIX MONTH PERIODS ENDED DECEMBER 31, 2018 AND 2017**

	<b>Six Months Ending Dec. 31,</b>	
	<b><u>2017</u></b>	<b><u>2018</u></b>
	<b>(Unaudited)</b>	<b>(Unaudited)</b>
<b>Enrollment</b>	<b>240</b>	<b>241</b>
Public School District - Per Pupil	\$2,058,737	\$2,038,623
Public School District - Special Education	386,870	419,728
Government Grants	155,467	3,359
Other Income	44,461	83,224
<b>Total Public Support and Revenue</b>	<b><u>\$2,645,535</u></b>	<b><u>\$2,544,933</u></b>
Total Personnel Services	1,317,631	1,391,121
Contracted Services	120,099	215,641
School Operations	130,891	205,244
Facility Operation & Maintenance	460,908	643,557
<b>Total Expenses</b>	<b><u>\$2,029,529</u></b>	<b><u>\$2,455,563</u></b>
<b>Change in Net Assets</b>	<b><u>\$616,006</u></b>	<b><u>\$89,370</u></b>
Lease Expense	366,479	381,003
Depreciation & Amortization	15,578	-
One-Time Expenses Related to Building Purchase	165	268,094
<b>Income Available for Debt Service</b>	<b><u>\$998,228</u></b>	<b><u>\$738,467</u></b>
Projected MADS - Series 2019 Bonds <sup>1</sup>	722,178	722,178
<b>Projected MADS Coverage<sup>2</sup></b>	<b>1.38x</b>	<b>1.02x</b>

*Source: The Institution*

<sup>1</sup> Based on final pricing and structure of Series 2019 Bonds.

<sup>2</sup> Projected MADS for the six-month periods ending December 31 is prorated.

### **Days Cash on Hand**

Table 18 below provides calculations of the Institution's historical Days Cash on Hand for the five fiscal years ended June 30, 2014 through June 30, 2018 and for the six months ended December 31, 2018. The Institution will contribute \$6,000,000 of equity to the Project funded out of its unrestricted cash balance. A \$6,000,000 reduction in unrestricted cash and equivalents would have reduced the Institution's Days Cash on Hand as of December 31, 2018 from 807 days to 305 days.

**TABLE 18: HISTORICAL DAYS CASH ON HAND**  
**FISCAL YEARS ENDED JUNE 30, 2014 THROUGH JUNE 30, 2018 AND FOR SIX MONTH PERIOD**  
**ENDED DECEMBER 31, 2018**

	Fiscal Year Ending June 30,					Six Months Ending Dec. 31,
	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2018</u>
	(Audited)	(Audited)	(Audited)	(Audited)	(Audited)	(Unaudited)
Cash & Equivalents	\$ 1,495,849	\$ 3,718,748	\$ 5,970,611	\$ 8,060,301	\$ 9,189,223	\$ 9,644,324
Operating Expenses <sup>1</sup>	<u>2,857,090</u>	<u>3,348,727</u>	<u>3,596,899</u>	<u>4,026,399</u>	<u>4,310,106</u>	<u>2,187,469</u>
<b>Days Cash On Hand</b>	<b>191 days</b>	<b>405 days</b>	<b>606 days</b>	<b>731 days</b>	<b>778 days</b>	<b>807 days</b>

*Source: The Institution*

<sup>1</sup> Excludes Depreciation

### Projected Financial Information

Management of the Institution has prepared the following financial projections for each of the five fiscal years ending June 30, 2019 through June 30, 2023. Such financial projections constitute “forward-looking” statements of the type described in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. See the information in the forepart of this Limited Offering Memorandum under the caption “Cautionary Statements Regarding Forward-Looking Statements.” Although management believes that the assumptions upon which these financial projections are based are reasonable, any of the assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions could also be incorrect. All phases of the operations of the Institution involve risks and uncertainties, many of which are outside of the Institution’s control and any one of which, or a combination of which, could materially affect the Institution’s results with respect to its operations.

Factors that could cause actual results to differ from those expected include, but are not limited to, general economic conditions; the willingness of the State to fund public schools including charter schools at present or increased levels; competitive conditions within the Institution’s service area; lower-than-projected enrollment; unanticipated expenses; changes in government regulation including changes in the law governing charter schools in New York; future claims for accidents against the Institution and the extent of insurance coverage for such claims; and other risks discussed in this Limited Offering Memorandum. See “RISKS TO BONDHOLDERS” in the body of this Limited Offering Memorandum.

The following financial projections have not been independently verified by any party other than the Institution. No feasibility studies have been conducted with respect to operations of the Institution pertinent to these financial projections or the Series 2019 Bonds.

The Underwriter has not independently verified the Institution’s projections, and makes no representations nor gives any assurances that such projections, or the assumptions underlying them, are complete or correct.

NO REPRESENTATION OR ASSURANCE CAN BE GIVEN THAT THE INSTITUTION WILL REALIZE REVENUES IN AMOUNTS SUFFICIENT TO MAKE ALL REQUIRED DEBT SERVICE PAYMENTS ON THE SERIES 2019 BONDS. THE REALIZATION OF FUTURE REVENUES DEPENDS ON, AMONG OTHER THINGS, THE MATTERS DESCRIBED IN “RISKS TO BONDHOLDERS” IN THE BODY OF THIS LIMITED OFFERING MEMORANDUM AND FUTURE CHANGES IN ECONOMIC AND OTHER CONDITIONS THAT ARE UNPREDICTABLE AND CANNOT BE DETERMINED AT THIS TIME. THE UNDERWRITER MAKES NO



REPRESENTATION AS TO THE ACCURACY OF THE PROJECTIONS CONTAINED HEREIN, NOR AS TO THE ASSUMPTIONS ON WHICH THE PROJECTIONS ARE BASED.

For fiscal year 2019, New Dawn is projecting funded FTE enrollment of 316 for the full year. January 2019 enrollment was 241 compared to enrollment of 240 for January 2018. Although enrollment is lower than budgeted enrollment, New Dawn management expects enrollment to grow through the year. Additionally, management has already made budget adjustments to help ensure that the School meets its budgeted change in net assets for fiscal year 2019.

New Dawn projects that enrollment will increase from 316 for fiscal year 2019 to 335 for fiscal year 2020 and 375 for fiscal year 2021 and thereafter. Historically, enrollment peaked at 329 in fiscal year 2017, but management expects that the additional physical capacity and expanded program offerings that the Project will make available will allow New Dawn to achieve projected enrollment levels.

Table 19 below provides a Projected Summary Statement of Activities for New Dawn, in each case for the five fiscal years ending June 30, 2019 through June 30, 2023. Table 20 below provides a Breakeven Projected Summary Statement of activities for such time period.

(The remainder of this page is intentionally left blank.)

**TABLE 19: PROJECTED SUMMARY STATEMENT OF ACTIVITIES**  
**FISCAL YEARS ENDED JUNE 30, 2019 THROUGH JUNE 30, 2023**

	<u>2019</u>	<b>Projections, Fiscal Years Ending June 30,</b>			<u>2023</u>
		<u>2020</u>	<u>2021</u>	<u>2022</u>	
<b>Enrollment</b>	<b>316</b>	<b>335</b>	<b>375</b>	<b>375</b>	<b>375</b>
Public School District - Per Pupil	\$ 4,947,562	\$ 5,179,462	\$ 5,855,884	\$ 5,914,443	\$ 5,973,587
Public School District - Special Education	772,332	772,332	772,332	772,332	772,332
Government Grants	300,625	300,625	317,225	317,225	317,225
Other Income	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
<b>Total Public Support and Revenue<sup>1</sup></b>	<b><u>\$ 6,030,519</u></b>	<b><u>\$ 6,262,754</u></b>	<b><u>\$ 6,955,816</u></b>	<b><u>\$ 7,014,375</u></b>	<b><u>\$ 7,073,519</u></b>
Total Personnel Services	2,509,250	2,673,923	2,817,934	2,883,098	2,949,770
Contracted Services	384,700	394,318	404,175	414,280	424,637
School Operations	397,076	407,003	415,077	475,454	486,090
Facility Operation & Maintenance <sup>2</sup>	815,990	2,271,125	1,476,778	1,482,573	1,488,512
Depreciation & Amortization	<u>466,667</u>	<u>633,333</u>	<u>633,333</u>	<u>633,333</u>	<u>633,333</u>
<b>Total Expenses<sup>3</sup></b>	<b><u>\$ 4,573,683</u></b>	<b><u>\$ 6,379,701</u></b>	<b><u>\$ 5,747,298</u></b>	<b><u>\$ 5,888,737</u></b>	<b><u>\$ 5,982,342</u></b>
<b>Change in Net Assets</b>	<b><u>\$ 1,456,836</u></b>	<b><u>\$ (116,948)</u></b>	<b><u>\$ 1,208,518</u></b>	<b><u>\$ 1,125,638</u></b>	<b><u>\$ 1,091,177</u></b>
Lease Expense/Debt Service	665,990	2,000,000	1,200,000	1,200,000	1,200,000
Depreciation & Amortization	<u>466,667</u>	<u>633,333</u>	<u>633,333</u>	<u>633,333</u>	<u>633,333</u>
<b>Income Available for Debt Service</b>	<b>\$ 2,589,493</b>	<b>\$ 2,516,386</b>	<b>\$ 3,041,852</b>	<b>\$ 2,958,971</b>	<b>\$ 2,924,510</b>
MADS - Series 2019 Bonds <sup>4</sup>	1,444,356	1,444,356	1,444,356	1,444,356	1,444,356
<b>Projected MADS Coverage</b>	<b>1.79x</b>	<b>1.74x</b>	<b>2.11x</b>	<b>2.05x</b>	<b>2.02x</b>

*Source: The Institution*

1 State Revenues for 2019 are based on actual DOE numbers and are projected to increase 1% per year in 2020 and thereafter.

2 In FY 2020, Facility Operation & Maintenance expense includes \$800,000 of lease expense that will be incurred to rent alternate space to operate the School while renovations of the Facility are progressing during the 2019-2020 school year.

3 Includes a 2.3% annual increase relating to a standard of living adjustment in personnel expenses and a 2.5% annual increase in contracted services and school operations.

4 Based on final pricing and structure of the Series 2019 Bonds.

For the purpose of this Limited Offering Memorandum, New Dawn management has also provided a “break-even” analysis showing the minimum enrollment level required to reach 1.0x projected MADS Coverage for the Series 2019 Bonds. Based on this analysis, New Dawn would need to reach FTE enrollment of 252 or the full year to achieve 1.0x MADS Coverage for the Series 2019 Bonds for fiscal year 2019, compared to actual FTE enrollment of 244 through November 2018. The Series 2019 Bonds are being structured as interest-only for the first year following the date of issuance of the Series 2019 Bonds.

**TABLE 20: PROJECTED SUMMARY BREAKEVEN STATEMENT OF ACTIVITIES  
FISCAL YEARS ENDED JUNE 30, 2019 THROUGH JUNE 30, 2023**

	Projections, Fiscal Years Ending June 30,				
	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
<b>Enrollment</b>	<b>252</b>	<b>275</b>	<b>285</b>	<b>291</b>	<b>293</b>
Public School District - Per Pupil	\$ 3,857,616	\$ 4,251,797	\$ 4,450,472	\$ 4,589,608	\$ 4,667,363
Public School District - Special Education	615,910	634,004	586,972	599,330	603,449
Government Grants	300,625	300,625	317,225	317,225	317,225
Other Income	<u>110,000</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
<b>Total Public Support and Revenue<sup>1</sup></b>	<b><u>\$ 4,884,151</u></b>	<b><u>\$ 5,196,426</u></b>	<b><u>\$ 5,364,669</u></b>	<b><u>\$ 5,516,162</u></b>	<b><u>\$ 5,598,037</u></b>
Total Personnel Services	2,509,250	2,673,923	2,817,934	2,883,098	2,949,770
Contracted Services	384,700	394,318	404,175	414,280	424,637
School Operations	397,076	407,003	415,077	475,454	486,090
Facility Operation & Maintenance <sup>2</sup>	815,990	2,271,125	1,476,778	1,482,573	1,488,512
Depreciation & Amortization	<u>466,667</u>	<u>633,333</u>	<u>633,333</u>	<u>633,333</u>	<u>633,333</u>
<b>Total Expenses<sup>3</sup></b>	<b><u>\$ 4,573,683</u></b>	<b><u>\$ 6,379,701</u></b>	<b><u>\$ 5,747,298</u></b>	<b><u>\$ 5,888,737</u></b>	<b><u>\$ 5,982,342</u></b>
<b>Change in Net Assets</b>	<b><u>\$ 310,469</u></b>	<b><u>\$(1,183,276)</u></b>	<b><u>\$ (382,628)</u></b>	<b><u>\$ (372,575)</u></b>	<b><u>\$ (384,306)</u></b>
Lease Expense/Debt Service	665,990	2,000,000	1,200,000	1,200,000	1,200,000
Depreciation & Amortization	<u>466,667</u>	<u>633,333</u>	<u>633,333</u>	<u>633,333</u>	<u>633,333</u>
<b>Income Available for Debt Service</b>	<b>\$ 1,443,125</b>	<b>\$ 1,450,058</b>	<b>\$ 1,450,705</b>	<b>\$ 1,460,759</b>	<b>\$ 1,449,027</b>
MADS - Series 2019 Bonds <sup>4</sup>	1,444,356	1,444,356	1,444,356	1,444,356	1,444,356
<b>Projected MADS Coverage</b>	<b>1.00x</b>	<b>1.00x</b>	<b>1.00x</b>	<b>1.01x</b>	<b>1.00x</b>

*Source: The Institution*

1 State Revenues for 2019 are based on actual DOE numbers and are projected to increase 1% per year in 2020 and thereafter.

2 In FY 2020, Facility Operation & Maintenance expense includes \$800,000 of lease expense that will be incurred to rent alternate space to operate the School while renovations of the Facility are progressing during the 2019-2020 school year.

3 Includes a 2.3% annual increase relating to a standard of living adjustment in personnel expenses and a 2.5% annual increase in contracted services and school operations.

4 Based on final pricing and structure of the Series 2019 Bonds.

[THIS PAGE INTENTIONALLY LEFT BLANK]

---

**APPENDIX B**

**SUMMARY OF CERTAIN PROVISIONS  
OF NEW YORK EDUCATION LAW**

---

[THIS PAGE INTENTIONALLY LEFT BLANK]

## **APPENDIX B**

### **SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW**

The following summarizes certain provisions of the New York Charter Schools Act of 1998, Article 56, §§ 2850-2857 of the New York Education Law, as amended (the "Act"), other applicable provisions of the New York Education Law, and related regulations. The following provides a summary only, and is only for informational purposes. Potential investors should refer to and independently evaluate applicable provisions of the Act in their entirety, with assistance from counsel as necessary, for a complete understanding of their terms. Further, potential investors should note that the provisions summarized below are subject to change, and this summary only pertains to certain aspects of currently existing law. See "RISK FACTORS - Changes in Law; Annual Appropriation; Inadequate Education Aid Payments" in this Limited Offering Memorandum.

#### **Purpose (New York Education Law § 2850)**

The purpose of the Act is to authorize a system of charter schools to provide opportunities for teachers, parents, and community members to establish and maintain schools that operate independently of existing schools and school districts in order to accomplish the following objectives:

- (a) Improve student learning and achievement;
- (b) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are at-risk of academic failure;
- (c) Encourage the use of different and innovative teaching methods;
- (d) Create new professional opportunities for teachers, school administrators and other school personnel;
- (e) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
- (f) Provide schools with a method to change from rule-based to performance-based accountability systems by holding the schools established under the Act accountable for meeting measurable student achievement results.

#### **Eligible Applicants; Applications; Submission (New York Education Law §§ 2851(1), 2851(2) and 2851(3))**

An application to establish a charter school may be submitted by teachers, parents, school administrators, community residents or any combination thereof. Such application may be filed in conjunction with a college, university, museum, educational institution, not-for-profit corporation exempt from taxation under § 501(c)(3) of the Internal Revenue Code or for-profit business or corporate entity authorized to do business in New York state. Provided however, for-profit business or corporate entities shall not be eligible to submit an application to establish a charter school pursuant to § 2852(9-a) (a request for proposals process) of the Act, or operate or manage a charter school for a charter issued pursuant to § 2852(9-a) (a request for proposals process) of the Act. For charter schools established in conjunction with a for-profit business or corporate entity, the charter shall specify the extent of the entity's participation in the management and operation of the school.

The information provided on the application shall be consistent with the provisions of the Act and other applicable laws, rules and regulations.

An applicant shall submit the application to a charter entity for approval. For purposes of the Act, a charter entity shall be:

(a) The board of education of a school district eligible for an apportionment of aid under § 3602(4) (apportionment of public moneys to school districts employing eight or more teachers) of the New York Education Law; provided that a board of education shall not approve an application for a school to be operated outside the school district's geographic boundaries and further provided that in a city having a population of 1,000,000 or more, the chancellor of any such city school district shall be the charter entity established by this paragraph;

(b) The Board of Trustees of the State University of New York; or

(c) The Board of Regents. The Board of Regents shall be the only entity authorized to issue a charter pursuant to the Act.

Notwithstanding any provision of this section to the contrary, an application for the conversion of an existing public school to a charter school shall be submitted to, and may only be approved by, the charter entity set forth in paragraph (a) of this section. Notwithstanding any law, rule or regulation to the contrary, any such § 2852(9-a) application for conversion shall be consistent with this section but shall not be subject to the process pursuant to the Act, and the charter entity shall require that the parents or guardians of a majority of the students then enrolled in the existing public school vote in favor of converting the school to a charter school.

#### **Charter Renewal (New York Education Law § 2851(4))**

Charters may be renewed, upon application, for a term of up to five (5) years in accordance with the provisions of the Act for the issuance of such charters pursuant to § 2852 of the Act; provided however, that a renewal application shall include:

(a) A report of the progress of the charter school in achieving the educational objectives set forth in the charter.

(b) A detailed financial statement that discloses the cost of administration, instruction and other spending categories for the charter school that will allow a comparison of such costs to other schools, both public and private. Such statement shall be in a form prescribed by the Board of Regents.

(c) Copies of each of the annual reports of the charter school required by § 2857 of the Act, including the charter school report cards and the certified financial statements.

(d) Indications of parent and student satisfaction.

(e) The means by which the charter school will meet or exceed enrollment and retention targets as prescribed by the Board of Regents or the Board of Trustees of the State University of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program which shall be considered by the charter entity prior to approving such charter school's application for renewal. When developing such targets, the Board of Regents and the Board of Trustees of the State University of New York shall ensure (1) that such enrollment targets are comparable to the enrollment figures of such categories of students attending the



public schools within the school district, or in a city school district in a city having a population of 1,000,000 or more inhabitants, the community school district, in which the charter school is located; and (2) that such retention targets are comparable to the rate of retention of such categories of students attending the public schools within the school district, or in a city school district in a city have a population of 1,000,000 or more inhabitants, the community school district, in which the proposed charter school would be located.

Such renewal application shall be submitted to the charter entity no later than six months prior to the expiration of the charter; provided, however, that the charter entity may waive such deadline for good cause shown.

#### **Charter School Organization (New York Education Law § 2853(1))**

(a) Upon the approval of a charter by the Board of Regents, the Board of Regents shall incorporate the charter school as an education corporation for a term not to exceed five (5) years, provided however in the case of charters issued pursuant to § 2852(9-a) of the Act the Board of Regents shall incorporate the charter school as an education corporation for a term not to exceed five (5) years in which instruction is provided to pupils plus the period commencing with the effective date of the charter and ending with the opening of the school for instruction. Such certificate of incorporation shall not modify or limit any terms of the charter approved by the Board of Regents. Upon approval of an application to renew a charter, the Board of Regents shall extend the certificate of incorporation for a term not to exceed five (5) years. Upon termination or nonrenewal of the charter of a charter school pursuant to § 2855 of the Act, the certificate of incorporation of the charter school shall be revoked by the Board of Regents pursuant to § 219 (change of charter) of the New York Education law, provided that compliance with the notice and hearing requirements of the Act shall be deemed to satisfy the notice and hearing requirements of § 219 of the New York Education law. It shall be the duty of the trustees of the charter school to obtain federal tax-exempt status no later than one year following approval of a charter school by the Board of Regents. For purposes of the Act, "certificate of incorporation" shall mean the provisional charter issued by the Board of Regents to form the charter school as an educational corporation pursuant to §§ 216 (charters) and 217 (provisional charters) of the New York Education Law.

(b) An education corporation organized to operate a charter school shall have all corporate powers necessary and desirable for carrying out a charter school program in accordance with the provisions of the Act, other applicable laws and regulations and the terms of the charter, including all of the powers of an education corporation formed to operate an elementary or secondary school and those powers granted under the provisions of the not-for-profit corporation law that are made applicable to charter schools by § 216-a (applicability of not-for-profit corporation law) of the New York Education Law. The powers of the trustees of the charter school shall include those powers specified in § 226 (powers of trustees of institutions) of the New York Education Law.

(b-1) An education corporation operating a charter school shall be authorized to operate more than one school or house any grade at more than one site, provided that a charter must be issued for each such additional school or site in accordance with the requirements for the issuance of a charter pursuant to the Act and that each such additional school or site shall count as a charter issued pursuant to § 2852(9) of the Act; and provided further that:

- (i) a charter school may operate in more than one building at a single site; and
- (ii) a charter school which provides instruction to its students at different locations for a portion of their school day shall be deemed to be operating at a single site.

(c) A charter school shall be deemed an independent and autonomous public school, except as otherwise provided in the Act and a political subdivision having boundaries coterminous with the school district or community school district in which the charter school is located. The charter entity and the Board of Regents shall be deemed to be the public agents authorized to supervise and oversee the charter school.

(d) The powers granted to a charter school under the Act constitute the performance of essential public purposes and governmental purposes of the state. A charter school shall be exempt to the same extent as other public schools from all taxation, fees, assessments or special ad valorem levies on its earnings and its property, including property leased by the charter school. Instruments of conveyance to or from a charter school and any bonds or notes issued by a charter school, together with the income therefrom, shall at all times be exempt from taxation.

(e) A charter school shall not have the power to levy taxes or to acquire property by eminent domain.

(f) The Board of Trustees of the charter school shall have final authority for policy and operational decisions of the school. Nothing herein shall prohibit the Board of Trustees of a charter school from delegating decision-making authority to officers and employees of the school in accordance with the provisions of the charter.

(g) Notwithstanding any provision of law to the contrary, no civil liability shall attach to any charter entity, the Board of Regents, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school. Neither the local school district, the charter entity nor the state shall be liable for the debts or financial obligations of a charter school or any person or corporate entity who operates a charter school.

#### **Public and Private Assistance to Charter Schools (New York Education Law § 2853(4))**

Effective until June 30, 2021:

(a) For purposes of §§ 701 (power to designate text-books; purchase and loan of text-books; purchase of supplies), 711 (aid for purchase of school library materials), 751 (aid for computer software purchases) and 912 (health and welfare services to all children) of the New York Education Law, a charter school shall be deemed a nonpublic school in the school district within which the charter school is located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider. Where the charter school arranges to have the school district of residence provide such special education programs or services, such school district shall provide services in the same manner as it serves students with disabilities in other public schools in the school district, including the provision of supplementary and related services on site to the same extent to which it has a policy or practice of providing such services on the site of such other public schools.

Effective June 30, 2021:

(b) For purposes of §§ 701 (power to designate text-books; purchase and loan of text-books; purchase of supplies), 711 (aid for purchase of school library materials), 751 (aid for computer software purchases) and 912 (health and welfare services to all children) of the New York Education Law, a charter school shall be deemed a nonpublic school in the school district within which the charter school is

located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider.

(c) For purposes of § 3635 (transportation) of the New York Education Law, a charter school shall be deemed a nonpublic school. The charter and application therefor shall set forth the manner in which students ineligible for transportation pursuant to § 3635 of the New York Education Law shall be transported to and from school. Any supplemental transportation provided by a charter school shall comply with all transportation safety laws and regulations applicable to other public schools. A school district may enter into a contract for the provision of supplemental transportation services to a charter school, and any such services shall be provided by the school district at cost.

(d) A charter school may contract with the governing body of a public college or university for the use of a school building and grounds, the operation and maintenance thereof. Any such contract shall provide such services or facilities at cost. A school district shall permit any charter school granted approval to co-locate, to use such services and facilities without cost. Notwithstanding any provision of law to the contrary, any approval prior to January 1, 2014, pursuant to § 2590-g(1)(h) of New York Education Law, of a significant change in school utilization relating to the co-location of a school authorized pursuant to the Act or to allocate such school space in a district school building made prior to the implementation of the requirements of § 2590-g(1)(h) of New York Education Law shall not, on or after January 21, 2014, be altered, revised, amended, overturned or withdrawn by the board of education or the chancellor as of January 21, 2014 fail to be implemented without the consent of the charter school approved for co-location in a public school building unless such charter school is no longer authorized pursuant to the Act.

(e) Private persons and organizations are encouraged to provide funding and other assistance to the establishment or operation of charter schools.

(f) The school district of residence of children attending a charter school may, but is not required to, allow such children to participate in athletic and extra-curricular activities of the district's schools.

#### **Applicability of Other Laws (New York Education Law § 2854(1))**

(a) Notwithstanding any provision of law to the contrary, to the extent that any provision of the Act is inconsistent with any other state or local law, rule or regulation, the provisions of the Act shall govern and be controlling.

(b) A charter school shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in the Act. A charter school shall be exempt from all other state and local laws, rules, regulations or policies governing public or private schools, boards of education, school districts and political subdivisions, including those relating to school personnel and students, except as specifically provided in the school's charter or in the Act. Nothing in this section shall affect the requirements of compulsory education of minors established by Part 1 of Article 65 (compulsory education) of the New York Education Law.

(c) A charter school shall be subject to the financial audits, the audit procedures, and the audit requirements set forth in the charter and shall be subject to audits of the comptroller of the city school district of the city of New York for charter schools located in New York city, and to audits of the

New York State Comptroller for charter schools located in the rest of the state, at his or her discretion, with respect to the school's financial operations. Such procedures and standards shall be consistent with generally accepted accounting and audit standards. Independent fiscal audits shall be required at least once annually.

(d) A charter school shall design its educational programs to meet or exceed the student performance standards adopted by the Board of Regents and the student performance standards contained in the charter. Students attending charter school shall be required to take Regents examinations to the same extent such examinations are required of other public school students. A charter school offering instruction in the high school grades may grant Regents diplomas and local diplomas to the same extent as other public schools, and such other certificates and honors as are specifically authorized by their charter, and in testimony thereof give suitable certificates, honors and diplomas under its seal; and every certificate and diploma so granted shall entitle the conferee to all privileges and immunities which by usage or statute are allowed for similar diplomas of corresponding grade granted by any other public school.

(e) A charter school shall be subject to the provisions of the New York Freedom of Information Law and New York Open Meetings Law.

A charter school shall be subject to the provisions of §§ 800 (definitions), 801 (conflicts of interest prohibited), 802 (exceptions), 803 (disclosure of interest), 804 (contracts void), 804-a (certain interests prohibited), 805 (violations), 805-a (certain action prohibited), 805-b (solemnization of marriages) and 806 (code of ethics) of the General Municipal Law to the same extent such sections apply to school districts.

#### **Admission; Enrollment; Students (New York Education Law § 2854(2))**

(a) A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees; provided that a charter school may require the payment of fees on the same basis and to the same extent as other public schools. A charter school shall not discriminate against any student, employee or any other person on the basis of ethnicity, national origin, gender, or disability or any other ground that would be unlawful if done by a school. Admission of students shall not be limited on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry; provided, however, that nothing in the Act shall be construed to prevent the establishment of a single-sex charter school or a charter school designed to provide expanded learning opportunities for students at-risk of academic failure or students with disabilities and English language learners; and provided, further, that the charter school shall demonstrate good faith efforts to attract and retain a comparable or greater enrollment of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program when compared to the enrollment figures for such students in the school district in which the charter school is located. A charter shall not be issued to any school that would be wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine would be taught.

(b) Any child who is qualified under the laws of this state for admission to a public school is qualified for admission to a charter school. Applications for admission to a charter school shall be submitted on a uniform application form created by the department and shall be made available by a charter school in languages predominately spoken in the community in which such charter school is located. The school shall enroll each eligible student who submits a timely application by the first day of April each year, unless the number of applications exceeds the capacity of the grade level or building. In such cases, students shall be accepted from among applicants by a random selection process, provided,

however, that an enrollment preference shall be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located, and siblings of pupils already enrolled in the charter school. Preference may also be provided to children of employees of the charter school or charter management organization, provided that such children of employees may constitute no more than 15% of the charter school's total enrollment. The Commissioner shall establish regulations to require that the random selection process conducted pursuant to this paragraph be performed in a transparent and equitable manner and to require that the time and place of the random selection process be publicized in a manner consistent with the requirements of §104 of the Public Officers Law and be open to the public. For purposes of this paragraph and paragraph (a) above, the school district in which the charter school is located shall mean, for the city school district of the city of New York, the community district in which the charter school is located.

(c) A charter school shall serve one or more of the grades one through twelve, and shall limit admission to pupils within the grade levels served. Nothing in the Act shall prohibit a charter school from establishing a kindergarten program.

(d) A student may withdraw from a charter school at any time and enroll in a public school. A charter school may refuse admission to any student who has been expelled or suspended from a public school until the period of suspension or expulsion from the public school has expired, consistent with the requirements of due process.

#### **Causes for Revocation or Termination (New York Education Law § 2855)**

The charter entity, or the Board of Regents, may terminate a charter upon any of the following grounds:

(a) When a charter school's outcome on student assessment measures adopted by the Board of Regents falls below the level that would allow the Commissioner to revoke the registration of another public school, and student achievement on such measures has not shown improvement over the preceding three school years;

(b) Serious violations of law;

(c) Material and substantial violation of the charter, including fiscal mismanagement;

(d) When the public employment relations board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of § 209-a(i) (improper employer practices) of the Civil Service Law involving interference with or discrimination against employee rights under Article 14 (Public Employees' Fair Employment Act) of the Civil Service Law; or

(e) Repeated failure to comply with the requirement to meet or exceed enrollment and retention targets of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program pursuant to targets established by the Board of Regents or the Board of Trustees of the State University of New York, as applicable. Provided, however, if no grounds for terminating a charter are established pursuant to § 2855 of the Act other than pursuant to this paragraph (e), and the charter school demonstrates that it has made extensive efforts to recruit and retain such students, including outreach to parents and families in the surrounding communities, widely publicizing the lottery for such school, and efforts to academically support such students in such charter school, then the charter entity or Board of Regents may retain such charter.

Notice of intent to revoke a charter shall be provided to the Board of Trustees of a charter school at least thirty (30) days prior to the effective date of the proposed revocation. Such notice shall include a statement of reasons for the proposed revocation. The charter school shall be allowed at least thirty (30) days to correct the problems associated with the proposed revocation. Prior to revocation of the charter, a charter school shall be provided an opportunity to be heard, consistent with the requirements of due process. Upon the termination of a charter, the charter school shall proceed with dissolution pursuant to the procedures of the charter and direction of the charter entity and the Board of Regents.

In addition to the provisions of the paragraph above, the charter entity or the Board of Regents may place a charter school falling within the provisions of paragraphs (a) through (e) above on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in summary revocation of the school's charter.

Any individual or group may bring a complaint to the Board of Trustees of a charter school alleging a violation of the provisions of the Act, the charter, or any other provision of law relating to the management or operation of the charter school. If, after presentation of the complaint to the Board of Trustees of a charter school, the individual or group determines that such board has not adequately addressed the complaint, they may present that complaint to the charter entity, which shall investigate and respond. If, after presentation of the complaint to the charter entity, the individual or group determines that the charter entity has not adequately addressed the complaint, they may present that complaint to the Board of Regents, which shall investigate and respond. The charter entity and the Board of Regents shall have the power and the duty to issue appropriate remedial orders to charter schools under their jurisdiction to effectuate the provisions of this section.

The regulatory power of the Board of Regents and the Commissioner shall not extend to charter schools except as otherwise specifically provided in the Act.

#### **Review and Assessment (New York Education Law §§ 2857(2), 2857(3) and 2857(5))**

Each charter school shall submit to the charter entity and to the Board of Regents an annual report. Such report shall be issued no later than the first day of August of each year for the preceding school year and shall be made publicly available by such date and shall be posted on the charter school's website. The annual report shall be in such form as shall be prescribed by the Commissioner and shall include at least the following components:

(a) a charter school report card, which shall include measures of the comparative academic and fiscal performance of the school, as prescribed by the Commissioner in regulations adopted for such purpose. Such measures shall include, but not be limited to, graduation rates, dropout rates, performance of students on standardized tests, college entry rates, total spending per pupil and administrative spending per pupil. Such measures shall be presented in a format that is easily comparable to similar public schools. In addition, the charter school shall ensure that such information is easily accessible to the community including making it publicly available by transmitting it to local newspapers of general circulation and making it available for distribution at board of trustee meetings;

(b) discussion of the progress made towards achievement of the goals set forth in the charter;

(c) a certified financial statement setting forth, by appropriate categories, the revenues and expenditures for the preceding school year, including a copy of the most recent independent fiscal audit of the school and any audit conducted by the New York State Comptroller; and

(d) efforts taken by the charter school in the existing school year, and a plan for efforts to be taken in the succeeding school year, to meet or exceed enrollment and retention targets set by the Board of Regents or the Board of Trustees of the State University of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program established pursuant to § 2851(4)(e) of the Act.

The Board of Regents shall report annually to the governor, the temporary president of the senate, and the speaker of the assembly the following information:

(a) The number, distribution, and a brief description of new charter schools established during the preceding year;

(a-1) A list including the number of charter schools closed during the preceding year, and a brief description of the reasons therefor including, but not limited to, non-renewal of the charter or revocation of the charter;

(b) The department's assessment of the current and projected programmatic and fiscal impact of charter schools on the delivery of services by school districts;

(c) The academic progress of students attending charter schools, as measured against comparable public and nonpublic schools with similar student population characteristics wherever practicable;

(d) A list of all actions taken by a charter entity on charter application and the rationale for the

renewal or revocation of any charters; and

(e) Any other information regarding charter schools that the Board of Regents deems necessary. The format for this annual report shall be developed in consultation with representatives of school districts and charter school officials.

The Board of Regents shall on an annual basis review and make available to school districts best educational practices employed by charter schools.

#### **Facilities (New York Education Law § 2853-3)**

(a) A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building or in any other suitable location. Provided, however, before a charter school may be located in part of an existing public school building, the charter entity shall provide notice to the parents or guardians of the students then enrolled in the existing school building and shall hold a public hearing for purposes of discussing the location of the charter school. A charter school may own, lease or rent its space.

(a-1) (i) For charters issued pursuant to § 2852(9-a) of the Act located outside a city school district in a city having a population of 1,000,000 or more inhabitants, the department shall approve plans and specifications and issue certificates of occupancy for such charter schools. Such charter schools shall comply with all department health, sanitary, and safety requirements applicable to facilities and shall be treated the same as other public schools for purposes of local zoning, land use regulation and building code compliance. Provided however, that the department shall be authorized to grant specific exemptions from the requirements of this paragraph to charter schools upon a showing that compliance

with such requirements creates an undue economic hardship or that some other good cause exists that makes compliance with this paragraph extremely impractical. A demonstrated effort to overcome the stated obstacles must be provided.

(ii) In a city school district in a city with a population of 1,000,000 or more, all charters authorized to be issued by the chapter of the laws of 2010 which amended this subdivision shall be obligated to comply with the department's health, safety and sanitary requirements applicable to facilities to the same extent as non-charter public schools in such a city school district.

(a-2) A charter school shall be deemed a nonpublic school for purposes of local zoning, land use regulation and building code compliance if it has been granted an exemption by the department pursuant to paragraph (a-1) above or if its charter was not issued pursuant to § 2852(9-a) of the Act.

(a-3) (i) Before a charter school may be located or co-located in an existing public school building in a city school district in a city having a population of 1,000,000 or more inhabitants, the chancellor shall identify which public school buildings may be subject to location or co-location, provide the rationale as to why such public school building is identified for location or co-location and shall make all such information publicly available, including via the city board's official internet website. In addition, the chancellor shall provide widespread notice of such information including to the community superintendent, community district education council and the school-based management team. After a public school building has been selected for a proposed location or co-location, the chancellor shall develop a building usage plan in accordance with the Act.

(a-4) In a city school district in a city having a population of 1,000,000 or more inhabitants, a shared space committee shall be established in each public school building in which one or more charter schools are located or co-located within a public school building with non-charter public schools. The shared space committee shall be comprised of the principal, a teacher, and a parent of each co-located school. Such committee shall conduct regular meetings, at least four times per school year, to review implementation of the building usage plan developed pursuant to the Act.

(a-5) Notwithstanding any provision to the contrary, in a city school district in a city having a population of 1,000,000 or more inhabitants, the determination to locate or co-locate a charter school within a public school building and the implementation of and compliance with the building usage plan developed pursuant to the Act that has been approved by the board of education of such city school district pursuant to the New York Education law and after satisfying the requirements of the New York Education law may be appealed to the commissioner pursuant to applicable provisions of the New York Education law. Provided further, the revision of a building usage plan approved by the board of education consistent with the requirements pursuant to the New York Education law may also be appealed to the commissioner on the grounds that such revision fails to meet the standards set forth in the Act. Following a petition for such appeal pursuant to this paragraph, such city school district shall have ten days to respond. The petition must be dismissed, adjudicated or disposed of by the commissioner within ten days of the receipt of the city school district's response.

(b) A charter school may pledge, assign or encumber its assets to be used as collateral for loans or extensions of credit; provided, however, that a charter school shall not pledge or assign monies provided, or to be provided, pursuant to § 2856(1) of the Act in connection with the purchase or construction, acquisition, reconstruction, rehabilitation or improvement of a school facility.

(c) The office of general services shall annually publish a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by the state and that may be suitable for the



operation of a charter school. Such list shall be provided to applicants for charter schools and to existing charter schools. At the request of a charter school or a prospective applicant, a school district shall make available a list of vacant and unused school buildings and vacant and unused portions of school buildings, including private school buildings, within the school district that may be suitable for the operation of a charter school.

(d) Notwithstanding any other provision to the contrary, in a city school district in a city having a population of 1,000,000 or more inhabitants, the chancellor must first authorize in writing any proposed capital improvements or facility upgrades in excess of \$5,000, regardless of the source of funding, made to accommodate the co-location of a charter school within a public school building. For any such improvements or upgrades that have been approved by the chancellor, capital improvements or facility upgrades shall be made in an amount equal to the expenditure of the charter school for each non-charter public school within the public school building. For any capital improvements or facility upgrades in excess of \$5,000 that have been approved by the chancellor, regardless of the source of funding, made in a charter school that is already co-located within a public school building, matching capital improvements or facility upgrades shall be made in an amount equal to the expenditure of the charter school for each non-charter public school within the public school building within three months of such improvements or upgrades.

(e) In a city school district in a city having a population of 1,000,000 or more inhabitants, charter schools that first commence instruction or that require additional space due to an expansion of grade level, pursuant to the Act, approved by their charter entity for the 2014-2015 school year or thereafter and request co-location in a public school building shall be provided access to facilities pursuant to § 2853-3(e) of the Act for such charter schools that first commence instruction or that require additional space due to an expansion of grade level, pursuant to the Act, approved by their charter entity for those grades newly provided.

(1) Notwithstanding any other provision of law to the contrary, within the later of (i) five months after a charter school's written request for co-location and (ii) 30 days after the charter school's charter is approved by its charter entity, the city school district shall either: (A) offer at no cost to the charter school a co-location site in a public school building approved by the Board of Education as provided by law, or (B) offer the charter school space in a privately owned or other publicly owned facility at the expense of the city school district and at no cost to the charter school. The space must be reasonable, appropriate and comparable and in the community school district to be served by the charter school and otherwise in reasonable proximity.

(2) No later than 30 days after approval by the Board of Education or expiration of the offer period prescribed in paragraph (1) above, the charter school shall either accept the city school district's offer or appeal in accordance with paragraph (3) below. If no appeal is taken, the city's offer or refusal to make an offer is final and non-reviewable. The charter school may appeal as early as issuance of an educational impact statement for the proposed co-location.

(3) The charter school shall have the option of appealing the city school district's offer or failure to offer a co-location site through binding arbitration in accordance with the Act, an expedited appeal to the Commissioner pursuant to applicable provisions of the New York Education Law, or a special proceeding pursuant to Article 78 of the civil practice law and rules. In any such appeal, the standard of review is the standard prescribed in § 7803 of the civil practice law and rules.

(4) If the appeal results in a determination in favor of the city school district, the city's offer is final and the charter school may either accept such offer and move into the space

offered by the city school district at the city school district's expense, or locate in another site at the charter school's expense.

(5) For a new charter school whose charter is granted or for an existing charter school whose expansion of grade level, pursuant to the Charter Schools Act, is approved by their charter entity, if the appeal results in a determination in favor of the charter school, the city school district will pay the charter school an amount attributable to the grade level expansion or the formation of the new charter school that is equal to the lesser of:

(A) the actual rental cost of an alternative privately owned site selected by the charter school or

(B) 30% of the product of the Charter School Basic Tuition for the current school year and (i) for a new charter school that first commences instruction on or after July 1, 2014, the charter school's current year enrollment; or (ii) for a charter school which expands its grade level, pursuant to the Act, the positive difference of the charter school's enrollment in the current school year minus the charter school's enrollment in the school year prior to the first year of the expansion.

#### **Financing of Charter Schools (New York Education Law § 2856)**

Effective Until June 30, 2021:

(a) The enrollment of students attending charter schools shall be included in the enrollment, attendance, membership and, if applicable, count of students with disabilities of the school district in which the pupil resides. The charter school shall report all such data to the school districts of residence in a timely manner. Each school district shall report such enrollment, attendance and count of students with disabilities to the department. The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the school district the Charter School Basic Tuition which shall be:

(i) for school years prior to the 2009-2010 school year, an amount equal to 100% of the amount calculated pursuant §3602(1)(f) of the New York Education Law for the school district for the year prior to the Base Year increased by the percentage change in the State Total Approved Operating Expense calculated pursuant to §3602(1)(t) of the New York Education Law from two years prior to the Base Year to the Base Year;

(ii) for the 2009-2010 school year, the Charter School Basic Tuition shall be the amount payable by such district as Charter School Basic Tuition for the 2008-2009 school year;

(iii) for the 2010-2011 through 2013-2014 school years, the Charter School Basic Tuition shall be the basic tuition computed for the 2010-2011 school year pursuant to the provisions of subparagraph (i) above;

(iv) for the 2014-2015 through 2016-2017 school years, the Charter School Basic Tuition shall be the sum of the lesser of the Charter School Basic Tuition computed for the 2010-2011 school year pursuant to the provisions of subparagraph (i) above or the Charter School Basic Tuition computed for the current year pursuant to the provisions of subparagraph (i) above plus the supplemental basic tuition;

(v) for the 2017-2018 school year, the Charter School Basic Tuition shall be the sum of (A) the Charter School Basic Tuition for the 2016-2017 school year plus (B) \$500;

(vi) for the 2018-2019 school year, the Charter School Basic Tuition shall be the lesser of (A) the product of (i) the Charter School Basic Tuition calculated for the Base Year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year five years prior to the Base Year and finishing with the year prior to the Base Year of the Total Approved Operating Expense for such school district calculated pursuant to § 3602(1)(t) of the New York Education Law for each such year divided by the Total Approved Operating Expense for such district for the immediately preceding year, provided that the highest and lowest annual quotients shall be excluded from the calculation of such average or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with § 305(21)(b) of the New York Education Law published annually on May 15th for the year prior to the Base Year divided by the total estimated public enrollment for the school district pursuant to § 3602(1)(n) of the New York Education Law for the year prior to the Base Year;

(vii) for the 2019-2020 school year the Charter School Basic Tuition shall be the lesser of (A) the product of (i) the Charter School Basic Tuition calculated for the Base Year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year three years prior to the Base Year and finishing with the year prior to the base year of the Total Approved Operating Expense for such school district calculated pursuant to § 3602(1)(t) of the New York Education Law for each such year divided by the total approved operating expense for such district for the immediately preceding year provided that the highest annual quotient calculated pursuant to this subparagraph shall be replaced by the average quotient calculated pursuant to subparagraph (vi) of this paragraph or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with § 305(21)(b) of the New York Education Law published annually on May 15th for the year prior to the base year divided by the total estimated public enrollment for the school district pursuant to § 3602(1)(n) of the New York Education Law for the year prior to the Base Year;

(viii) for the 2020-2021 school year and thereafter, the Charter School Basic Tuition shall be the lesser of (A) the product of (i) the Charter School Basic Tuition calculated for the Base Year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year three years prior to the Base Year and finishing with the year prior to the Base Year of the Total Approved Operating Expense for such school district calculated pursuant to § 3602(1)(t) of the New York Education Law for each such year divided by the Total Approved Operating Expense for such district for the immediately preceding year or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with § 305(21)(b) of the New York Education Law published annually on May 15th for the year prior to the Base Year divided by the total estimated public enrollment for the school district pursuant to § 3602(1)(n) of the New York Education Law for the year prior to the Base Year.

For the purposes of this subdivision, the "supplemental basic tuition" shall be (A) for a school district for which the Charter School Basic Tuition for the current year is greater than or equal to the Charter School Basic Tuition for the 2010-2011 school year pursuant to the provisions of subparagraph (i) of this paragraph, (1) for the 2014-2015 school year \$250, (2) for the 2015-2016 school year \$350, (3) for the 2016-2017 school year \$500, and (4) for the 2017-2018 school year and thereafter, the sum of (i) the supplemental basic tuition calculated for the

2016-2017 school year plus (ii) \$500, and (B) for school years prior to the 2017-2018 school year, for a school district for which the Charter School Basic Tuition for the 2010-2011 school year is greater than the Charter School Basic Tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the positive difference of the Charter School Basic Tuition for the 2010-2011 school year minus the Charter School Basic Tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph and (C) for school years following the 2016-2017 schools years, for a school district for which the Charter School Basic Tuition for the 2010-2011 school year is greater than the Charter School Basic Tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the sum of (i) the supplemental basic tuition calculated for the 2016-2017 school year plus (ii) \$500.

(b) The school district shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Notwithstanding anything in this section to the contrary, amounts payable pursuant to this section from State or local funds may be reduced pursuant to an agreement between the school and the charter entity set forth in the charter. Payments made pursuant to this section shall be made by the school district in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. Amounts payable under this section shall be determined by the Commissioner. Amounts payable to a charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter until actual enrollment data is reported to the school district by the charter school. Such projections shall be reconciled with the actual enrollment as actual enrollment data is so reported and at the end of the school's first year of operation and each subsequent year based on a final report of actual enrollment by the charter school, and any necessary adjustments resulting from such final report shall be made to payments during the school's following year of operation.

(c) Notwithstanding any other provision of this subdivision to the contrary, payment of the federal aid attributable to a student with a disability attending a charter school shall be made in accordance with the requirements of § 8065-a of Title 20 of the United States Code and §§ 76.785-76.799 and 300.209 of Title 34 of the code of federal regulations.

(d) School districts shall be eligible for an annual apportionment equal to the amount of the supplemental basic tuition for the charter school in the Base Year for the expenses incurred in the 2014-2015, 2015-2016, and 2016-2017 school years and thereafter.

Effective June 30, 2021:

(a) The enrollment of students attending charter schools shall be included in the enrollment, attendance and, if applicable, count of students with disabilities of the school district in which the pupil resides. The charter school shall report all such data to the school districts of residence in a timely manner. Each school district shall report such enrollment, attendance and count of students with disabilities to the department. The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the school district the Charter School Basic Tuition which shall be:

(i) for school years prior to the 2009-2010 school year, an amount equal to 100% of the amount calculated pursuant §3602(1)(f) of the New York Education Law for the school district for the year prior to the Base Year increased by the percentage change in the State Total Approved Operating Expense calculated pursuant to §3602(1)(t) of the New York Education Law from two years prior to the Base Year to the Base Year;

(ii) for the 2009-2010 school year, the Charter School Basic Tuition shall be the amount payable by such district as Charter School Basic Tuition for the 2008-2009 school year;

(iii) for the 2010-2011 through 2013-2014 school years, the Charter School Basic Tuition shall be the basic tuition computed for the 2010-2011 school year pursuant to the provisions of subparagraph (i) above;

(iv) for the 2014-2015 through 2016-2017 school years, the Charter School Basic Tuition shall be the sum of the lesser of the Charter School Basic Tuition computed for the 2010-2011 school year pursuant to the provisions of subparagraph (i) above or the Charter School Basic Tuition computed for the current year pursuant to the provisions of subparagraph (i) above plus the supplemental basic tuition;

(v) for the 2017-2018 school year, the Charter School Basic Tuition shall be the sum of (A) the Charter School Basic Tuition for the 2016-2017 school year plus (B) \$500;

(vi) for the 2018-2019 school year, the Charter School Basic Tuition shall be the lesser of (A) the product of (i) the Charter School Basic Tuition calculated for the Base Year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year five years prior to the Base Year and finishing with the year prior to the Base Year of the Total Approved Operating Expense for such school district calculated pursuant to § 3602(1)(t) of the New York Law Education Law for each such year divided by the Total Approved Operating Expense for such district for the immediately preceding year, provided that the highest and lowest annual quotients shall be excluded from the calculation of such average or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with § 305(21)(b) of the New York Education Law published annually on May 15th for the year prior to the Base Year divided by the total estimated public enrollment for the school district pursuant to § 3602(1)(n) of the New York Education Law for the year prior to the Base Year;

(vii) for the 2019-2020 school year the Charter School Basic Tuition shall be the lesser of (A) the product of (i) the Charter School Basic Tuition calculated for the Base Year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year three years prior to the Base Year and finishing with the year prior to the Base Year of the Total Approved Operating Expense for such school district calculated pursuant to § 3602(1)(t) of the New York Education Law for each such year divided by the Total Approved Operating Expense for such district for the immediately preceding year provided that the highest annual quotient calculated pursuant to this subparagraph shall be replaced by the average quotient calculated pursuant to subparagraph (vi) of this paragraph or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with § 305(21)(b) of the New York Education Law published annually on May 15th for the year prior to the base year divided by the total estimated public enrollment for the school district pursuant to § 3602(1)(n) of the New York Education Law for the year prior to the Base Year;

(viii) for the 2020-2021 school and thereafter, the Charter School Basic Tuition shall be the lesser of (A) the product of (i) the Charter School Basic Tuition calculated for the Base Year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year three years prior to the Base Year and finishing with the year prior to the Base Year of the Total Approved Operating Expense for such school district calculated pursuant to § 3602(1)(t) of the New York Education Law for each such year divided by the Total

Approved Operating Expense for such district for the immediately preceding year or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with § 305(21)(b) of the New York Education Law published annually on May 15th for the year prior to the Base Year divided by the total estimated public enrollment for the school district pursuant to § 3602(1)(n) of the New York Education Law for the year prior to the Base Year;

For the purposes of this subdivision, the "supplemental basic tuition" shall be (A) for a school district for which the Charter School Basic Tuition for the current year is greater than or equal to the Charter School Basic Tuition for the 2010-2011 school year pursuant to the provisions of subparagraph (i) of this paragraph, (1) for the 2014-2015 school year \$250, (2) for the 2015-2016 school year \$350, (3) for the 2016-2017 school year \$500, and (4) for the 2017-2018 school year and thereafter, the sum of (i) the supplemental basic tuition calculated for the 2016-2017 school year plus (ii) \$500, and (B) for school years prior to the 2017-2018 school year, for a school district for which the Charter School Basic Tuition for the 2010-2011 school year is greater than the Charter School Basic Tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the positive difference of the Charter School Basic Tuition for the 2010-2011 school year minus the Charter School Basic Tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph and (C) for school years following the 2016-2017 schools years, for a school district for which the Charter School Basic Tuition for the 2010-2011 school year is greater than the Charter School Basic Tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the sum of (i) the supplemental basic tuition calculated for the 2016-2017 school year plus (ii) \$500.

(b) The school district shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Notwithstanding anything in this section to the contrary, amounts payable pursuant to this section from State or local funds may be reduced pursuant to an agreement between the school and the charter entity set forth in the charter. Payments made pursuant to this section shall be made by the school district in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. Amounts payable under this section shall be determined by the Commissioner. Amounts payable to a charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation.

(c) School districts shall be eligible for an annual apportionment equal to the amount of the supplemental basic tuition for the charter school in the Base Year for the expenses incurred in the 2014-2015, 2015-2016, and 2016-2017 school years and thereafter.

In the event of the failure of the school district to make payments required by this section, the state comptroller shall deduct from any state funds which become due to such school district an amount equal to the unpaid obligation. The comptroller shall pay over such sum to the charter school upon certification of the commissioner. The commissioner shall promulgate regulations to implement the provisions of this subdivision.

Nothing in the Act shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a charter school. The board of trustees of a charter school is authorized to accept gifts, donations or grants of any kind made to the charter school and to expend or use such gifts, donations or grants in accordance with the conditions prescribed by the donor;

provided, however, that no gift, donation or grant may be accepted if subject to a condition that is contrary to any provision of law or term of the charter.

#### **Charter School Basic Tuition (New York Education Law § 3602)**

As referenced in § 2856 of the Act, the amount calculated pursuant to § 3602(1)(f) of the New York Education Law is "Expense per Pupil" which is defined as Approved Operating Expense for the year prior to the Base Year divided by the sum, computed using year prior to the Base Year pupil counts, of the Total Aidable Pupil Units plus Weighted Pupils with Disabilities. Expense per Pupil for each borough in the city school district of the City of New York shall be the Expense per Pupil of the entire city school district.

Certain definitions are set out below:

"Base Year" shall mean the school year immediately preceding the current year.

"Weighted Pupils with Disabilities" shall mean the attendance, as defined in the regulations of the Commissioner, of pupils with disabilities who have been determined by a school district committee on special education to require any of the following types and levels of programs or services specified in this paragraph, and who receive such programs and services from the school district of attendance during the Base Year, multiplied by a special services weighting determined as follows:

(i) for placement for 60% or more of the school day in a special class, or home or hospital instruction for a period of more than 60 days, or special services or programs for more than 60% of the school day, the special services weighting shall be 170%;

(ii) for placement for 20% or more of the school week in a resource room or special services or programs including related services required for 20% or more of the school week, or in the case of pupils in grades 7-12 or a multi-level middle school program as defined by the Commissioner or in the case of pupils in grades 4-6 in an elementary school operating on a period basis, the equivalent of five periods per week, but not less than the equivalent of 180 minutes in a resource room or in other special services or programs including related services, or for at least two hours per week of direct or indirect consultant teacher services, in accordance with regulations of the Commissioner adopted for such purpose, the special services weighting shall be 90%.

"Pupils with disabilities" shall mean pupils of school age who are identified as students with disabilities pursuant to Article 89 (Children with Handicapping Conditions) of the New York Education Law and the regulations of the Commissioner and who receive special education services or attend special education programs which meet criteria established by the Commissioner, operated by a school district eligible for total foundation aid pursuant to this section or by a board of cooperative educational services, whether or not the school district is a component of such board.

"Total Aidable Pupil Units" shall be the sum of the district's Adjusted Average Daily Attendance computed pursuant to this section for the year prior to the Base Year multiplied by the Enrollment Index computed pursuant to this section for the Base Year plus the Additional Aidable Pupil Units computed for the year prior to the Base Year under paragraph (b) below.

"Adjusted Average Daily Attendance" of a school district for any school year shall be computed as follows:

(1) Adjusted Average Daily Attendance shall be determined by using the average daily attendance of public school pupils in a full-day kindergarten and grades 1-12 as the basic unit, with the attendance of such pupils in one-half day kindergartens measured at one-half of such basic unit. The sum of all such units of attendance shall be the Adjusted Average Daily Attendance.

(2) In computing such attendance, the school district shall (i) determine the number of religious holidays which fall on a school day within a school year according to regulations established by the Commissioner, such religious holidays to be duly recognized as such for purposes of this section by duly adopted resolution of the board of education; (ii) deduct the aggregate attendance on such religious holidays from the total aggregate attendance, by grade level; (iii) deduct such religious holidays from the total number of days of session, by grade level; (iv) compute the Adjusted Average Daily Attendance for the school year.

(3) In any instance where a pupil is a resident of another state or an Indian pupil is a resident of any portion of a reservation located wholly or partly within the borders of the state pursuant to § 4101(4) (duties of Commissioner regarding Indian children) of the New York Education Law or a pupil is living on federally owned land or property, such pupil's attendance shall be counted as part of the Adjusted Average Daily Attendance of the school district in which such pupil is enrolled.

"Additional Aidable Pupil Units" used to compute Total Aidable Pupil Units shall be the sum of the attendance of summer session pupils multiplied by 12% and the Weighted Pupils with Special Educational Needs. Nothing contained in this paragraph shall be construed to result in the inclusion of the attendance of summer session pupils in the computation of weighted or Adjusted Average Daily Attendance pursuant to this section.

"Enrollment Index" shall be computed by dividing the public school enrollment for the current year by public school enrollment for the Base Year, both as defined in the New York Education Law, with the result carried to three places without rounding.

"Enrollment" shall mean the unduplicated count of all children registered to receive educational services in grades kindergarten through twelve, including children in ungraded programs, as registered on the date prior to November first that is specified by the Commissioner as the enrollment reporting date for the school district or nonpublic school, as reported to the Commissioner.

"Public school district enrollment" shall mean the sum of: (1) the number of children on a regular enrollment register of a public school district on such date; (2) the number of children eligible to receive home instruction in the school district on such date; (3) the number of children for whom Equivalent Attendance must be computed pursuant to this Section on such date; (4) the number of children with disabilities who are residents of such district who are registered on such date to attend programs under the provisions of paragraph (c) of § 4401(2) (children with handicapping conditions definitions) of the New York Education Law; (5) the number of children eligible to receive educational services on such date but not claimed for aid pursuant to § 3202(7) (public schools free to resident pupils; tuition from nonresident pupils) of the New York Education Law; and (6) the number of children registered on such date to attend programs (i) pursuant to §355(2) (powers and duties of trustees administrative and fiscal functions) of the New York Education Law or (ii) pursuant to an agreement between the New York City School District and Hunter College pursuant to § 6216 of the New York Education Law.

"Equivalent Attendance" shall mean the quotient of the total number of student hours of instruction in programs in a public school of a school district or a board of cooperative educational



services leading to a high school diploma or a high school equivalency diploma as defined in regulations of the Commissioner for pupils under the age of 21 not on a regular day school register of the district, divided by 1,000.

“Approved Operating Expense” for the apportionments to any school district under the New York Education Law shall mean the amount computed as follows: The apportionment to any school district for operating expense shall be based upon the total expenditures from its general fund and from its capital fund and from its risk retention fund for purposes of employee benefit claims related to salaries paid from the general fund, and for any city school districts with a population of more than one hundred twenty-five thousand inhabitants its expenditures from the special aid fund of grant moneys for improving pupil performance and categorical aid for special reading programs as provided in the aid to localities budget during the applicable year as approved by the Commissioner, and in accordance with the classification of expenditures in use by the Commissioner for the reporting by school districts of receipts, expenditures and other financial data. For the purpose of this paragraph “Operating Expense” shall be defined as total cash expenditures during the applicable year, but shall exclude:

- (1) any balances and transfers;
- (2) any payments for transportation of pupils to and from school during the regular school year inclusive of capital outlays and debt service therefor;
- (2-a) a portion of any payments for transportation of pupils to and from district operated summer school programs pursuant to § 3622-a(6) (aidable regular transportation) of the New York Education Law, inclusive of capital outlays and debt service therefor, equal to the product of such expenditures multiplied by the quotient of the total apportionment after the proration, if any, required by such subdivision 6 of the New York Education Law divided by the total apportionment prior to such proration;
- (3) any payments for capital outlay and debt service for school building purposes, provided, however, that in the case of a school district which has entered into a contract with state university pursuant to § 355(2)(o) (conduct of research and experiments) of the New York Education Law, under which the school district makes payment to state university on account of capital outlay relating to certain children residing in such school district, such payments shall not be so excluded;
- (4) any payments for cafeteria or school lunch programs;
- (5) any proceeds of short term borrowings in the general fund and any payments from the proceeds of the sale of obligations in the capital fund;
- (6) any cash receipts which reduce the cost of an item when applied against the expenditure therefor, except gifts, donations and earned interest and any refunds made;
- (7) any payments made to boards of cooperative educational services for purposes or programs for which an apportionment is paid pursuant to other sections of the New York Education Law, except that payments attributable to eligible pupils with disabilities and ineligible pupils residing in noncomponent districts shall be included in operating expense;
- (8) any tuition payments made to other school districts inclusive of payments made to a central high school district by one of its component school districts;

(9) any apportionment or payment received from the state for experimental or special programs paid under provisions other than those found in this section and other than any apportionments or payments received from the state by the city school district of the city of Yonkers for the purpose of funding an educational improvement program pursuant to a court order and other than any other state grants in aid identified by the Commissioner for general use as specified by the board of education pursuant to § 1718(2) (limitation upon expenditures) of the New York Education Law;

(10) any funds received from the federal government except the federal share of Medicaid subject to the provisions of § 3600 (9-a) (moneys apportioned, when and how payable commencing July 1, 2007) of the New York Education Law and except Impact Aid funds received pursuant to Public Law 81-874 or §§ 2 and 6 or any law superseding such law in any such district which received aid pursuant to both such sections; provided further, however, that there shall be excluded from such federal funds or other apportionments any payments from such funds already deducted pursuant to this paragraph;

(11) any payments made for which an apportionment is disallowed pursuant to regulations of the Commissioner;

(12) any expenditures made for accounting, tabulation, or computer equipment, in excess of \$10,000 unless such expenditures shall have been specifically approved by the Commissioner;

(13) any rental payments received pursuant to the provisions of § 403-a (leasing of school property) of the New York Education Law;

(14) any rentals or other annual payments received pursuant to the provisions of § 403-b (Leasing of school buildings and facilities) of the New York Education Law;

(15) any expenditures made for persons 21 years of age or over attending employment preparation education programs pursuant to subdivision 11 of this section;

(16) any tuition payments made pursuant to a contract under the provisions of § 4401(2)(e) through (i) and (I) ("special services or programs" definition) of the New York Education Law or any tuition payments on behalf of pupils attending a state school under paragraph d of such subdivision;

(17) in any year in which expenditures are made to the New York state teachers' retirement system or the New York state and local employees' retirement system for both the prior school year and the current school year, any expenditures made to such retirement systems and recorded in the school year prior to the school year in which such obligations are paid; and

(18) any payments to the Commissioner of taxation and finance pursuant to Article 23 (Metropolitan Commuter Transportation Mobility Tax) of the tax law.

**Public School District Payments to Charter Schools (N.Y. Comp. Codes & Regs. Title 8, § 119.1(a), (b))**

The following summarizes certain provisions of the New York Codes, Rules and Regulations concerning charter schools.

In the event of the failure of a school district to make payments to a charter school as required by § 2856 of the New York Education Law, the Commissioner shall certify the amount of the unpaid obligation to the Comptroller to be deducted from any State aid payments which become due to such school district. The amount of each school district's obligation shall be calculated in accordance with this section.

For the purposes of this section:

(a) Legally absent means to be absent for: personal illness, illness or death in the family, impassable roads or weather, religious observance, quarantine, required court appearances, attendance at health clinics, approved college visits, military obligations, disciplinary detention of an incarcerated youth, or for such other reasons as may be approved by the Commissioner.

(b) Period of enrollment means that period commencing on the first day of the school year that a pupil is enrolled in and is physically present at, or legally absent from, an educational program or service of a charter school and ending on the last day of the school year that such pupil is so enrolled and physically present at, or legally absent from, such program or service.

(c) Enrollment for each charter school student shall mean the quotient, calculated to three decimals without rounding, obtained when the total number of weeks of the period of enrollment of such student is divided by the total number of weeks in the full school year of the educational program or service of the charter school. For the purposes of this section, three consecutive days of enrollment within the same week and within the same month shall be the equivalent of one week of enrollment, provided that no more than four weeks of enrollment may be counted in any calendar month.

(d) Levels of service shall mean the categories of programs for students with disabilities specified in § 3602(19)(b)(1)-(4) of the New York Education Law.

(e) Approved operating expense shall mean the amount calculated pursuant to § 3602(11) of the New York Education Law.

(f) Expense per pupil shall mean the amount calculated pursuant to § 3602(1)(f) of the New York Education Law for the school district using year prior to the Base Year expenditures and pupils, as established by the Commissioner based on the electronic data file prepared by the Commissioner on May 15th of the Base Year pursuant to § 305(21)(b) of the New York Education Law. Where the expense per pupil is not available for a school district, the expense per pupil shall be deemed to be the average expense per pupil for the county in which the school district is located.

(g) Adjusted expense per pupil shall be the district's expense per pupil increased by the percent change in the State total approved operating expense calculated pursuant to § 3602(11) of the New York Education Law from two years prior to the Base Year to the Base Year, as established by the Commissioner based on the electronic data file prepared by the Commissioner on May 15th of the Base Year pursuant to § 305(21)(b) of the New York Education Law.

(h) State aid attributable to a student with a disability attending a charter school shall mean the sum of excess cost aid payable to a public school district pursuant to § 3602(19)(4) of the New York Education Law based on the resident weighted enrollment in the charter school of pupils with disabilities receiving special services or programs provided directly or indirectly by the charter school in the current school year and any apportionment payable to such public school district pursuant to § 3602(19)(5) of the New York Education Law that is based on the cost of special services or programs provided directly or indirectly by the charter school to such pupil in the current school year. Excess cost aid for the purposes of this section shall equal the product of excess cost aid per pupil calculated pursuant to § 3602(19)(3) of the New York Education Law, the proportion of the weighting attributable to the student's level of service provided directly or indirectly by the charter school pursuant to § 3602(19)(b)(1)-(4) of the New York Education Law, and the student's enrollment in such charter school in the current school year.

(i) Federal aid attributable to a student with a disability attending a charter school, and receiving special education services or programs provided directly or indirectly by the charter school, shall mean:

(i) for the first year of operation of the charter school, the allocation that would be attributable to the charter school pursuant to 20 U.S.C. 1411 and 1419 (United States Code, 1994 edition, Supplement III, Volume 2; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 1998 - available at the Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza, Albany, New York 12234) for a pupil who is identified as a student with a disability, as such term is defined in the New York Education Law § 200.1, who is included in a report to the Commissioner of pupils so identified as of July 1st of the current school year, or for such other pupil count as specified by the Federal government for the current school year, provided that the enrollment of such students in the charter school during the current school year shall be used for this purpose until such report, or a report of such other pupil count, has been received by the Commissioner; and

(ii) for the second year of operation of the charter school and thereafter, the allocation that would be attributable to the charter school pursuant to 20 U.S.C. 1411 and 1419 (United States Code, 1994 edition, Supplement III, Volume 2; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 1998 - available at the Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza, Albany, New York 12234) for a pupil who is identified as a student with a disability, as such term is defined in the New York Education Law § 200.1, who is included in a report to the Commissioner of pupils so identified as of July 1st of the Base Year, or for such other pupil count as specified by the Federal government.

**Financial Obligations of Charter Schools, Public School Districts and Education Department (N.Y. Comp. Codes & Regs. Title 8, § 119.1(c)-(e))**

Charter school obligations:

(a) No later than 30 days prior to the first business day of July, September, November, January, March and May, each charter school shall report to each public school district with resident pupils attending the charter school and to the department an updated estimate of the enrollment of students attending the charter school in the current school year who are residents of such public school district and any reduced amounts per pupil that shall be payable to the charter school for such students pursuant to subdivision one of § 2856 of the New York Education Law that has been established pursuant to an agreement between the charter school and the charter school entity as set forth in the charter. For

each student with a disability attending such charter school, such report shall also indicate the level of special programs or services to be provided directly or indirectly to such student by the charter school and an estimated annual cost to be incurred by the charter school in providing such special programs or services.

(b) On or before the last day of July, each charter school shall provide a final report of actual enrollment to the department and to each school district with resident pupils attending the charter school in the prior school year. For each student with a disability attending such charter school, such report shall also indicate the level of special programs or services actually provided directly or indirectly to such student by the charter school and the annual cost incurred by the charter school in providing such special programs or services.

(c) In the event of the failure of a school district to fulfill the financial obligation required by § 2856 of the New York Education Law equal to the amounts calculated pursuant to this section, the charter school shall notify the Commissioner no later than May 31st of the school year in which the payments were due.

Public school district of residence obligations:

(a) No later than the first business day of July, September, November, January, March and May of the current school year, each public school district with resident pupils attending a charter school shall pay directly to such charter school the appropriate payment amounts as specified in subdivision one of § 2856 of the New York Education Law that are attributable to the enrollment of such pupils as reported to the public school district by the charter school no later than 30 days prior to each such payment date.

(b) The total amount of payments due and payable to a charter school for the current school year by a public school district shall be paid as follows:

(i) on or before the first business day of July, one sixth of the total amount due, as adjusted for any supplemental payments due or overpayments to be recovered for the prior school year;

(ii) on or before the first business day of September, two sixths of the total amount due, as adjusted for any supplemental payments due or overpayments to be recovered for the prior school year, minus any payments made before such date pursuant to subparagraph (i) of this subsection;

(iii) on or before the first business day of November, three sixths of the total amount due, as adjusted for any supplemental payments due on overpayments to be recovered for the prior school year, minus any payments made before such date pursuant to subparagraphs (i) and (ii) of this subsection;

(iv) on or before the first business day of January, four sixths of the total amount due, as adjusted for any supplemental payments due or overpayments to be recovered for the prior school year, minus any payments made before such date pursuant to subparagraphs (i), (ii) and (iii) of this subsection;

(v) on or before the first business day of March, five sixths of the total amount due, as adjusted for any supplemental payments due or overpayments to be recovered for the prior

school year, minus any payments made before such date pursuant to subparagraphs (i), (ii), (iii) and (iv) of this subsection and

(vi) on or before the first business day of May, the total amount due, as adjusted for any supplemental payments due or overpayments to be recovered for the prior school year, minus any payments made before such date pursuant to subparagraphs (i), (ii), (iii), (iv) and (v) of this subsection.

(c) The school district financial obligation per resident student enrolled in a charter school shall equal the sum of:

(i) the product of the school district's adjusted expense per pupil and the current year enrollment of the pupil in the charter school as defined in paragraph b(3) of this subsection; and

(ii) the amounts of State and Federal aid, if any, that may be attributable to such pupil as defined in paragraphs (b)(8) and (9) of this subsection, or the amount established pursuant to an agreement between the charter school and the charter entity as set forth in the charter.

(d) The total annual obligation due to a charter school by a public school district shall be the sum of the annual financial obligations for all resident students enrolled at any time during the current school year in the charter school.

(e) School districts shall include the enrollment of resident students attending charter schools in the enrollment, attendance and, if applicable, count of students with disabilities reported to the department for the purposes of claiming State aid.

Department obligations:

(a) On or before the first day of June of each year, or as soon as practicable upon the receipt of Federal notice of the estimated State appropriation for the next school year, the Commissioner shall notify all school districts and all charter schools of the adjusted expense per pupil of each public school district and the estimated per pupil allocation under part B of the Federal Individuals with Disabilities Education Act to be used in the calculation of payments due to charter schools in next school year. Notice of final Federal per pupil allocation will be issued as soon as practicable upon the State's receipt of the notice of final allocation from the Federal government.

(b) In the event of the failure of a school district to fulfill the financial obligation required by § 2956 of the New York Education Law equal to the amounts calculated pursuant to this section, upon notification by the charter school, the Commissioner shall certify the amounts of the unpaid obligations to the comptroller to be deducted from State aid due the school district and paid to the applicable charter schools.

(The remainder of this page is intentionally left blank.)

---

---

**APPENDIX C**

**AUDITED FINANCIAL STATEMENTS OF THE INSTITUTION FOR THE FISCAL YEAR  
ENDED JUNE 30, 2018 (INCLUDING JUNE 30, 2017 COMPARATIVE INFORMATION)**

---

---

[THIS PAGE INTENTIONALLY LEFT BLANK]



IRA L. SCHALL, CPA  
DAVID C. ASHENFARB, CPA  
MICHAEL L. SCHALL, CPA



**Audited Financial Statements In Accordance  
With Government Auditing Standards**

**June 30, 2018 and 2017**

# NEW DAWN CHARTER HIGH SCHOOL

## Table of Contents

	<u>Page</u>
Independent Auditor's Report	1 - 2
Statement of Financial Position	3
Statement of Activities	4
Statements of Functional Expenses	5 - 6
Statement of Cash Flows	7
Notes to Financial Statements	8 - 13
Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	14 - 15
Schedule of Findings and Questioned Costs	16

IRA L. SCHALL, CPA  
DAVID C. ASHENFARB, CPA  
MICHAEL L. SCHALL, CPA

## **Independent Auditor's Report**

To the Board of Trustees of  
New Dawn Charter High School

### **Report on the Financial Statements**

We have audited the accompanying financial statements of New Dawn Charter High School (the "School"), which comprise the statement of financial position as of June 30, 2018 and June 30, 2017, and the related statements of activities, functional expenses, and cash flows for the years then ended, and the related notes to the financial statements.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the organization's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the organization's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

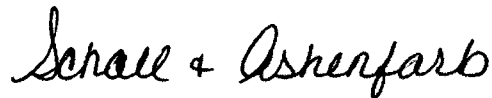
We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of New Dawn Charter High School as of June 30, 2018 and June 30, 2017, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

## Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated October 3, 2018 on our consideration of the School's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the School's internal control over financial reporting and compliance.



Schall & Ashenfarb  
Certified Public Accountants, LLC

October 3, 2018

**NEW DAWN CHARTER HIGH SCHOOL  
STATEMENT OF FINANCIAL POSITION  
AT JUNE 30, 2018 AND 2017**

	<u>6/30/18</u>	<u>6/30/17</u>
<b>Assets</b>		
Cash and cash equivalents	\$9,189,223	\$8,060,301
Restricted cash (Note 3)	75,000	75,000
Grant receivable - New York City (Note 5)	75,885	219,917
Government grants receivable	264,073	298,529
Prepaid expenses	134,878	139,101
Fixed assets, net (Note 4)	158,883	128,078
Security deposit	<u>238,360</u>	<u>238,360</u>
 Total assets	 <u><u>\$10,136,302</u></u>	 <u><u>\$9,159,286</u></u>
<b>Liabilities and Net Assets</b>		
Liabilities:		
Accounts payable and accrued expenses	\$90,420	\$204,974
Deferred rent	<u>154,225</u>	<u>86,051</u>
Total liabilities	<u><u>244,645</u></u>	<u><u>291,025</u></u>
Net assets:		
Unrestricted	<u>9,891,657</u>	<u>8,868,261</u>
Total net assets	<u><u>9,891,657</u></u>	<u><u>8,868,261</u></u>
 Total liabilities and net assets	 <u><u>\$10,136,302</u></u>	 <u><u>\$9,159,286</u></u>

*The attached notes and auditor's report are an integral part of these financial statements.*

**NEW DAWN CHARTER HIGH SCHOOL  
STATEMENT OF ACTIVITIES  
FOR THE YEARS ENDED JUNE 30, 2018 AND 2017**

	<u>6/30/18</u>	<u>6/30/17</u>
Unrestricted:		
Public support and revenue:		
Public school district: (Note 5)		
Revenue - resident student enrollment	\$3,766,749	\$4,618,740
Revenue - students with special education services	<u>1,010,022</u>	<u>1,304,306</u>
Subtotal public school district revenue	4,776,771	5,923,046
Government grants	438,630	494,522
Contributions	98,832	73,603
Other income	<u>48,479</u>	<u>5,559</u>
Total public support and revenue	<u>5,362,712</u>	<u>6,496,730</u>
Expenses:		
Program services:		
Regular education	1,804,204	1,821,941
Special education	<u>1,695,732</u>	<u>1,483,848</u>
Total program services	3,499,936	3,305,789
Supporting services:		
Management and general	<u>839,380</u>	<u>754,645</u>
Total expenses	<u>4,339,316</u>	<u>4,060,434</u>
Change in net assets	1,023,396	2,436,296
Net assets - beginning	<u>8,868,261</u>	<u>6,431,965</u>
Net assets - ending	<u><u>\$9,891,657</u></u>	<u><u>\$8,868,261</u></u>

*The attached notes and auditor's report are an integral part of these financial statements.*

**NEW DAWN CHARTER HIGH SCHOOL**  
**STATEMENT OF FUNCTIONAL EXPENSES**  
**FOR THE YEAR ENDED JUNE 30, 2018**  
(With comparative totals for the year ended June 30, 2017)

	Program Services			Supporting Services		
	Regular Education	Special Education	Total Program Services	Management and General	Total Expenses 6/30/18	Total Expenses 6/30/17
Wages	\$926,710	\$878,525	\$1,805,235	\$342,488	\$2,147,723	\$1,961,188
Employee benefits and payroll taxes	270,556	256,489	527,045	101,704	628,749	577,179
Total personnel costs	1,197,266	1,135,014	2,332,280	444,192	2,776,472	2,538,367
Professional fees	61,395	57,057	118,452	174,608	293,060	275,940
Professional development	2,360	1,451	3,811		3,811	4,233
Student and staff recruitment	924	569	1,493	4,400	5,893	5,968
Curriculum and classroom expenses	22,158	13,628	35,786		35,786	72,672
Supplies and materials	15,059	9,262	24,321		24,321	37,211
Student transportation and food services	5,286	4,978	10,264	1,915	12,179	3,153
Occupancy and facility costs	380,980	361,169	742,149	140,800	882,949	885,371
Travel and conferences	4,306	4,084	8,390	1,592	9,982	7,934
Postage, printing and copying	5,281	5,007	10,288	1,952	12,240	14,505
Insurance	17,687	16,767	34,454	6,535	40,989	32,794
Information technology	64,896	61,524	126,420	23,984	150,404	90,464
Repairs and maintenance	14,002	13,274	27,276	5,173	32,449	41,748
Depreciation	12,604	11,948	24,552	4,658	29,210	34,035
Other				29,571	29,571	16,039
Total other than personnel costs	606,938	560,718	1,167,656	395,188	1,562,844	1,522,067
Total expenses	\$1,804,204	\$1,695,732	\$3,499,936	\$839,380	\$4,339,316	\$4,060,434

*The attached notes and auditor's report are an integral part of these financial statements.*

**NEW DAWN CHARTER HIGH SCHOOL  
STATEMENT OF FUNCTIONAL EXPENSES  
FOR THE YEAR ENDED JUNE 30, 2017**

	Program Services			Supporting Services	
	Regular Education	Special Education	Total Program Services	Management and General	Total Expenses 6/30/17
Wages	\$901,437	\$748,378	\$1,649,815	\$311,373	\$1,961,188
Employee benefits and payroll taxes	264,801	219,838	484,639	92,540	577,179
Total personnel costs	1,166,238	968,216	2,134,454	403,913	2,538,367
Professional fees	70,208	51,586	121,794	154,146	275,940
Professional development	2,751	1,482	4,233		4,233
Student and staff recruitment	1,020	549	1,569	4,399	5,968
Curriculum and classroom expenses	47,237	25,435	72,672		72,672
Supplies and materials	24,187	13,024	37,211		37,211
Student transportation and food services	1,546	1,187	2,733	420	3,153
Occupancy and facility costs	406,952	337,852	744,804	140,567	885,371
Travel and conferences	3,647	3,027	6,674	1,260	7,934
Postage, printing and copying	6,667	5,535	12,202	2,303	14,505
Insurance	15,074	12,514	27,588	5,206	32,794
Information technology	41,580	34,521	76,101	14,363	90,464
Repairs and maintenance	19,191	15,932	35,123	6,625	41,748
Depreciation	15,643	12,988	28,631	5,404	34,035
Other			0	16,039	16,039
Total other than personnel costs	655,703	515,632	1,171,335	350,732	1,522,067
Total expenses	<u>\$1,821,941</u>	<u>\$1,483,848</u>	<u>\$3,305,789</u>	<u>\$754,645</u>	<u>\$4,060,434</u>

*The attached notes and auditor's report are an integral part of these financial statements.*



**NEW DAWN CHARTER HIGH SCHOOL  
STATEMENT OF CASH FLOWS  
FOR THE YEARS ENDED JUNE 30, 2018 AND 2017**

	<u>6/30/18</u>	<u>6/30/17</u>
Cash flows from operating activities:		
Change in net assets	\$1,023,396	\$2,436,296
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	29,210	34,035
Changes in assets and liabilities:		
Grant receivable - New York City	144,032	(213,909)
Government grants receivable	34,456	(287,441)
Prepaid expenses	4,223	(21,098)
Security deposit	0	0
Accounts payable and accrued expenses	(114,554)	163,395
Deferred rent	68,174	86,051
Total adjustments	<u>165,541</u>	<u>(238,967)</u>
Net cash provided by operating activities	<u>1,188,937</u>	<u>2,197,329</u>
Cash flows from investing activities:		
Purchase of furniture and equipment	(7,015)	(50,474)
Capitalized cost of purchasing a building	<u>(53,000)</u>	<u>(57,165)</u>
Net cash used for investing activities	<u>(60,015)</u>	<u>(107,639)</u>
Net increase in cash and cash equivalents	1,128,922	2,089,690
Cash and cash equivalents - beginning	<u>8,060,301</u>	<u>5,970,611</u>
Cash and cash equivalents - ending	<u><u>\$9,189,223</u></u>	<u><u>\$8,060,301</u></u>
Supplemental disclosures:		
Interest and taxes paid	<u><u>\$0</u></u>	<u><u>\$0</u></u>

*The attached notes and auditor's report are an integral part of these financial statements.*

**NEW DAWN CHARTER HIGH SCHOOL  
NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2018 AND JUNE 30, 2017**

**Note 1 - Organization and Nature of Activities**

New Dawn Charter High School (the "School"), located in Brooklyn, New York, is a not-for-profit education corporation chartered by the Board of Regents of the State of New York. The School provides over-aged and under-credited students 15-21 years of age the opportunity to return to school and obtain a high school diploma through a rigorous NYSED standards-based education program. The School is a publicly funded, privately managed school, which is independent of the New York City Department of Education ("NYCDOE").

On September 13, 2011, the School was granted a provisional charter for a term up to and including June 30, 2017. In May 2017, the Board of Regents voted to award the School a full five-year charter renewal from July 1, 2017 through June 30, 2022.

The School has been notified by the Internal Revenue Service that it is a not-for-profit organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code and has not been determined to be a private foundation. Accordingly, no provision for income taxes has been reflected in the accompanying financial statements.

In June 2018, the Board of Regents voted to approve and issue a charter to New Dawn Charter High School II ("New Dawn II"), a charter school developed to replicate the learning experience of New Dawn Charter High School. The anticipated opening of New Dawn II is scheduled for the Fall of 2019. The activity of New Dawn II is expected to be consolidated with the School under the new name "New Dawn Charter Schools". New Dawn II did not have any transactions during the year ended June 30, 2018.

**Note 2 - Significant Accounting Policies**

a. Basis of Presentation

The accompanying financial statements have been prepared using the accrual basis of accounting, which is the process of recognizing revenue and expenses when earned or incurred rather than received or paid.

The School's net assets are classified based upon the existence or absence of donor-imposed restrictions as follows:

- *Unrestricted* – represent those resources for which there are no restrictions by donors as to their use. The board has designated \$1,200,000 to be set aside as a cash reserve fund to enable the School to respond to unforeseen circumstances that limit or hinder its daily operations.
- *Temporarily restricted* – represent those resources, the uses of which have been restricted by donors to specific purposes or the passage of time. The release from restrictions results from the satisfaction of the restricted purposes specified by the donor. Temporarily restricted contributions, the requirements of which are met in the year of donation, are reported as unrestricted. The School did not have any temporary restricted net assets at June 30, 2018 or 2017.

- *Permanently restricted* – accounts for activity restricted by donors that must remain intact in perpetuity. The School did not have any permanently restricted net assets at June 30, 2018 or 2017.

b. Cash and Cash Equivalents

All bank accounts with local institutions and highly liquid debt instruments purchased with a maturity of three months or less are considered to be cash and cash equivalents.

c. Concentration of Credit

Financial instruments, which potentially subject the School to concentration of credit risk, consist of cash accounts, which have been placed with a financial institution that management deems to be creditworthy. From time-to-time, cash balances may be in excess of insurance levels. While at year end the School had material uninsured balances, management feels they have little risk and has not experienced any loss due to bank failure.

d. Capitalization Policy

Property and equipment that exceed pre-determined amounts and have a useful life of greater than one year are capitalized at cost or at the fair value at the date of gift. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets, as follows:

Furniture and equipment – *3 to 5 year life*

Leasehold improvements – *Life of lease*

Capitalized costs for the building purchase will be placed into service when the purchase is complete and depreciated over the useful life of the building at that time.

e. Revenue – Public School District and Government Grants

Program revenue is recognized based on student attendance using rates established by the School's funding source in the period during which services are provided.

Government grant receipts are recorded as advances until they have been earned. Once the conditions of the grant have been satisfied, income is recognized.

f. Contributions

Contributions are recorded as revenue upon the earlier of the receipt of cash or when a pledge is considered unconditional in nature. Contributions are available for general use in support of the School's mission, unless specifically restricted by the donor, in which case they are recorded in one of the restricted classes of net assets, depending on the nature of the restriction.

Contributions expected to be received within one year are recorded at net realizable value. Long-term pledges are recorded at fair value using a risk adjusted discounted rate. Conditional contributions are recognized as income when the conditions have been substantially met.

g. Deferred Rent

Rent expense is recognized evenly over the life of the lease using the straight-line method. In the earlier years of the lease, as rent expense exceeds amounts paid, a deferred rent liability is created. In later years of the lease, as payments exceed the amount of expense recognized, deferred rent will be reduced until it is zero at the end of the lease.

h. Donated Services

Donated services are recognized in circumstances where those services create or enhance non-financial assets or require specialized skills, are provided by individuals possessing those skills and would typically need to be purchased, if not provided in-kind.

Board members and other individuals volunteer their time and perform a variety of tasks that assist the School. These services do not meet the criteria outlined above and have not been recorded in the financial statements.

i. Functional Allocation of Expenses

The costs of providing various programs and other activities have been summarized on a functional basis in the accompanying financial statements. Accordingly, certain costs have been allocated among the programs and supporting services benefited. The School's fundraising activity was minimal, therefore no expenses were allocated to the functional category.

j. Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

k. Contingencies

Government contracts are subject to audit by the grantor. Management does not believe that any audits, if they were to occur, would result in material disallowed costs, and has not established any reserves. Any disallowed costs would be recorded in the period notified.

l. Accounting for Uncertainty in Income Taxes

The school does not believe its financial statements include any material, uncertain tax positions. Tax filings for periods ending June 30, 2015 and later are subject to examination by applicable taxing authorities.

m. Subsequent Events

Management has evaluated for potential recognition and disclosure events subsequent to the date of the statement of financial position through October 3, 2018, the date the financial statements were available to be issued.

n. New Accounting Pronouncement

The Financial Accounting Standards Board (FASB) issued an Accounting Standards Update (ASU) No. 2016-14, *Presentation of Financial Statements of Not-for-Profit Entities*. The ASU, which becomes effective for the June 30, 2019 year, focuses on improving the current net asset classification requirements and information presented in the financial statements and notes that is useful in assessing a not-for-profit's liquidity, financial performance and cash flows.

On June 21, 2018, the Financial Accounting Standards Board (FASB) issued an Accounting Standards Update (ASU) No. 2018-08, *Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made*. The ASU, which becomes effective for the June 30, 2020 year, provides guidance on whether a receipt from a third-party resource provider should be accounted for as contributions (nonreciprocal transactions) within the scope of Topic 958, Not-for-Profit Entities, or as exchange (reciprocal) transactions.

In addition, FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers*. The ASU, which becomes effective for the June 30, 2020 year, focuses on a principle-based model. It highlights the identification of performance obligations of the contract, determining the price and allocating that price to the performance obligation so that revenue is recognized as each performance obligation is satisfied.

FASB issued ASU No. 2016-02, *Leases*. The ASU, which becomes effective for the June 30, 2021 year, requires all leases to be reflected as assets and liabilities on the statement of financial position.

The School is currently evaluating the impact these standards will have on future statements.

**Note 3 - Restricted Cash**

An escrow account has been established to meet the requirement of the Board of Regents of the State of New York. The purpose of this account is to ensure sufficient funds are available for an orderly dissolution or transition process in the event of termination of the charter or school closure.

**Note 4 - Fixed Assets**

Fixed assets consist of the following:

	<u>6/30/18</u>	<u>6/30/17</u>
Furniture and equipment	\$256,513	\$249,498
Capitalized cost for building purchase – in progress	110,165	57,165
Leasehold improvements	<u>49,105</u>	<u>49,105</u>
	415,783	355,768
Less: accumulated depreciation	<u>(256,900)</u>	<u>(227,690)</u>
Total fixed assets, net	<u>\$158,883</u>	<u>\$128,078</u>

**Note 5 - Grant Receivable – New York City Department of Education**

Grants receivable consists of the following:

	<u>6/30/18</u>	<u>6/30/17</u>
Beginning grants receivable from		
New York City	\$219,917	\$6,008
Funding based on allowable FTE's	4,776,771	5,923,046
Advances received	<u>(4,920,803)</u>	<u>(5,709,137)</u>
Grants receivable from New York City	<u>\$75,885</u>	<u>\$219,917</u>

**Note 6 - Significant Concentrations**

The School is dependent upon grants from NYCDOE to carry out its operations. Approximately 89% and 91% of the School's total public support and revenue was received from NYCDOE for the years ended June 30, 2018 and 2017, respectively. If NYCDOE were to discontinue funding, this would have a severe economic impact on the School's ability to operate.

**Note 7 - Commitments**

The School occupies space in Brooklyn under a lease agreement that expires on June 30, 2026. The School exercised an option in the lease to purchase the building for \$14,000,000.

Terms of the purchase, including financing options, were still being negotiated as of the date the financial statements were available to be issued.

Until the purchase of the building is finalized, the School expects to follow the terms of the lease. Future minimum payments due under the lease are as follows:

	<u>Amount</u>
Year ending:	
June 30, 2019	\$751,281
June 30, 2020	770,063
June 30, 2021	789,315
June 30, 2022	809,047
June 30, 2023	829,274
Thereafter	<u>2,614,297</u>
Total	<u>\$6,563,277</u>

**Note 8 - 403(b) Plan**

The School has a retirement plan under IRS Section 403(b). Employees are eligible to participate if they serve 1,000 hours for the year. All eligible employees may elect to defer a portion of their salary and contribute to this plan up to statutory amounts and, after 1 year of service, receive an employer base contribution equal to 50% of the salary reduction contributions made by the employee for the calendar year, not to exceed 3% of the employee's salary. In addition, the School can decide to give a discretionary based contribution. The School contributed \$87,000 and \$116,000 to the 403(b) plan during the years ended June 30, 2018 and 2017, respectively. The following vesting periods apply:

<u>Period</u>	<u>Vesting Percentage</u>
Less than 2 years	0%
2 years	20%
3 years	40%
4 years	60%
5 years	80%
6 years or more	100%

IRA L. SCHALL, CPA  
DAVID C. ASHENFARB, CPA  
MICHAEL L. SCHALL, CPA

**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING  
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN  
AUDIT OF FINANCIAL STATEMENTS PERFORMED IN  
ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

To the Board of Trustees of  
New Dawn Charter High School

**Report on the Financial Statements**

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of New Dawn Charter High School (the "School"), which comprise the statement of financial position as of June 30, 2018 and June 30, 2017, and the related statements of activities, functional expenses, and cash flows for the years then ended and the related notes to the financial statements, and have issued our report thereon dated October 3, 2018.

**Internal Control over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the School's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the School's internal control. Accordingly, we do not express an opinion on the effectiveness of the School's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

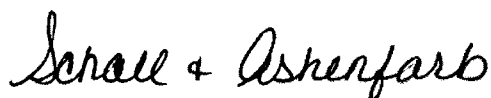


### **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the School's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

### **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.



Schall & Ashenfarb  
Certified Public Accountants, LLC

October 3, 2018

**NEW DAWN CHARTER HIGH SCHOOL  
SCHEDULE OF FINDINGS AND QUESTIONED COSTS  
JUNE 30, 2018**

Current Year:

None

Prior Year:

None

---

**APPENDIX D**

**UNAUDITED FINANCIAL STATEMENTS OF THE INSTITUTION FOR THE SIX MONTHS  
ENDED DECEMBER 31, 2018 (INCLUDING DECEMBER 31, 2017 COMPARATIVE  
INFORMATION)**

---

[THIS PAGE INTENTIONALLY LEFT BLANK]

# NEW DAWN CHARTER HIGH SCHOOL

	YTD Actual July 1, 2018 - December 31, 2018	Actual July 1, 2017 - December 31, 2017
	2018-19	2017-18
<b>Total Revenue</b>	<b>2,544,933</b>	<b>2,645,535</b>
<b>Total Expenses</b>	<b>2,455,563</b>	<b>2,029,529</b>
<b>Change in Net Assets (Before Cash Flow Adjustments)</b>	<b>89,370</b>	<b>616,006</b>
<b>Actual Student Enrollment</b>	<b>241</b>	<b>240</b>
<b>Total Paid Student Enrollment</b>	<b>241</b>	<b>240</b>

## REVENUE

### REVENUES FROM STATE SOURCES

Per Pupil Revenue		
NYC	2,038,623	2,058,737
TOTAL Per Pupil Revenue (Average Districts Per Pupil Funding)	2,038,623	2,058,737
Special Education Revenue	419,728	386,370
Stimulus Grant		
TOTAL REVENUE FROM STATE SOURCES	2,458,350	2,445,607

### REVENUE FROM FEDERAL FUNDING

IDEA Special Needs	-	114,870
Title I	3,359	29,641
Title Funding - Other	-	11,036
TOTAL REVENUE FROM FEDERAL SOURCES	3,359	155,467

### LOCAL and OTHER REVENUE

Contributions and Donations	6,460	435
Fundraising	-	-
Erate Reimbursement	9,317	-
Interest Income	3,466	5,111
Food Service (Income from meals)	1,441	425
Contributions-Restricted	10,500	38,501
OTHER	2,000	-
TOTAL REVENUE FROM LOCAL and OTHER SOURCES	83,224	44,461

## TOTAL REVENUE

<b>2,544,933</b>	<b>2,645,535</b>
------------------	------------------

## EXPENSES

### ADMINISTRATIVE STAFF PERSONNEL COSTS

Executive Management	88,511	78,000
Instructional Management	66,444	61,321
Deans, Directors & Coordinators	164,025	165,391
CFO / Director of Finance	-	-
Operation / Business Manager/ Administrative Staff	72,108	73,955
Administrative Staff	16,076	13,320
TOTAL ADMINISTRATIVE STAFF	407,164	392,539

### INSTRUCTIONAL PERSONNEL COSTS

Teachers - Regular	686,571	309,793
Teachers - SPED	109,692	69,074
Aspiring Teachers	41,439	32,311
Substitute Teachers	-	-
Specialty Teachers	62,989	55,797
Parent Coordinator	20,403	18,480
Aides	-	-
Therapists & Counselors	72,782	122,566
Other	35,695	50,140
TOTAL INSTRUCTIONAL	686,571	658,162

# NEW DAWN CHARTER HIGH SCHOOL

	YTD Actual July 1, 2018 - December 31, 2018 2018-19	Actual July 1, 2017 - December 31, 2017 2017-18
<b>NON-INSTRUCTIONAL PERSONNEL COSTS</b>		
IT Staff		
Other		
<b>TOTAL NON-INSTRUCTIONAL</b>	-	-
<b>SUBTOTAL PERSONNEL SERVICE COSTS</b>	1,093,735	1,050,701
<b>PAYROLL TAXES AND BENEFITS</b>		
Payroll Taxes	77,528	76,361
Unemployment & Workers Comp	15,421	12,008
Fringe / Employee Benefits		158,727
Retirement / Pension		19,833
<b>TOTAL PAYROLL TAXES AND BENEFITS</b>	297,385	266,930
<b>TOTAL PERSONNEL SERVICE COSTS</b>	1,391,121	1,317,631
<b>CONTRACTED SERVICES</b>		
Accounting / Audit	37,500	33,750
Events		
Legal	93,250	8,045
Support Organization Fees	7,500	7,500
Marketing Materials		
Nurse Services		
Food Service / School Lunch		
Payroll Services	4,250	4,250
Special Ed Services		
Technology Services		
Custodian	30,328	26,851
Security	32,600	37,578
Consultant-General	5,000	194
Other Purchased / Professional / Consulting	4,172	1,259
<b>TOTAL CONTRACTED SERVICES</b>	215,641	120,099
<b>SCHOOL OPERATIONS</b>		
Board Expenses		7
Classroom / Teaching Supplies & Materials	8,695	12,700
Educational Software	1,956	7,340
Special Ed Supplies & Materials	3,208	4,850
Textbooks / Workbooks		1,665
Supplies & Materials other	924	2,434
Office Software	11,523	2,254
Equipment / Furniture	143	1,477
Equipment Purchased	5,667	3,213
Equipment Leased	5,692	1,522
Telephone	14,154	14,460
Technology	71,163	43,000
Student Testing & Assessment	9,500	4,800
Field Trips	98	175
Recreation	6,936	1,040
Senior Dues	427	(615)
Student Purchased Lunches	3,982	2,696
Special Events Staff	742	1,544
Medical Supplies		
Office Supplies	7,000	15,729
Staff Development	24,589	3,240
Staff Recruitment	3,151	3,020

# NEW DAWN CHARTER HIGH SCHOOL

	YTD Actual July 1, 2018 - December 31, 2018	Actual July 1, 2017 - December 31, 2017
	2018-19	2017-18
Student Recruitment / Marketing	1,493	1,493
Postage & Delivery	2,383	831
School Meals / Lunch	5,250	179
Travel (Staff)	4,272	932
Lodging (Staff)	2,547	
Fundraising	317	
Conference Fee	3,219	1,205
Other School Operations	9,509	6,073
<b>TOTAL SCHOOL OPERATIONS</b>	<b>205,244</b>	<b>130,891</b>
<b>FACILITY OPERATION &amp; MAINTENANCE</b>		
Insurance	13,419	7,255
Janitorial	1,020	1,825
Building and Land Rent / Lease	381,003	365,479
Real Estate Taxes	27,064	13,741
Repairs & Maintenance	7,072	10,151
Equipment / Furniture	267	1,624
Security	1,088	1,029
Utilities	24,834	28,061
Moving & Storage		
Depreciation Expense		15,578
Payment for debt service reserve fund		
Payment for interest on bond		
Building Purchase Related Items: Attorney Fees	174,890	165
<b>TOTAL FACILITY OPERATION &amp; MAINTENANCE</b>	<b>643,557</b>	<b>460,908</b>
<b>DEPRECIATION &amp; AMORTIZATION</b>		
<b>BUILDING RELATED ACTIVITIES RECEIPTS</b>		
Bond Financing		
Down Payment from reserves of NDCHS	1,000,000	
<b>TOTAL BUILDING RELATED RECEIPTS</b>	<b>1,000,000</b>	<b>-</b>
<b>DISBURSEMENTS</b>		
Purchase price of building		
Cost related to bond issuance	54,947	
Renovations & Repairs		
Attorney Fees		
<b>TOTAL BUILDING RELATED DISBURSEMENTS</b>	<b>1,054,947</b>	<b>-</b>
<b>TOTAL EXPENSES</b>	<b>2,455,563</b>	<b>2,029,529</b>
<b>CHANGE IN NET ASSETS</b>	<b>89,370</b>	<b>616,006</b>

[THIS PAGE INTENTIONALLY LEFT BLANK]



---

**APPENDIX E**  
**FORM OF INDENTURE**

---

[THIS PAGE INTENTIONALLY LEFT BLANK]

# TABLE OF CONTENTS

Page

## FORM OF INDENTURE OF TRUST

### BUILD NYC RESOURCE CORPORATION,

a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038, as "Issuer",

TO

### THE BANK OF NEW YORK MELLON,

a banking corporation organized and existing under the laws of the State of New York, having a corporate trust office at 240 Greenwich Street, New York, New York 10286, together with any successor trustee at the time serving as such under this Indenture of Trust, as "Trustee"  
Dated as of February 1, 2019

\$20,685,000  
Build NYC Resource Corporation  
Revenue Bonds  
(New Dawn Charter Schools Project), Series 2019

## TABLE OF CONTENTS (continued)

Page

### ARTICLE V

#### CUSTODY AND INVESTMENT OF FUNDS

Section 5.01. Creation of Funds and Accounts.....	43
Section 5.02. Project Fund.....	43
Section 5.03. Payments into Renewal Fund; Application of Renewal Fund.....	46
Section 5.04. Payments into Bond Fund.....	48
Section 5.05. Application of Bond Fund Moneys.....	49
Section 5.06. Payments into Earnings Fund; Application of Earnings Fund.....	51
Section 5.07. Payments into Rebate Fund; Application of Rebate Fund.....	52
Section 5.08. Transfer to Rebate Fund.....	53
Section 5.09. Investment of Funds and Accounts.....	53
Section 5.10. Application of Moneys in Certain Funds for Retirement of Bonds.....	55
Section 5.11. Repayment to the Institution from the Funds.....	55
Section 5.12. Non-presentment of Bonds.....	55
Section 5.13. Debt Service Reserve Fund.....	56
Section 5.14. Repair and Replacement Fund.....	57
Section 5.15. Revenue Fund.....	57

### ARTICLE VI

#### REDEMPTION OF BONDS

Section 6.01. Privilege of Redemption and Redemption Price.....	59
Section 6.02. Selection of Bonds to be Redeemed.....	59
Section 6.03. Notice of Redemption.....	59
Section 6.04. Payment of Redeemed Bonds.....	61
Section 6.05. Cancellation of Redeemed Bonds.....	61
Section 6.06. No Partial Redemption After Default.....	61

### ARTICLE VII

#### PARTICULAR COVENANTS

Section 7.01. Payment of Principal and Interest.....	62
Section 7.02. Performance of Covenants; Authority.....	62
Section 7.03. Books and Records; Certificate as to Defaults.....	62
Section 7.04. Loan Agreement.....	63
Section 7.05. Creation of Liens; Indebtedness.....	63
Section 7.06. Ownership; Instruments of Further Assurance.....	63
Section 7.07. Security Agreement; Filing.....	64
Section 7.08. Issuer Tax Covenant.....	66

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions.....	5
Section 1.02. Construction.....	22

## ARTICLE II

### AUTHORIZATION AND ISSUANCE OF BONDS

Section 2.01. Authorized Amount of Bonds; Pledge Effected by this Indenture.....	24
Section 2.02. Issuance and Terms of the Initial Bonds.....	24
Section 2.03. Redemption of Initial Bonds.....	26
Section 2.04. Delivery of Initial Bonds.....	31
Section 2.05. Execution of Bonds.....	32
Section 2.06. Authentication.....	32
Section 2.07. Additional Bonds.....	32
Section 2.08. CUSIP Numbers.....	35
Section 2.09. Book Entry Bonds.....	35

## ARTICLE III

### GENERAL TERMS AND PROVISIONS OF BONDS

Section 3.01. Date of Bonds.....	38
Section 3.02. Form and Denominations.....	38
Section 3.03. Legends.....	38
Section 3.04. Medium of Payment.....	39
Section 3.05. Bond Details.....	39
Section 3.06. Interchangeability, Transfer and Registry.....	39
Section 3.07. Bonds Mutilated, Destroyed, Stolen or Lost.....	40
Section 3.08. Cancellation and Destruction of Bonds.....	41
Section 3.09. Requirements With Respect to Transfers.....	41
Section 3.10. Bond Registrar.....	41
Section 3.11. Payments Due on Saturdays, Sundays and Holidays.....	41

## ARTICLE IV

### APPLICATION OF BOND PROCEEDS

Section 4.01. Application of Proceeds of Initial Bonds.....	42
---	----

## TABLE OF CONTENTS (continued)

Page

### ARTICLE VIII

#### EVENTS OF DEFAULT; REMEDIES OF BONDHOLDERS

Section 8.01. Events of Default; Acceleration of Due Date.....	67
Section 8.02. Enforcement of Remedies.....	68
Section 8.03. Application of Revenues and Other Moneys After Default.....	69
Section 8.04. Actions by Trustee.....	70
Section 8.05. Majority Holders Control Proceedings.....	70
Section 8.06. Individual Bondholder Action Restricted.....	71
Section 8.07. Effect of Discontinuance of Proceedings.....	71
Section 8.08. Remedies Not Exclusive.....	71
Section 8.09. Delay or Omission.....	72
Section 8.10. Notice of Default.....	72
Section 8.11. Waivers of Default.....	72

## ARTICLE IX

### TRUSTEE, BOND REGISTRAR AND PAYING AGENTS

Section 9.01. Appointment and Acceptance of Duties of Trustee.....	73
Section 9.02. Indemnity of Trustee.....	73
Section 9.03. Responsibilities of Trustee.....	73
Section 9.04. Compensation of Trustee, Bond Registrar and Paying Agents.....	75
Section 9.05. Evidence on Which Trustee May Act.....	75
Section 9.06. Trustee and Paying Agents May Deal in Bonds.....	75
Section 9.07. Resignation or Removal of Trustee.....	76
Section 9.08. Successor Trustee.....	76
Section 9.09. Paying Agents.....	78
Section 9.10. Appointment of Co-Trustee.....	78
Section 9.11. Patriot Act.....	79

## ARTICLE X

### DISCHARGE OF INDENTURE; DEFEASANCE

Section 10.01. Defeasance.....	80
Section 10.02. Defeasance Opinion and Verification.....	81
Section 10.03. No Limitation of Rights of Holders.....	81

## ARTICLE XI

### AMENDMENTS OF INDENTURE

Section 11.01. Limitation on Modifications.....	82
---	----

**TABLE OF CONTENTS**  
(continued)

Section 11.02. Supplemental Indentures Without Bondholders' Consent .....	Page 82
Section 11.03. Supplemental Indentures With Bondholders' Consent .....	83
Section 11.04. Supplemental Indenture Part of this Indenture .....	84

**ARTICLE XII**

**AMENDMENTS OF RELATED SECURITY DOCUMENTS**

Section 12.01. Rights of Institution .....	85
Section 12.02. Amendments of Related Security Documents Not Requiring Consent of Bondholders .....	85
Section 12.03. Amendments of Related Security Documents Requiring Consent of Bondholders .....	85

**ARTICLE XIII**

**MISCELLANEOUS**

Section 13.01. Evidence of Signature of Bondholders and Ownership of Bonds .....	87
Section 13.02. Notices .....	87
Section 13.03. Parties Interested Herein .....	89
Section 13.04. Partial Invalidity .....	89
Section 13.05. Effective Date; Counterparts .....	89
Section 13.06. Laws Governing Indenture .....	90
Section 13.07. No Pecuniary Liability of Issuer or Members; No Debt of the State or the City .....	90
Section 13.08. Priority of Mortgage Over Liens .....	90
Section 13.09. Consent to Jurisdiction .....	91
Section 13.10. Waiver of Trial by Jury .....	91
Section 13.11. Legal Counsel; Mutual Drafting .....	91

**EXHIBITS**

Exhibit A — Description of the Land .....	A-1
Exhibit B — Description of the Facility Personality .....	B-1
Exhibit C — Form of Fully Registered Initial Bond .....	C-1
Exhibit D-1 — Form of Requisition from the Project Fund .....	D-1-1
Exhibit D-2 — Form of Certificate of Construction Manager .....	D-2-1
Exhibit D-3 — Form of Certificate of Architect .....	D-3-1
Exhibit D-4 — Form of Project Budget Balance Sheet .....	D-4-1
Exhibit E — Form of Requisition from the Repair and Replacement Fund .....	E-1

iv

**WHEREAS**, the Issuer has determined that the providing of financial assistance to the Institution for the Project will promote and is authorized by and will be in furtherance of the corporate purposes of the Issuer; and

**WHEREAS**, as a result of such negotiations, the Institution has requested the Issuer to issue its bonds to finance a portion of the costs of the Project; and

**WHEREAS**, the Issuer adopted the Approving and Bond Resolution authorizing the Project and the issuance of its revenue bonds to finance a portion of the costs of the Project; and

**WHEREAS**, to facilitate the Project and the issuance by the Issuer of its revenue bonds to finance a portion of the costs of the Project, the Issuer and the Institution have entered into negotiations pursuant to which (i) the Issuer will make the Loan of the proceeds of the Initial Bonds, in the original aggregate principal amount of the Initial Bonds, to the Institution pursuant to the Loan Agreement, and (ii) the Institution will execute the Promissory Note in favor of the Issuer to evidence the Institution's obligation under the Loan Agreement to repay the Loan, and the Issuer will endorse the Promissory Note to the Trustee; and

**WHEREAS**, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Initial Bonds, the Issuer has authorized the issuance of the Initial Bonds in the Authorized Principal Amount pursuant to the Approving and Bond Resolution and this Indenture; and

**WHEREAS**, concurrently with the execution hereof, in order to secure the Initial Bonds, the Institution will grant mortgage liens on and security interests in its fee interest in the Mortgaged Property to the Issuer and the Trustee pursuant to the Mortgage, and the Issuer will assign its right, title and interest under the Mortgage to the Trustee pursuant to the Assignment of Mortgage; and

**WHEREAS**, additional moneys may be necessary to finance the cost of completing the Project, providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, or providing extensions, additions or improvements to the Facility or refunding outstanding Bonds and provision should therefore be made for the issuance from time to time of additional bonds; and

**WHEREAS**, the Initial Bonds and the Trustee's Certificate to be endorsed thereon are all to be in substantially the form set forth in Exhibit C, with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture; and

**WHEREAS**, all things necessary to make the Bonds when authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal special limited revenue obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid pledge and assignment of the loan payments, revenues and receipts herein made to the payment of the principal, Purchase Price or Redemption Price of, Sinking Fund Installments for, and interest on the Bonds, have been done and performed, and the creation, execution and

2

**INDENTURE OF TRUST**

**THIS INDENTURE OF TRUST** dated as of the date set forth on the cover page hereof (as the same may be amended and supplemented in accordance with its terms, this "Indenture"), by and between **BUILD NYC RESOURCE CORPORATION**, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038, party of the first part, to **THE BANK OF NEW YORK MELLON**, a banking corporation organized and existing under the laws of the State of New York, together with any successor trustee at the time serving as such under this Indenture of Trust, having a corporate trust office at 240 Greenwich Street, New York, New York 10286, party of the second part (capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Indenture),

**WITNESSETH:**

**WHEREAS**, the Issuer is authorized pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended, and its Certificate of Incorporation and By-Laws (i) to promote community and economic development and the creation of jobs in the non-profit and for-profit sectors for the citizens of The City of New York (the "City") by developing and providing programs for not-for-profit institutions, manufacturing and industrial businesses and other entities to access tax-exempt and taxable financing for their eligible projects; (ii) to issue and sell one or more series or classes of bonds, notes and other obligations through private placement, negotiated underwriting or competitive underwriting to finance such activities above, on a secured or unsecured basis; and (iii) to undertake other eligible projects that are appropriate functions for a non-profit local development corporation for the purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, carrying on scientific research for the purpose of aiding the City by attracting new industry to the City or by encouraging the development of or retention of an industry in the City, and lessening the burdens of government and acting in the public interest; and

**WHEREAS**, the Certificate of Incorporation of the Issuer further provides that the lessening of the burdens of government and the exercise of the powers conferred on the Issuer are the performance of an essential governmental function, which activities will assist the City in reducing unemployment and promoting additional job growth and economic development; and

**WHEREAS**, the Institution has entered into negotiations with officials of the Issuer for the Issuer's assistance with a tax-exempt bond transaction, the proceeds of which, together with other funds of the Institution, will be used by the Institution for the acquisition, construction, renovation, equipping and furnishing of the Improvements as part of the Project; and

delivery of this Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS INDENTURE WITNESSETH:**

That the Issuer in consideration of the premises and of the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Holders and owners thereof, and of the sum of One Dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal, Purchase Price or Redemption Price of, and Sinking Fund Installments for, the Bonds and the indebtedness represented thereby and the interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby grant, bargain, convey, transfer, grant a security interest in, pledge and assign unto the Trustee, and unto its respective successors in trust, and to their respective assigns, for the benefit of the Bondholders, forever for the securing of the performance of the obligations of the Issuer hereinafter set forth, the following:

**GRANTING CLAUSES**

**I**

All right, title and interest of the Issuer in and to the Loan Agreement, including all loan payments, revenues and receipts payable or receivable thereunder, excluding, however, the Issuer's Reserved Rights, which Issuer's Reserved Rights may be enforced by the Issuer and the Trustee, jointly or severally.

**II**

All right, title and interest of the Issuer in and to the Promissory Note.

**III**

All moneys and securities from time to time held by the Trustee under the terms of this Indenture including amounts set apart and transferred to the Revenue Fund, the Earnings Fund, the Project Fund, the Renewal Fund, the Bond Fund, the Repair and Replacement Fund, the Debt Service Reserve Fund or any special fund, and all investment earnings of any of the foregoing, subject to disbursements from the Revenue Fund, the Earnings Fund, the Repair and Replacement Fund, the Debt Service Reserve Fund, the Project Fund, the Renewal Fund or any such special fund in accordance with the provisions of the Loan Agreement and this Indenture; provided, however, there is hereby expressly excluded from any assignment, pledge, lien or security interest any amounts set apart and transferred to the Rebate Fund.

3

Any and all other property of every kind and nature from time to time which was heretofore or hereafter is by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder, by the Issuer or by any other Person, with or without the consent of the Issuer, to the Trustee which is hereby authorized to receive any and all such property at any time and at all times to hold and apply the same subject to the terms hereof.

**TO HAVE AND TO HOLD** all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said Trust and to them and their assigns forever;

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders and owners of the Bonds issued under and secured by this Indenture, without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any of the others of the Bonds, except as otherwise expressly provided in this Indenture, provided, however, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal and any applicable redemption premium, of the Bonds and the interest due or to become due thereon, at the times and in the manner provided in the Bonds according to the true intent and meaning thereof and shall make the payments into the Bond Fund as required under this Indenture or shall provide, as permitted hereby, for the payment thereof by depositing or causing to be deposited with the Trustee sufficient amounts, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture to be and remain in full force and effect.

**THIS INDENTURE FURTHER WITNESSETH**, and it is expressly declared that, all the Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said loan payments, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant with the Trustee and with the respective Holders and owners, from time to time of the Bonds or any part thereof, as follows, that is to say:

the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with this Indenture.

**Authorized Denomination** shall mean, in the case of the Initial Bonds, \$100,000 or any integral multiple of \$5,000 in excess thereof.

**Authorized Principal Amount** shall mean, in the case of the Initial Bonds, \$20,685,000.

**Authorized Representative** shall mean, (i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Institution, a person named in Exhibit C - "Authorized Representative" to the Loan Agreement or any other officer or employee of the Institution who is authorized to perform specific duties under the Loan Agreement or under any other Project Document and of whom another Authorized Representative of the Institution has given written notice to the Issuer and the Trustee; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of the Loan Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

**Beneficial Owner** shall mean, whenever used with respect to an Initial Bond, the Person in whose name such Initial Bond is recorded as the Beneficial Owner of such Initial Bond by the respective systems of DTC and each of the Participants of DTC. If at any time the Initial Bonds are not held in the Book-Entry System, Beneficial Owner shall mean "Holder" for purposes of the Security Documents.

**Bond Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01.

**Bondholder, Holder of Bonds, Holder or holder** shall mean any Person who shall be the registered owner of any Bond or Bonds.

**Bond Registrar** shall mean the Trustee acting as registrar as provided in Section 3.10.

**Bonds** shall mean the Initial Bonds and any Additional Bonds.

**Building Loan Agreement** shall mean the Building Loan Agreement, dated as of even date herewith, among the Issuer, the Institution and the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and herewith.

**Business Day** shall mean any day that shall not be:

- (i) a Saturday, Sunday or legal holiday;

## DEFINITIONS

**Section 1.01. Definitions.** Unless otherwise herein defined, the following capitalized terms shall have the respective meanings specified in this Section 1.01 for purposes of this Indenture:

**Account Direction Agreement** shall mean any and all agreements, whether there be one or more, among the Institution, the Depository Bank and the Trustee, pursuant to which the Institution directs the Depository Bank to initiate automatic transfers from the Institution's designated account at the Depository Bank to the Trustee with respect to the Institution's debt service payment obligations under the Loan Agreement; the initial Account Direction Agreement being, that certain Account Direction Agreement, dated as of the Closing Date, among the Institution, the Depository Bank and the Trustee.

**Additional Bonds** shall mean one or more Series of additional bonds issued, executed, authenticated and delivered under this Indenture.

**Affiliate** shall mean, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

**Approved Facility** shall mean the Facility as occupied, used and operated by the Institution substantially for the Approved Project Operations, including such other activities as may be substantially related to or substantially in support of such operations, all to be effected in accordance with the Loan Agreement.

**Approved Project Operations** shall mean the facility located at 238-242 Hoyt Street, Brooklyn, New York, for the operation by the Institution as a public charter school for over-aged and under-credited students in grades 9-12.

**Approving and Bond Resolution** shall mean the resolution of the Issuer adopted on June 12, 2018 authorizing the Project and the issuance of the Initial Bonds to finance the Project.

**Architect** shall mean Gerner Kronick & Valcarcel, Architects D.P.C., and its successors and assigns.

**Assignment of Contracts** shall mean the Assignment of Contracts and Interest in Licenses, Permits and Agreements, dated as of even date herewith, from the Institution to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with this Indenture.

**Assignment of Mortgage** shall mean collectively, the Assignment of Mortgage and Security Agreement (Acquisition Loan), the Assignment of Mortgage and Security Agreement (Building Loan) and the Assignment of Mortgage and Security Agreement (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Issuer to

- (ii) a day on which banking institutions in the City are authorized by law or executive order to close; or

- (iii) a day on which the New York Stock Exchange or the payment system of the Federal Reserve System is closed.

**Charter School Act** shall mean the New York Charter Schools Act of 1998, as amended (N.Y. Educ. Law Section 2850 et seq.).

**City** shall mean The City of New York, New York.

**Closing Date** shall mean February 28, 2019, the date of the initial issuance and delivery of the Initial Bonds.

**Code** shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder. All references to Sections of the Code or regulations thereunder shall be deemed to include any such Sections or regulations as they may hereafter be renumbered in any subsequent amendments to the Code or such regulations.

**Computation Date** shall have the meaning assigned to that term in the Tax Regulatory Agreement.

**Computation Period** shall have the meaning assigned to that term in the Tax Regulatory Agreement.

**Conduct Representation** shall mean any representation by the Institution under Section 2.2(t) of the Loan Agreement, or by any other Person in any Required Disclosure Statement delivered to the Issuer.

**Construction Contract** shall mean the Agreement (Document A133 - 2009), dated as of February 19, 2019, between the Institution and the Construction Manager, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

**Construction Manager** shall mean Benchmark Builders, Inc. and its successors and assigns.

**Construction Monitor** shall mean Carl B. Edwards Construction Consultant, Chicago, Illinois.

**Continuing Disclosure Undertaking** shall mean, with respect to the Initial Bonds, the Continuing Disclosure Agreement, dated the Closing Date, between the Institution and the Trustee, as dissemination agent, pursuant to Section 8.27 of the Loan Agreement and, as to any Series of Additional Bonds, the continuing disclosure undertaking executed by the Institution.

**Control or Controls**, including the related terms "controlled by" and "under common control with", shall mean the power to direct the management and policies of a Person

(x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

**Costs of Issuance** shall mean issuance costs with respect to the Initial Bonds described in Section 147(g) of the Code and any regulations thereunder, including but not limited to the following: Underwriter's spread (whether realized directly or derived through the purchase of the Initial Bonds at a discount below the price at which they are expected to be sold to the public); counsel fees (including bond counsel, Underwriter's counsel, Trustee's counsel, Issuer's counsel, Institution's counsel, as well as any other specialized counsel fees incurred in connection with the borrowing); financial advisor fees of any financial advisor to the Issuer or the Institution incurred in connection with the issuance of the Initial Bonds; engineering and feasibility study costs; guarantee fees (other than Qualified Guarantee Fees, as defined in the Tax Regulatory Agreement); Trustee and Paying Agent fees; accountant fees and other expenses related to issuance of the Initial Bonds; printing costs for the Initial Bonds and for the preliminary and final offering documents relating to the Initial Bonds; public approval and process costs; fees and expenses of the Issuer incurred in connection with the issuance of the Initial Bonds; Blue Sky fees and expenses; and similar costs.

**Debt Service Reserve Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of this Indenture.

**Debt Service Reserve Fund Requirement** shall mean (a) \$1,444,356.26 with respect to the Series 2019 Bonds (provided that if the Series 2019 Bonds shall be redeemed in part, the Debt Service Reserve Fund Requirement shall mean the Maximum Annual Debt Service of the Series 2019 Bonds), and (b) with respect to each Series of Additional Bonds, shall mean the Maximum Annual Debt Service of such Series of Additional Bonds.

**Defaulted Interest** shall have the meaning specified in Section 2.02(f).

**Defeasance Obligations** shall mean Government Obligations that are not subject to redemption prior to maturity.

**Depository Bank** shall mean Israel Discount Bank of New York, in its capacity as the financial institution receiving all Education Aid under the Account Direction Agreement, its successors and assigns, and any successor Depository Bank pursuant to Section 8.28(d) of the Loan Agreement.

**Determination of Taxability** shall mean:

(i) (A) the adoption, promulgation or enactment of any federal statute or regulation, or any determination, decision, decree or ruling made by the Commissioner or any District Director of the Internal Revenue Service;

(B) the issuance of a public or private ruling or a technical advice memorandum by the Internal Revenue Service in which the Institution has participated or has been given the opportunity to

8

**Education Aid** shall mean, collectively, all School District Payments, State Education Operating Aid, Disability Aid and any Other Education Aid payable to the Institution pursuant to the New York State Education Law or federal law for the payment of operations of the Institution at the Facility.

**Electronic Means** shall mean the following communications methods: S.W.I.F.T., e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

**Entity** shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

**Event of Default** shall have the meaning specified in Section 8.01(a).

**Facility** shall mean, collectively, the Facility Personality and the Facility Realty.

**Facility Personality** shall mean those items of machinery, equipment and other items of personality the acquisition and/or the installation of which is to be financed in whole or in part with the proceeds of the Bonds for installation or use at the Facility Realty as part of the Project pursuant to Section 3.2 of the Loan Agreement and described in Exhibit B - "Description of the Facility Personality", together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personality shall, in accordance with the provisions of Sections 3.5 and 6.4 of the Loan Agreement, include all property substituted for or replacing items of Facility Personality and exclude all items of Facility Personality so substituted for or replaced, and further exclude all items of Facility Personality removed as provided in Section 3.5 of the Loan Agreement.

**Facility Realty** shall mean, collectively, the Land and the Improvements.

**Fitch** shall mean Fitch Ratings, Inc., a Delaware corporation, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Fund Valuation Date** shall mean February 15 and August 15 of each year commencing August 15, 2019.

**GAAP** shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Closing Date, so as to properly reflect the financial position of the Institution, except that any accounting principle or practice

participate, and which ruling or memorandum the Institution, in its discretion, does not contest or from which no further right of judicial review or appeal exists;

(C) a determination from which no further right of appeal exists of any court of competent jurisdiction in the United States in a proceeding in which the Institution has participated or has been a party, or has been given the opportunity to participate or be a party; or

(D) the admission in writing by the Institution;

in any case, to the effect that the interest payable on the Bond of a Holder or a former Holder thereof is includable in gross income for federal income tax purposes; or

(ii) the receipt by the Trustee of a written opinion of Nationally Recognized Bond Counsel to the effect that the interest payable on the Bonds is includable in gross income for federal income tax purposes or the refusal of any such counsel to render a written opinion that the interest on the Bonds is not so includable when required pursuant to a request by a Bondholder in accordance with the procedures set forth in this Indenture;

provided, however, that no such Determination of Taxability described in clauses (i)(B) or (i)(C) of this definition shall be considered to exist unless (1) the Holder or former Holder of the Bond involved in such proceeding (a) gives the Institution and the Trustee prompt notice of the commencement thereof and (b) (if the Institution agrees to pay all expenses in connection therewith) offers the Institution the opportunity to control the defense thereof and (2) either (a) the Institution does not agree within thirty (30) days of receipt of such offer to pay such expenses and to control such defense or (b) the Institution shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Institution determines to be appropriate. A Bondholder shall have the right to request the Trustee to obtain a written opinion of Nationally Recognized Bond Counsel pursuant to clause (ii) above, at the expense of the Institution, upon delivery by the Bondholder to the Institution of a letter from the Bondholder's accountant stating that, in his or her reasonable opinion, interest on the Bonds is includable in the gross income of such Bondholder for federal income tax purposes and stating the reasons for such determination. No Determination of Taxability described above will result from the inclusion of interest on any Bond in the computation of minimum or indirect taxes.

**Disability Aid** shall mean those certain federal and State payments payable to the Institution for operations at the Facility attributable to students with disabilities.

**DTC** shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

**Earnings Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01.

9

required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

**Governing Body** shall mean, when used with respect to any Entity, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Entity are exercised.

**Government Obligations** shall mean the following:

(i) direct and general obligations of, or obligations unconditionally guaranteed by, the United States of America;

(ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America for the timely payment thereof; or

(iii) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clauses (i) or (ii) above.

**Improvements** shall mean:

(i) all buildings, structures, foundations, related facilities, fixtures and other improvements of every nature whatsoever existing on the Closing Date and hereafter erected or situated on the Land;

(ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2 of the Loan Agreement); and

(iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

**Indebtedness** shall have the meaning set forth in the Loan Agreement.

**Indenture** shall mean this Indenture of Trust, dated as of February 1, 2019, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI.

**Independent Engineer** shall mean a Person (not an employee of either the Issuer or the Institution or any Affiliate of either thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Institution.

**Initial Bonds** shall mean the Issuer's \$20,685,000 Revenue Bonds (New Dawn Charter Schools Project), Series 2019, authorized, issued, executed, authenticated and delivered on the Closing Date under this Indenture.

**Institution** shall mean New Dawn Charter Schools, a not-for-profit education corporation created and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Institution under Section 8.9 or 8.20 of the Loan Agreement.

**Interest Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01.

**Interest Payment Date** shall mean, with respect to the Initial Bonds, February 1 and August 1 of each year, commencing August 1, 2019 (or, if any such day is not a Business Day, the immediately succeeding Business Day), and with respect to any Series of Additional Bonds, the dates set forth therein in the Supplemental Indenture pursuant to which such Series of Additional Bonds are issued.

**Issuer** shall mean Build NYC Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

**Issuer's Reserved Rights** shall mean, collectively,

(i) the right of the Issuer in its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Issuer under the Loan Agreement;

(ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under the Loan Agreement;

(iii) the right of the Issuer to enforce in its own behalf the obligation of the Institution under the Loan Agreement to complete the Project;

(iv) the right of the Issuer to enforce or otherwise exercise in its own behalf all agreements of the Institution under the Loan Agreement with respect to ensuring that the Facility shall always constitute the Approved Facility;

(v) the right of the Issuer to amend with the Institution the provisions of Section 5.1 of the Loan Agreement without the consent of the Trustee or any Bondholder;

(vi) the right of the Issuer in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under the following Articles and Sections of the Loan Agreement: Article III (except for Section 3.1), Sections 4.4, 4.5 and 4.6, Article V, Article VI,

12

other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Mortgage** shall mean, collectively, the Mortgage and Security Agreement (Acquisition Loan), the Mortgage and Security Agreement (Building Loan) and the Mortgage and Security Agreement (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Institution to the Issuer and the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with this Indenture.

**Mortgaged Property** shall have the meaning specified in the Mortgage.

**Nationally Recognized Bond Counsel** shall mean Hawkins Delafield & Wood LLP or other counsel acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

**Net Proceeds** shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including documented reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

**Notice Parties** shall mean the Issuer, the Institution, the Bond Registrar, the Paying Agents and the Trustee.

**Opinion of Counsel** shall mean a written opinion of counsel for the Institution or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

**Organizational Documents** shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the charter, articles of incorporation or certificate of incorporation, and the bylaws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

**Other Education Aid** shall mean any federal or State payments, other than School District Payments, State Education Operating Aid or Disability Aid, payable to the Institution for the purpose of funding operations of the Institution at the Facility.

**Outstanding**, when used with reference to a Bond or Bonds, as of any particular date, shall mean all Bonds which have been issued, executed, authenticated and delivered under this Indenture, except:

(i) Bonds cancelled by the Trustee because of payment or redemption prior to maturity or surrendered to the Trustee under this Indenture for cancellation;

14

Article VIII (except for Sections 8.29, 8.31 and 8.32), Article IX, Article X, Sections 11.1, 11.3 and 11.5 and Article XII (except Section 12.2); and

(vii) the right of the Issuer in its own behalf to declare a default with respect to any of the Issuer's Reserved Rights and exercise the remedies set forth in Section 9.2(b) of the Loan Agreement.

**Land** shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn, Block 409 and Lot 38, generally known by the street address 238-242 Hoyt Street, Brooklyn, New York, all as more particularly described in Exhibit A — "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c) of the Loan Agreement.

**Legal Requirements** shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wage, living wage, prevailing wage, sick leave, healthcare, benefits and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Institution, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

**Loan** shall mean the loan made by the Issuer to the Institution pursuant to the Loan Agreement as described in Section 4.1 thereof.

**Loan Agreement** shall mean the Loan Agreement, dated as of even date herewith, between the Issuer and the Institution, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with this Indenture.

**Loan Payment Date** shall mean the fifteenth (15<sup>th</sup>) day of each January, March, May, July, September and November, commencing March 15, 2019 (or, if any such day shall not be a Business Day, the immediately preceding Business Day).

**Loss Event** shall have the meaning specified in Section 6.1 of the Loan Agreement.

**Majority Holders** shall mean the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

**Moody's** shall mean Moody's Investors Service Inc., a Delaware corporation, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any

13

(ii) any Bond (or portion of a Bond) for the payment or redemption of which, in accordance with Article X, there has been separately set aside and held in the Redemption Account of the Bond Fund either:

(A) moneys, and/or

(B) Defeasance Obligations in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications as shall be necessary to provide moneys,

in an amount sufficient to effect payment of the principal or applicable Redemption Price of such Bond, together with accrued interest on such Bond to the payment or Redemption Date, which payment or Redemption Date shall be specified in irrevocable instructions given to the Trustee to apply such moneys and/or Defeasance Obligations to such payment on the date so specified, provided, that, if such Bond or portion thereof is to be redeemed, notice of such redemption shall have been given as provided in this Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(iii) Bonds in exchange for or in lieu of which other Bonds shall have been authenticated and delivered under Article III,

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder or under any other Security Document, Bonds owned by the Institution or any Affiliate of the Institution shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. Bonds which have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Institution or any Affiliate of the Institution.

**Participants** shall mean those financial institutions for whom the Securities Depository effects book entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**Paying Agent** shall mean any paying agent for the Bonds appointed pursuant to this Indenture (and may include the Trustee) and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to this Indenture.

**Permitted Encumbrances** shall mean:

(i) the Mortgage (as assigned by the Assignment of Mortgage), the Building Loan Agreement and any other Project Document;

15

(ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;

(iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien, security interest, encumbrance or charge or right in respect thereof, placed on or with respect to the Facility or any part thereof, if payment is not yet due and payable, or if such payment is being disputed pursuant to Section 8.11(b) of the Loan Agreement;

(iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Institution certifies to the Issuer and the Trustee will not materially interfere with or impair the Institution's use and enjoyment of the Facility as provided in the Loan Agreement;

(v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of the Institution delivered to the Issuer and the Trustee, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired or purport to impose liabilities or obligations on the Issuer;

(vi) those exceptions to title to the Mortgaged Property enumerated in the title insurance policy delivered pursuant to Section 3.7 of the Loan Agreement insuring the Trustee's mortgagee interest in the Mortgaged Property, a copy of which is on file at the offices of the Issuer and at the designated corporate trust office of the Trustee;

(vii) liens arising by reason of good faith deposits with the Institution in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Institution to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Institution to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(ix) any judgment lien against the Institution, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed;

16

(vi) all costs of title insurance as provided in Section 3.7 of the Loan Agreement;

(vii) the payment of the Costs of Issuance with respect to the Initial Bonds;

(viii) the payment of the fees and expenses of the Trustee and the Construction Monitor during the period of construction and renovation of the Project Work;

(ix) all costs which the Institution shall be required to pay, under the terms of any contract or contracts, for the completion of the Project Work, including any amounts required to reimburse the Institution for advances made for any item otherwise constituting a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Project Work; and

(x) all other costs and expenses relating to the completion of the Project Work or the issuance of a Series of Additional Bonds.

"Project Costs" shall not include (i) fees or commissions of real estate brokers, (ii) moving expenses, or (iii) operational costs.

**Project Documents** shall mean the Continuing Disclosure Undertaking, the Account Direction Agreement and the Security Documents.

**Project Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01.

**Project Work** shall mean (i) the design, construction and/or renovation of the Improvements, including the acquisition of building materials and fixtures, and (ii) the acquisition, whether by title or lease, of the Facility Personalty and any work required to install same.

**Promissory Note** shall mean, (i) with respect to the Initial Bonds, that certain Promissory Note in substantially the form of Exhibit H to the Loan Agreement, (ii) with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to the Loan Agreement, and (iii) with respect to the Bonds, collectively, those certain Promissory Notes described in clauses (i) and (ii) above, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and this Indenture.

**Purchase Price** shall mean an amount equal to the Redemption Price that would be applicable to the Initial Bonds being purchased pursuant to Section 2.03(g) if such Initial Bonds were being optionally redeemed pursuant to Section 2.03(a) on the date such Initial Bonds are being so purchased, plus accrued interest thereon to the date of purchase.

**Qualified Investments** shall mean, to the extent permitted by applicable law, the following:

18

(x) any purchase money security interest in movable personal property, including equipment leases and financing;

(xi) liens on property due to rights of governmental entities or third party payors for recoupment of excess reimbursement paid;

(xii) a lien, restrictive declaration, performance mortgage or other encumbrances with respect to the operation of the Facility arising by reason of a grant or other funding received by the Institution from the City, the State or any governmental agency or instrumentality; and

(xiii) (xiii) any lien, security interest, encumbrances or charge which exists in favor of the Trustee, or, at the written direction of the Majority Holders, to which the Trustee shall consent in writing.

**Person** shall mean an individual or any Entity.

**Principal Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01.

**Project** shall mean the acquisition, construction, renovation, equipping and furnishing of an approximately 24,000 square-foot building on an approximately 7,500 square-foot parcel of land located at 238-242 Hoyt Street, Brooklyn, New York, which is being operated by the Institution as a public charter school for over-aged and under-credited students in grades 9-12.

**Project Completion Date** shall have the meaning set forth in the Loan Agreement.

**Project Costs** shall mean:

(i) all costs of engineering and architectural services with respect to the Project Work, including the cost of test borings, surveys, estimates, permits, plans and specifications and for supervising demolition, construction and renovation, as well as for the performance of all other duties required by or consequent upon the proper construction of, and the making of alterations, renovations, additions and improvements in connection with, the completion of the Project Work;

(ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the completion of the Project Work;

(iii) Reserved;

(iv) all costs of contract bonds and of insurance that may be required or necessary during the period of Project Work construction and renovation;

(v) the cost of acquisition of the Facility Realty;

17

(i) Government Obligations;

(ii) Commercial paper, rated at least P-1 by Moody's or at least A-1 by S&P, issued by a corporation or banking institution organized under the laws of the United States of America or any state thereof;

(iii) Direct and general long term obligations of any state of the United States of America to which the full faith and credit of the state is pledged and that are rated in either of the two highest rating categories by Moody's and S&P;

(iv) Direct and general short term obligations of any state of the United States to which the full faith and credit of the state is pledged and that are rated in the highest rating category by Moody's and S&P;

(v) Interest-bearing demand or time deposits with or certificates of deposit issued by a national banking association or a state bank or trust company that is a member of the Federal Deposit Insurance Corporation ("FDIC") and that are (a) continuously and fully insured by the FDIC, or (b) with a bank that has outstanding debt, or which is a subsidiary of a holding company which has outstanding debt, rated in either of the two highest rating categories by Moody's and S&P, or (c) continuously and fully secured by obligations of the type described in (i) and (ii) above that have a market value at all times at least equal to the principal amount of the deposit and are held by the Trustee or its agent or, in the case of uncertificated securities, are registered in the name of the Trustee as pledgee;

(vi) Repurchase agreements, the maturity of which are less than thirty (30) days, entered into (a) with a bank or trust company rated at least P-1 by Moody's and A-1 by S&P and organized under the laws of the United States, (b) with a national banking association, insurance company, or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York and which is a member of the Security Investors Protection Corporation, in each case rated at least P-1 by Moody's and A-1 by S&P, or (c) with a dealer which is rated at least P-1 by Moody's and A-1 by S&P. The repurchase agreement must be continuously and fully secured by obligations of the type described in (i), (ii), (iii), (iv) or (v) above which have a fair market value, exclusive of accrued interest, at least equal to the amount invested in the repurchase agreement and which are held by the Trustee or its agent or, in the case of uncertificated securities, are registered in the name of the Trustee as pledgee;

(vii) Money market mutual funds with assets in excess of \$2,000,000,000 investing in obligations of the type specified in (i), (ii), (iii), (iv), (v) or (vi) above, including funds for which the Trustee or an affiliate of the Trustee serves as investment advisor, administrator, shareholder, servicing agent and/or custodian or sub-custodian, notwithstanding that (a) the Trustee charges and collects fees and expenses from such funds for services rendered, (b) the Trustee charges and collects fees and expenses for services rendered pursuant to this Indenture and (c) services performed for such funds and pursuant to this Indenture may converge at any time; and

19



(viii) An investment agreement or other investment arrangement with any bank, trust company, national banking association or bank holding company in the United States, with any domestic branch of a foreign bank, or with any surety or insurance company, provided, that, (i) such investment agreement or other investment arrangement shall permit the full principal amount of the moneys so placed together with the investment income agreed to be paid to be available for use as and when required under the Indenture, and (ii) the Person with whom such investment agreement or other investment arrangement is made must be a Person whose unsecured or uncollateralized short term debt obligations are assigned a rating by S&P of SP 1+ or better or a Person assigned a financial strength rating of AAA by S&P, and whose domestic assets shall be in excess of \$10,000,000,000.

**Rebate Amount** shall have the meaning assigned to that term in the Tax Regulatory Agreement.

**Rebate Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01.

**Record Date** shall mean, with respect to any Interest Payment Date for the Initial Bonds, the close of business on the fifteenth (15<sup>th</sup>) day of the month next preceding such Interest Payment Date, or, if such day is not a Business Day, the next preceding Business Day.

**Redemption Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01.

**Redemption Date** shall mean the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms of this Indenture.

**Redemption Price** shall mean, with respect to any Bond or a portion thereof, the principal amount thereof to be redeemed in whole or in part, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or this Indenture.

**Refunding Bonds** shall have the meaning assigned to that term in Section 2.07(c).

**Reimbursement Resolution** shall mean the resolution adopted by the Issuer on June 12, 2018 with respect to the Project and the debt financing thereof.

**Related Security Documents** shall mean all Security Documents other than this Indenture.

**Renewal Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01.

**Repair and Replacement Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01.

**Repair and Replacement Fund Requirement** shall mean \$250,000.

20

**Sinking Fund Installment Account** shall mean the special trust account of the Bond Fund so designated, which is established pursuant to Section 5.01.

**Special Record Date** shall have the meaning specified in Section 2.02(f).

**State** shall mean the State of New York.

**State Education Operating Aid** shall mean all New York State Education Department operating aid payments appropriated for the purpose of funding operating expenses of the Institution with respect to its operations at the Facility on a per-pupil basis.

**Supplemental Indenture** shall mean any indenture supplemental to or amendatory of this Indenture, executed and delivered by the Issuer and the Trustee in accordance with Article XI.

**Tax Regulatory Agreement** shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Institution to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with this Indenture.

**Trustee** shall mean The Bank of New York Mellon, New York, New York, in its capacity as trustee under this Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in this Indenture.

**Trust Estate** shall mean all property, interests, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

**Yield** shall have the meaning assigned to such term in the Tax Regulatory Agreement.

#### Section 1.02. Construction.

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Indenture, refer to this Indenture, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Indenture, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Indenture, nor shall they affect its meaning, construction or effect.

22

**Representations Letter** shall mean the Blanket Issuer Letter of Representations from the Issuer to DTC with respect to the Initial Bonds.

**Responsible Officer** shall mean, with respect to the Trustee, any officer within the corporate trust office of the Trustee, including any vice-president, any assistant vice-president, any secretary, any assistant secretary, the treasurer, any assistant treasurer or other officer of the corporate trust office of the Trustee customarily performing functions similar to those performed by any of the above designated officers, who has direct responsibility for the administration of the trust granted in this Indenture, and shall also mean, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

**Revenue Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01.

**S&P** shall mean S&P Global Ratings, a division of Standard & Poor's Financial Services LLC, a Delaware limited liability company, its successors and assigns, and if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**School District Payments** shall mean any and all payments made to or for the benefit of the Institution with respect to its operations at the Facility pursuant to the Charter School Act.

**Securities Depository** shall mean any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book-entry interests in the Bonds, and to effect transfers of book-entry interests in the Bonds in book-entry form, and includes and means initially DTC.

**Security Documents** shall mean, collectively, the Loan Agreement, the Promissory Note, this Indenture, the Tax Regulatory Agreement, the Assignment of Contracts, the Building Loan Agreement, the Mortgage and the Assignment of Mortgage.

**Series** shall mean all of the Bonds designated as being of the same series authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter authenticated and delivered in lieu thereof or in substitution therefor pursuant to this Indenture.

**Sinking Fund Installment** shall mean an amount so designated and which is established for mandatory redemption on a date certain of the Bonds of any Series of Bonds pursuant to this Indenture. The portion of any such Sinking Fund Installment of a Series of Bonds remaining after the deduction of any amounts credited pursuant to this Indenture toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments of such Series of Bonds due on a future date.

21

(e) Unless the context indicates otherwise, references to designated "Exhibits", "Articles", "Sections", "Subsections", "clauses" and other subdivisions are to the designated Exhibits, Articles, Sections, Subsections, clauses and other subdivisions of or to this Indenture.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein or herein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

23

## ARTICLE II

### AUTHORIZATION AND ISSUANCE OF BONDS

**Section 2.01. Authorized Amount of Bonds; Pledge Effected by this Indenture.** (a) No Bond may be authenticated and delivered under the provisions of this Indenture except in accordance with this Article. Except as provided in Sections 2.07 and 3.07, the total aggregate principal amount of Bonds that may be authenticated and delivered hereunder is limited to the Authorized Principal Amount.

(b) The proceeds of the Bonds deposited in the Project Fund and certain of the loan payments, receipts and revenues payable under the Loan Agreement, including moneys which are required to be set apart and transferred to the Revenue Fund, to the Earnings Fund, to the Bond Fund, to the Debt Service Reserve Fund, to the Repair and Replacement Fund, to the Renewal Fund or to certain special funds, including the investments, if any, thereof (subject to disbursements from such Funds in accordance with the provisions of this Indenture) are pledged by this Indenture for the payment of the principal, Purchase Price or Redemption Price (if any) of, Sinking Fund Installments for, and interest on, the Bonds. All such Funds shall be held by the Trustee in trust for the benefit of the Bondholders, and while held by the Trustee constitute part of the Trust Estate and be subject to the lien hereof. The Rebate Fund (including amounts on deposit therein) shall not be subject to any assignment, pledge, lien or security interest in favor of the Trustee or any Bondholder or any other Person. The Bonds shall be the special limited revenue obligations of the Issuer and shall be payable by the Issuer as to the principal, Purchase Price or Redemption Price (if any) of the Bonds, Sinking Fund Installments for the Bonds, and interest on the Bonds only from the Funds, special funds and loan payments, revenues and receipts pledged therefor. The Bonds are additionally secured by a pledge and assignment of the Promissory Note and substantially all of the Issuer's right, title and interest in and to the Loan Agreement (excluding the Issuer's Reserved Rights). In addition, the Institution has granted a mortgage lien on and security interest in its fee interest in the Mortgaged Property to the Issuer and the Trustee pursuant to the Mortgage, and the Issuer has assigned its right, title and interest in the Mortgage to the Trustee pursuant to the Assignment of Mortgage.

In no event shall any obligations of the Issuer under this Indenture or the Bonds or under the Loan Agreement or under any other Security Document or related document for the payment of money create a debt of the State or the City and neither the State nor the City shall be liable on any obligation so incurred, but any such obligation shall be a special limited revenue obligation of the Issuer secured and payable solely as provided in this Indenture.

**Section 2.02. Issuance and Terms of the Initial Bonds.** (a) The Initial Bonds in the Authorized Principal Amount shall be issued under and secured by this Indenture. The Initial Bonds shall be issuable in fully registered form without coupons substantially in the form set forth in Exhibit C and shall be dated as provided in Section 3.01.

24

manner. It is provided in the Loan Agreement that the Institution shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Initial Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment. Money deposited with the Trustee on account of Defaulted Interest shall be held in trust for the benefit of the owners of the Initial Bonds entitled to such Defaulted Interest as provided in this Section. Following receipt of such funds the Trustee shall fix the Special Record Date for the payment of such Defaulted Interest which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt of such funds by the Trustee. The Trustee shall promptly notify the Institution of such Special Record Date and, in the name and at the expense of the Institution, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each owner of an Initial Bond entitled to such notice at the address of such owner as it appears on the bond registration books not less than ten (10) days prior to such Special Record Date.

Subject to the foregoing provisions of this Section, each Initial Bond delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Initial Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Initial Bond and each such Initial Bond shall bear interest from such date, so that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

(g) The Initial Bonds are issuable in the form of fully registered bonds in the Authorized Denominations.

(h) Anything in the Initial Bonds or in this Indenture to the contrary notwithstanding, the obligations of the Issuer hereunder and under the Initial Bonds shall be subject to the limitation that payments of interest or other amounts on the Initial Bonds shall not be required to the extent that receipt of any such payment by a Holder of an Initial Bond would be contrary to the provisions of law applicable to such Holder which would limit the maximum rate of interest which may be charged or collected by such Holder of an Initial Bond.

**Section 2.03. Redemption of Initial Bonds.** (a) **General Optional Redemption.** The Initial Bonds shall be subject to redemption, on or after February 1, 2026, in whole or in part on any Business Day (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$100,000) at the option of the Issuer (which option shall be exercised only upon the giving of notice by the Institution of its intention to prepay loan payments due under the Loan Agreement pursuant to Section 4.3(c) thereof) at a Redemption Price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the Redemption Date.

(b) **Extraordinary Redemption.** The Initial Bonds are subject to redemption prior to maturity, at the option of the Issuer exercised at the direction of the Institution (which option shall be exercised only upon the giving of notice by the Institution of its intention to prepay loan payments due under the Loan Agreement pursuant to Section 4.3(c) thereof), as a whole on any date, upon notice or waiver of notice as provided in this Indenture, at a

26

(b) The Initial Bonds shall mature on the dates and in the principal amounts and bear interest at the annual rates, as set forth below:

Maturity Date	Principal Amount	Interest Rate
February 1, 2033	\$ 5,260,000	5.000%
February 1, 2039	3,865,000	5.625
February 1, 2049	11,560,000	5.750

Interest shall be payable on each Interest Payment Date and shall be computed on the basis of a 360-day year of twelve 30-day months. Notwithstanding anything herein to the contrary, the interest rate borne by the Initial Bonds shall not exceed the maximum permitted by, or enforceable under, applicable law.

(c) Reserved.

(d) Reserved.

(e) The Initial Bonds shall be numbered from R-1 upward in consecutive numerical order. Initial Bonds issued upon any exchange or transfer hereunder shall be numbered in such manner as the Trustee in its discretion shall determine.

(f) The principal, Purchase Price or Redemption Price of, and Sinking Fund Installments for, all Initial Bonds shall be payable by check or draft or wire transfer of immediately available funds at maturity or upon earlier purchase or redemption to the Persons in whose names such Initial Bonds are registered on the bond registration books maintained by the Trustee as Bond Registrar at the maturity or Redemption Date thereof, provided, however, that the payment in full of any Initial Bond either at final maturity or upon purchase or upon redemption in whole shall only be payable upon presentation and surrender of such Initial Bonds at the designated corporate trust office of the Trustee or of any Paying Agent.

The interest payable on each Initial Bond on any Interest Payment Date shall be paid by the Trustee to the registered owner of such Initial Bond as shown on the bond registration books of the Trustee as Bond Registrar at the close of business on the Record Date for such interest, (1) by check or draft mailed to such registered owner at his address as it appears on the bond registration books or at such other address as is furnished to the Trustee in writing by such owner, or (2) if such Initial Bonds are held by a Securities Depository or, at the written request addressed to the Trustee by any registered owner of Initial Bonds in the aggregate principal amount of at least \$1,000,000 that all such payments be made by wire transfer, by electronic transfer in immediately available funds to the bank for credit to the ABA routing number and account number filed with the Trustee no later than five (5) Business Days before an Interest Payment Date, but no later than a Record Date for any interest payment.

Interest on any Initial Bond that is due and payable but not paid on the date due ("Defaulted Interest") shall cease to be payable to the owner of such Initial Bond on the relevant Record Date and shall be payable to the owner in whose name such Initial Bond is registered at the close of business on a special record date (the "Special Record Date") for the payment of such Defaulted Interest, which Special Record Date shall be fixed in the following

25

Redemption Price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the Redemption Date, if one or more of the following events shall have occurred:

(i) The Facility shall have been damaged or destroyed to such extent that, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee, (A) the Facility cannot be reasonably restored within a period of two (2) years from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Institution is thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of two (2) years from the date of such damage or destruction, or (C) the restoration cost of the Facility would exceed the total amount of all insurance proceeds, including any deductible amount, in respect of such damage or destruction; or

(ii) Title to, or the temporary use of, all or substantially all of the Facility shall have been taken or condemned by a competent authority which taking or condemnation results, or is likely to result, in the Institution being thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of two (2) years from the date of such taking or condemnation, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee; or

(iii) As a result of changes in the Constitution of the United States of America or of the State or of legislative or executive action of the State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court after the contest thereof by the Institution, the Loan Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein or unreasonable burdens or excessive liabilities are imposed upon the Institution by reason of the operation of the Facility.

If the Initial Bonds are to be redeemed in whole as a result of the occurrence of any of the events described above, the Institution shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution stating that, as a result of the occurrence of the event giving rise to such redemption, the Institution has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes.

(c) **Mandatory Sinking Fund Installment Redemption.** The Initial Bonds maturing on February 1, 2033 shall be subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the Redemption Date, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in Sections 5.05(d) and (f):

27

Sinking Fund Installment Payment	Sinking Fund Date	Sinking Fund Installment Payment	Sinking Fund Date
(February 1)	(February 1)	(February 1)	(February 1)
2021	\$295,000	2027	\$400,000
2022	310,000	2028	420,000
2023	325,000	2029	440,000
2024	345,000	2030	460,000
2025	360,000	2031	485,000
2026	380,000	2032	505,000
		2033*	535,000

\*Final Maturity

The Initial Bonds maturing on February 1, 2039 shall be subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the Redemption Date, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in Sections 5.05(d) and (f):

Sinking Fund Installment Payment	Sinking Fund Date	Sinking Fund Installment Payment	Sinking Fund Date
(February 1)	(February 1)	(February 1)	(February 1)
2034	\$560,000	2037	\$660,000
2035	590,000	2038	695,000
2036	625,000	2039*	735,000

\* Final Maturity

The Initial Bonds maturing on February 1, 2049 shall be subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the Redemption Date, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in Sections 5.05(d) and (f):

Sinking Fund Installment Payment	Sinking Fund Date	Sinking Fund Installment Payment	Sinking Fund Date
(February 1)	(February 1)	(February 1)	(February 1)
2040	\$775,000	2045	\$1,025,000
2041	820,000	2046	1,085,000
2042	870,000	2047	1,150,000
2043	920,000	2048	1,215,000
2044	970,000	2049*	2,730,000

\*Final Maturity

(d) Mandatory Redemption from Excess Proceeds and Certain Other Amounts. The Initial Bonds shall be redeemed, on or after February 1, 2026, in whole or in part by lot prior to maturity in the event and to the extent:

- (i) excess Bond proceeds shall remain in the Project Fund after the completion of the Project,
- (ii) excess title insurance or property insurance proceeds or condemnation awards shall remain after the application thereof pursuant to the Loan Agreement and this Indenture,
- (iii) excess proceeds shall remain after the release or substitution of Facility Realty or Facility Personality, or
- (iv) certain funds received by the Institution pursuant to any capital campaign which are earmarked for specific Project Costs shall remain with the Institution and shall not be required for completion of the Project or related Project Costs as provided in Section 11.4 of the Loan Agreement,

in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Initial Bonds to be redeemed, together with interest accrued thereon to the Redemption Date.

(e) Mandatory Redemption Upon Failure to Operate the Facility for the Approved Project Operations, Material Violation of Material Legal Requirements, False Representation or Failure to Maintain Liability Insurance. The Initial Bonds are also subject to mandatory redemption prior to maturity, at the option of the Issuer, as a whole only, in the event (i) the Issuer shall determine that (w) the Institution is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations, (x) the Institution, any Principal of the Institution or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Institution has committed a material violation of a material Legal Requirement, (y) any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, or (ii) the Institution shall fail to obtain or

28

maintain the liability insurance with respect to the Facility required under the Loan Agreement, and, in the case of clause (i) or (ii) above, the Institution shall fail to cure any such default or failure within the applicable time periods set forth in the Loan Agreement following the receipt by the Institution of written notice of such default or failure from the Issuer and a demand by the Issuer on the Institution to cure the same. Any such redemption shall be made upon notice or waiver of notice to the Bondholders as provided in this Indenture, at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Initial Bonds, together with interest accrued thereon to the Redemption Date.

(f) Mandatory Taxability Redemption. Upon the occurrence of a Determination of Taxability, the Initial Bonds shall be redeemed prior to maturity on any date within one hundred twenty (120) days following such Determination of Taxability, at a Redemption Price equal to one hundred three percent (103%) of the principal amount thereof, together with accrued interest to the Redemption Date. The Initial Bonds shall be redeemed in whole unless redemption of a portion of the Initial Bonds Outstanding would have the result that interest payable on the Initial Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of an Initial Bond. In such event, the Initial Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

(g) Purchase in Lieu of Optional Redemption. In lieu of calling the Initial Bonds for optional redemption, the Initial Bonds shall be subject to mandatory tender for purchase at the direction of the Issuer, upon the direction of the Institution, in whole or in part (and, if in part, in such manner as determined by the Institution) on any date on or after February 1, 2026, at a Purchase Price equal to the applicable Redemption Price for any optional redemption of such Initial Bonds as provided in Section 2.03(a), plus accrued interest to the purchase date. Purchases of tendered Initial Bonds may be made without regard to any provision of this Indenture relating to the selection of Initial Bonds in a partial optional redemption. The Initial Bonds purchased pursuant to any mandatory tender(s) are not required to be cancelled, and if not so cancelled (subject to Section 11.6 of the Loan Agreement), shall, prior to any resale by or on behalf of the Institution, not be deemed Outstanding in connection with any subsequent partial optional redemption solely for purposes of those provisions of this Indenture relating to the selection of the Initial Bonds in a partial redemption.

Purchases in lieu of an optional redemption shall be permitted, with the consent of the Issuer, upon the delivery to the Issuer and the Trustee of (i) an opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee substantially to the effect that (A) such purchases in lieu of optional redemption comply with the provisions of this Indenture and (B) neither such purchases in lieu of an optional redemption nor any transaction directly related thereto will adversely affect the exclusion from gross income of interest on the Initial Bonds for purposes of federal income taxation, and (ii) such other opinions, certificates or documentation as the Issuer may require.

(h) Redemption of Initial Bonds permitted or required by this Article II shall be made as follows, and the Trustee shall give the notice of redemption required by Section 6.03 in respect of each such redemption:

30

29

(1) Redemption shall be made pursuant to the general optional redemption provisions of Section 2.03(a) or (b) at such times as are permitted under such Section and, in the case of Section 2.03(a), in such principal amounts, as the Institution shall request in a written notice to the Trustee in accordance with Section 4.3(c) of the Loan Agreement.

(2) Redemption shall be made pursuant to the mandatory Sinking Fund Installment redemption provisions of Section 2.03(c) as and when required by this Section without the necessity of any request by, or notification from the Issuer or from the Institution, but subject to the provisions of Section 5.05(d) and (f).

(3) Redemption shall be made pursuant to the mandatory redemption provisions of Section 2.03(d) at the earliest possible date set forth therein following the deposit of the excess proceeds or other amounts in the Redemption Account of the Bond Fund, without the necessity of any instructions or further act of the Issuer or the Institution.

(4) Redemption shall be made pursuant to the mandatory redemption provisions of Section 2.03(e) on the date specified therein in the event redemption is required under such circumstances, without the necessity of any instructions or further act of the Institution.

(5) Redemption shall be made pursuant to the mandatory taxability redemption provisions of Section 2.03(f) at the earliest possible date, but no later than one hundred twenty (120) days following the Determination of Taxability, without the necessity of any instructions or further act of the Issuer or the Institution.

**Section 2.04. Delivery of Initial Bonds.** The Initial Bonds shall be executed in the form and manner set forth in this Indenture and shall be deposited with the Trustee and thereupon shall be authenticated by the Trustee. Upon payment to the Trustee of the proceeds of sale of the Initial Bonds including the interest, if any, accrued on the Initial Bonds to the Closing Date, the Initial Bonds shall be delivered by the Trustee on behalf of the Issuer to or upon the order of the purchaser(s) thereof, but only upon receipt by the Trustee of:

- (a) a copy, duly certified by the Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel of the Issuer, of the Approving and Bond Resolution;
- (b) an original executed counterpart of all Security Documents and a copy of each other executed Project Document;
- (c) a written opinion by Nationally Recognized Bond Counsel to the effect that the issuance of the Initial Bonds and the execution thereof have been duly authorized and that all conditions precedent to the delivery thereof have been fulfilled; and
- (d) the written order to the Trustee executed by an Authorized Representative of the Issuer to authenticate and deliver the Initial Bonds to the purchaser(s) therein identified

31

upon payment to the Trustee for the account of the Issuer of the purchase price therein specified, plus accrued interest, if any.

**Section 2.05. Execution of Bonds.** The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel of the Issuer, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the manual or facsimile signature of the Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel of the Issuer. Any facsimile signatures shall have the same force and effect as if the appropriate officers had personally signed each of said Bonds. In case one or any of the officers who shall have signed or attested the Bonds or whose reproduced facsimile signature appears thereon shall cease to be such officer or officers before the Bonds so signed and attested shall have been actually issued and delivered, the Bonds may be issued and delivered as though the person who signed or attested or whose reproduced facsimile signature appears on the Bonds had not ceased to be such officer. Neither the members, directors, officers or agents of the Issuer nor any person executing the Bonds shall be liable personally or be subject to any personal liability or accountability by reason of the issuance thereof.

**Section 2.06. Authentication.** Only such Bonds as shall have endorsed thereon a certificate of authentication, in substantially the form set forth in the Form of Fully Registered Initial Bond in Exhibit C, duly executed by the Trustee, shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless and until such certificate of authentication on such Bond shall have been duly executed by the Trustee, and such certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Trustee shall note, with respect to each Bond to be authenticated under this Indenture in the space provided in the certificate of authentication for such Bond, the date of the authentication and delivery of such Bond. The Trustee's certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds.

**Section 2.07. Additional Bonds.** (a) So long as the Promissory Note, the Loan Agreement and the other Security Documents are each in effect, one or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of (i) completing the Project, (ii) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, the purpose of which shall be for the Approved Project Operations, or (iv) refunding Outstanding Bonds. Such Additional Bonds shall be payable from the loan payments, receipts and revenues of the Facility including such extensions, additions and improvements thereto. Prior to the issuance of a Series of Additional Bonds and the execution of a Supplemental Indenture in connection therewith, the Issuer and the Institution shall enter into an amendment to the Loan Agreement, and the Institution shall execute a new Promissory Note, which shall provide, among other things, that the loan payments payable by the Institution under the Loan Agreement and the aggregate amount to be paid under all Promissory Notes shall be increased and computed so as to amortize in full the principal of and interest on such Additional Bonds and any other costs in

connection therewith. In addition, the Institution and the Issuer shall enter into an amendment to each Security Document with the Trustee which shall provide that the amounts guaranteed or otherwise secured thereunder be increased accordingly.

(b) Each such Series of Additional Bonds shall be deposited with the Trustee and thereupon shall be authenticated by the Trustee. Upon payment to the Trustee of the proceeds of sale of such Series of Additional Bonds, they shall be made available by the Trustee for pick-up by the order of the purchaser or purchasers thereof, but only upon receipt by the Trustee of:

(1) a copy of the resolution, duly certified by the Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel of the Issuer, authorizing, issuing and awarding the Series of Additional Bonds to the purchaser or purchasers thereof and providing the terms thereof and authorizing the execution of any Supplemental Indenture and any amendments of or supplements to the Loan Agreement and any other Security Document to which the Issuer shall be a party;

(2) original executed counterparts of the Supplemental Indenture and an amendment of or supplement to the Loan Agreement expressly providing that, to the extent applicable, for all purposes of the Supplemental Indenture, the Promissory Note, and all other Security Documents, the Facility referred to therein and the premises related or subject thereto shall include the buildings, structures, improvements, machinery, equipment or other facilities being financed, and the Bonds referred to therein shall mean and include the Series of Additional Bonds being issued as well as the Initial Bonds and any Series of Additional Bonds theretofore issued;

(3) a written opinion by Nationally Recognized Bond Counsel, to the effect that the issuance of the Series of Additional Bonds and the execution thereof have been duly authorized and that all conditions precedent to the delivery thereof have been fulfilled and that the issuance of the Series of Additional Bonds will not cause the interest on any Series of Bonds Outstanding to become includable in gross income for federal income tax purposes;

(4) except in the case of a Series of Refunding Bonds (defined below) refunding all Outstanding Bonds, a certificate of an Authorized Representative of the Institution to the effect that each Security Document to which it is a party continues in full force and effect and that there is no Event of Default nor any event which upon notice or lapse of time or both would become an Event of Default;

(5) Reserved;

(6) an amount of money for deposit in the Debt Service Reserve Fund such that the aggregate amount on deposit in such Fund shall be at least equal to the Debt Service Reserve Requirement after giving effect to the issuance of such Series of Additional Bonds;

(7) an original, executed counterpart of the new Promissory Note and the amendment to each Security Document;

32

33

(8) a written order to the Trustee executed by an Authorized Representative of the Issuer to authenticate and make available for pick-up the Series of Additional Bonds to the purchaser or purchasers therein identified upon payment to the Trustee of the purchase price therein specified, plus accrued interest, if any; and

(9) evidence satisfactory to the Trustee that the additional Indebtedness of the Institution incurred in connection with the issuance of the Additional Bonds complies with the requirements of Section 8.31 of the Loan Agreement.

(c) (1) Upon the request of the Institution, one or more Series of Additional Bonds may be authenticated and made available for pick-up upon original issuance to refund ("Refunding Bonds") all Outstanding Bonds or any Series of Outstanding Bonds or any part of one or more Series of Outstanding Bonds. Bonds of a Series of Refunding Bonds shall be issued in a principal amount sufficient, together with other moneys available therefor, to accomplish such refunding and to make such deposits required by the provisions of this Indenture and of the resolution authorizing said Series of Refunding Bonds. In the case of the refunding under this Section 2.07 of less than all Bonds Outstanding of any Series or of any maturity within such Series, the Trustee shall proceed to select such Bonds in accordance with Section 6.02.

(2) A Series of Refunding Bonds may be authenticated and made available for pick-up only upon receipt by the Trustee (in addition to the receipt by it of the documents required by Section 2.07(b), as may be applicable) of:

(A) Irrevocable instructions from the Issuer to the Trustee, satisfactory to it, to give due notice of redemption pursuant to Section 6.03 to the Holders of all the Outstanding Bonds to be refunded prior to maturity on the Redemption Date specified in such instructions; and

(B) Either:

(i) moneys in an amount sufficient to effect payment at maturity or upon redemption at the applicable Redemption Price of the Bonds to be refunded, together with accrued interest on such Bonds to the maturity or Redemption Date, which moneys shall be held by the Trustee or any Paying Agent in a separate account irrevocably in trust for and assigned to the respective Holders of the Outstanding Bonds being refunded, or

(ii) Defeasance Obligations in such principal amounts, having such maturities, bearing such interest, and otherwise having such terms and qualifications, as shall be necessary to comply with the provisions of Article X, and any moneys required pursuant to said Section (with respect to all Outstanding Bonds or any part of one or more Series of Outstanding Bonds being refunded), which Defeasance Obligations and moneys shall be held in trust and used only as provided in Article X.

(3) The Institution shall furnish to the Trustee and the Issuer at the time of delivery of the Series of Refunding Bonds a certificate of an independent certified public accountant stating that the Trustee and/or the Paying Agent (and/or any escrow agent as shall be appointed in connection therewith) hold in trust the moneys or such Defeasance Obligations and moneys required to effect such payment at maturity or earlier redemption.

(d) Each Series of Additional Bonds issued pursuant to this Section shall be equally and ratably secured under this Indenture with the Initial Bonds and all other Series of Additional Bonds, if any, issued pursuant to this Section, without preference, priority or distinction of any Bond over any other Bonds except as expressly provided in or permitted by this Indenture.

(e) No Series of Additional Bonds shall be issued unless the Promissory Note, the Loan Agreement, the Mortgage and the other Security Documents are in effect and, at the time of issuance, there is no Event of Default nor any event which upon notice or lapse of time or both would become an Event of Default.

**Section 2.08. CUSIP Numbers.** The Issuer in issuing the Bonds may use CUSIP numbers (if then generally in use), and, if so, the Trustee shall use such CUSIP numbers in notices of redemption as a convenience to registered owners; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Bonds or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Bonds, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee of any change in the CUSIP numbers of which it has actual knowledge.

**Section 2.09. Book Entry Bonds.** (a) Except as provided in Section 2.09(c), the Holder of all of the Initial Bonds shall be DTC (the "Securities Depository") and the Initial Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest for any Initial Bond registered in the name of Cede & Co. shall be made by wire transfer of New York Clearing House or equivalent same day funds to the account of Cede & Co. on the Interest Payment Date for the Initial Bonds at the address indicated for Cede & Co. in the registration books of the Issuer kept by the Trustee. It is anticipated that during the term of the Initial Bonds, the Securities Depository will make book entry transfers among its Participants and receive and transmit payment of principal, Purchase Price or Redemption Price of, Sinking Fund Installments for, and interest on the Initial Bonds to the Participants until and unless the Trustee authenticates and delivers replacement bonds to the Beneficial Owners as described in Section 2.09(c).

(b) The Initial Bonds shall be initially issued in the form of a separate single authenticated fully registered certificate for each maturity thereof. Upon initial issuance, the ownership of such Initial Bonds shall be registered in the registration books of the Issuer kept by the Trustee in the name of Cede & Co., as nominee of DTC. The Trustee, the Bond Registrar, the Paying Agent and the Issuer shall treat DTC (or its nominee) as the sole and exclusive Holder of the Initial Bonds registered in its name for the purposes of payment of the principal, Sinking Fund Installments, Redemption Price of or interest on the Initial Bonds, selecting the Initial Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to

34

35

Bondholders under this Indenture, registering the transfer of Initial Bonds, obtaining any consent or other action to be taken by Holders of the Initial Bonds and for all other purposes whatsoever; and neither the Trustee, the Bond Registrar, the Paying Agent, the Institution nor the Issuer shall be affected by any notice to the contrary. All notices with respect to such Initial Bond shall be made and given, respectively, to DTC as provided in the Representations Letter. Neither the Trustee, the Bond Registrar, the Paying Agent nor the Issuer shall have any responsibility or obligation to any Participant, any Person claiming a beneficial ownership interest in the Initial Bonds under or through DTC or any Participant, or any other Person that is not shown on the registration books of the Trustee as being a Holder, with respect to the accuracy of any records maintained by DTC or any Participant; the payment of DTC or any Participant of any amount in respect of the principal, Sinking Fund Installments, Redemption Price of or interest on the Initial Bonds; any notice that is permitted or required to be given to Bondholders under this Indenture or any other Security Documents; the selection by DTC or any Participant of any Person to receive payment in the event of a partial redemption of the Initial Bonds; or any consent given or other action taken by DTC as Bondholder. The Trustee shall pay all principal, Purchase Price or Redemption Price of, Sinking Fund Installments for, and interest on the Initial Bonds only to or "upon the order of" (as that term is used in the Uniform Commercial Code as adopted in the State) DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal, Purchase Price or Redemption Price of, Sinking Fund Installments for, and interest on the Initial Bonds to the extent of the sum or sums so paid. Except as otherwise provided in Section 2.09(c), no Person other than DTC shall receive an authenticated Initial Bond certificate evidencing the obligation of the Issuer to make payments of principal, Purchase Price or Redemption Price of, Sinking Fund Installments for, and interest on the Initial Bonds pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions of this Indenture with respect to transfers of Bonds, the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

(c) In the event the Issuer determines that it is in the best interest of the Beneficial Owners that they be able to obtain Initial Bond certificates, the Issuer may notify DTC and the Trustee, whereupon DTC will notify the Participants, of the availability through DTC of Initial Bond certificates. In such event, the Trustee shall issue, transfer and exchange Initial Bond certificates as requested by DTC in appropriate amounts within the guidelines set forth in this Indenture. DTC may determine to discontinue providing its services with respect to the Initial Bonds at any time by giving written notice to the Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the Issuer and the Trustee shall be obligated to deliver Initial Bond certificates as described in this Indenture. In the event Initial Bond certificates are issued, the provisions of this Indenture shall apply to, among other things, the transfer and exchange of such certificates and the method of payment of principal, Purchase Price or Redemption Price of, Sinking Fund Installments for, and interest on such certificates. Whenever DTC requests the Issuer and the Trustee to do so, the Issuer will direct the Trustee (at the sole cost and expense of the Institution) to cooperate with DTC in taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the Initial Bonds to any DTC Participant having Initial Bonds credited to its DTC account or (ii) to arrange for another securities depository to maintain custody of certificates evidencing the Initial Bonds.

36

### ARTICLE III

#### GENERAL TERMS AND PROVISIONS OF BONDS

**Section 3.01. Date of Bonds.** The Initial Bonds shall be dated their date of original issuance (subject to the provisions set forth below with respect to transfers and exchanges) and will bear interest from their date at the applicable rate or rates until the entire principal amount of the Initial Bonds has been paid. Bonds authenticated prior to the first Interest Payment Date shall bear interest from their date of original issuance. Bonds issued in exchange for or upon the registration of transfer of Bonds on or after the first Interest Payment Date thereon shall bear interest from and including the Interest Payment Date next preceding the date of the authentication thereof, unless the date of such authentication shall be an Interest Payment Date to which interest on the Bonds has been paid in full or duly provided for, in which case they shall bear interest from and including such Interest Payment Date; provided that, if, as shown by the records of the Trustee, interest on the Bonds shall be in default, Bonds issued in exchange for or upon the registration of transfer of Bonds shall bear interest from the date to which interest has been paid in full on the Bonds, or if no interest has been paid on the Bonds, the date of the first delivery of fully executed and authenticated Bonds hereunder.

**Section 3.02. Form and Denominations.** Bonds shall be issued in fully registered form, without coupons, in any Authorized Denomination not exceeding the aggregate principal amount of Bonds of the same series, maturity and interest rate as the Bond for which the denomination is to be specified. Subject to the provisions of Section 3.03, the Initial Bonds shall be in substantially the form set forth in Exhibit C, with such variations, omissions and insertions as are permitted or required by this Indenture.

**Section 3.03. Legends.** Each Bond shall contain on the face thereof a statement to the effect that: "THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), IN RELIANCE UPON EXEMPTIONS PROVIDED BY THE SECURITIES ACT. NO RESALE OR OTHER TRANSFER OF THIS BOND MAY BE MADE UNLESS SUCH TRANSFER IS MADE PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS AND IN ACCORDANCE WITH THE INDENTURE OF TRUST REFERRED TO HEREIN. NEITHER THE ISSUER NOR THE TRUSTEE IS OBLIGATED TO REGISTER THIS BOND UNDER THE SECURITIES ACT OR ANY OTHER SECURITIES OR "BLUE SKY" LAW.

THIS BOND MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (1) SO LONG AS THIS BOND IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A OF THE SECURITIES ACT, TO A PERSON CONSTITUTING A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A; OR (2) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 OF REGULATION D UNDER THE SECURITIES ACT.

38

(d) In connection with any notice or other communication to be provided to Bondholders pursuant to this Indenture or any other Security Document by the Issuer or the Trustee with respect to any consent or other action to be taken by Bondholders, the Issuer or the Trustee, as the case may be, shall establish a record date for such consent or other action and give DTC notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible. Such notice to DTC shall be given only when DTC is the sole Bondholder.

(e) NEITHER THE ISSUER, THE INSTITUTION NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO THE PARTICIPANTS OR THE BENEFICIAL OWNERS WITH RESPECT TO (1) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY PARTICIPANT; (2) THE PAYMENT BY DTC OR ANY PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT, SINKING FUND INSTALLMENTS, REDEMPTION PRICE OF OR INTEREST ON THE INITIAL BONDS; (3) THE DELIVERY BY DTC OR ANY PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED UNDER THE TERMS OF THIS INDENTURE TO BE GIVEN TO BONDHOLDERS; OR (4) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE INITIAL BONDS.

(f) SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE INITIAL BONDS, AS NOMINEE OF DTC, REFERENCES HEREIN TO THE INITIAL BONDHOLDERS OR REGISTERED HOLDERS OF THE INITIAL BONDS SHALL MEAN CEDE & CO. AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF THE INITIAL BONDS.

(g) For so long as the Holder of all of the Initial Bonds shall be DTC, and all Initial Bonds shall be registered in the name of Cede & Co. as nominee for DTC, (i) only DTC may tender Initial Bonds upon redemption or retirement in whole and (ii) unless all Initial Bonds are being redeemed or retired in whole, Initial Bonds shall not be required to be presented to the Trustee for payment of principal, Sinking Fund Installments or Redemption Price except upon final maturity or redemption in whole.

(h) In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Trustee receives written evidence satisfactory to the Trustee with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository that is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Trustee upon its receipt of an Initial Bond or Bonds for cancellation shall cause the delivery of an Initial Bond or Bonds to the successor Securities Depository in appropriate Authorized Denominations and form as provided herein.

37

THIS BOND SHALL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE STATE OF NEW YORK OR OF THE CITY OF NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR THE CITY OF NEW YORK SHALL BE LIABLE HEREON, NOR SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OF THE BUILD NYC RESOURCE CORPORATION OTHER THAN THOSE PLEDGED THEREFOR."

The Bonds may in addition contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Indenture as may be necessary or desirable to comply with custom or otherwise as may be determined by the Issuer prior to the delivery thereof.

**Section 3.04. Medium of Payment.** The principal, Purchase Price or Redemption Price, if any, of, Sinking Fund Installments for, and interest on the Bonds shall be payable in any coin or currency of the United States of America which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Such payment may be made as provided in Section 2.02.

**Section 3.05. Bond Details.** Subject to the provisions hereof, the Bonds shall be dated, shall mature in such years and such amounts, shall bear interest at such rate or rates per annum, shall be subject to redemption on such terms and conditions and shall be payable as to principal, Purchase Price or Redemption Price, if any, Sinking Fund Installments, and interest at such place or places as shall be specified in this Indenture.

**Section 3.06. Interchangeability, Transfer and Registry.** (a) Each Bond shall be transferable only upon compliance with the restrictions on transfer set forth on such Bond and only upon the books of the Issuer, which shall be kept for the purpose at the designated corporate trust office of the Trustee, by the registered owner thereof in person or by his duly authorized attorney-in-fact, upon surrender of such Bond together with a written instrument of transfer in the form appearing on such Bond duly executed by the registered owner or his duly authorized attorney-in-fact with a guaranty of the signature thereon by a member of the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15. Upon the transfer of any Bond the Trustee shall prepare and issue in the name of the transferee one or more new Bonds of the same aggregate principal amount, related Series, maturity and interest rate as the surrendered Bond.

(b) Each Holder of a Bond, by the purchase and acceptance of such Bond, is deemed to have represented and agreed as follows:

(A) (i) it is a qualified institutional buyer as defined in Rule 144A ("Rule 144A") of the Securities Act of 1933, as amended (the "Securities Act") and it is aware that the sale made to it of such Bond has been made in reliance on Rule 144A; it has acquired such Bond for its own account or for the account of a qualified institutional buyer; or (ii) it is an "accredited investor" as defined in Rule 501 under the Securities Act; and

39

(B) it understands that such Bond has not been registered under the Securities Act, and that, if in the future it decides to offer, resell, pledge or otherwise transfer such Bond, such Bond may be offered, resold, pledged or transferred only in accordance with the above transfer restrictions set forth in Section 3.06(a) hereof.

(c) Any Bond, upon surrender thereof at the designated corporate trust office of the Trustee in the City with a written instrument of transfer in the form appearing on such Bond, duly executed by the registered owner or his duly authorized attorney-in-fact, with a guaranty of the signature thereon by a member of the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15, may, at the option of the owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series, maturity and interest rate of any other Authorized Denominations. However, the Trustee will not be required to (i) transfer or exchange any Bonds during the period between a Record Date and the following Interest Payment Date or during the period of fifteen (15) days next preceding any day for the selection of Bonds to be redeemed, or (ii) transfer or exchange any Bonds selected, called or being called for redemption in whole or in part.

(d) The Issuer, the Bond Registrar, the Trustee and any Paying Agent may deem and treat the Person in whose name any Bond shall be registered as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal, Purchase Price and Redemption Price, if any, of, Sinking Fund Installments for, and interest on such Bond and for all other purposes, and all payments made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer, the Institution, the Bond Registrar, the Trustee nor any Paying Agent shall be affected by any notice to the contrary.

(e) In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Issuer or the Trustee may make a charge sufficient to reimburse it for any expenses and any tax, fee or other governmental charge required to be paid in connection therewith; any such expenses shall be paid by the Institution but any such tax, fee or other governmental charge shall be paid by the Holder requesting such transfer or exchange.

**Section 3.07. Bonds Mutilated, Destroyed, Stolen or Lost.** In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer shall execute, and thereupon the Trustee shall authenticate and deliver, a new Bond of like Series, maturity, unpaid principal amount and interest rate as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and in substitution for the Bond destroyed, stolen or lost, upon filing with the Trustee evidence reasonably satisfactory to it that such Bond has been destroyed, stolen or lost, and upon furnishing the Issuer and the Trustee with indemnity (an undertaking from an insurance company acceptable to the Trustee and the Issuer) satisfactory to the Trustee and to the Issuer and complying with such other reasonable regulations as the Trustee may prescribe and paying such expenses as the Issuer and the Trustee may incur. All Bonds so surrendered to the Trustee shall be cancelled by it. Every new Bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is destroyed, lost or stolen, shall, with respect to such Bond, constitute an

40

#### ARTICLE IV

##### APPLICATION OF BOND PROCEEDS

**Section 4.01. Application of Proceeds of Initial Bonds.** Upon the receipt by the Trustee of the original proceeds of the sale and delivery of the Initial Bonds (\$20,670,045.80, consisting of the par amount of the Initial Bonds less net original discount of \$14,954.20), the Trustee shall apply such proceeds as follows:

- (i) \$1,444,356.26, being an amount equal to the Debt Service Reserve Fund Requirement, shall be deposited in the Debt Service Reserve Fund; and
- (ii) \$19,225,689.54, being the balance of the proceeds of the Initial Bonds, shall be deposited in the Project Fund.

42

additional contractual obligation of the Issuer whether or not the destroyed, lost or stolen Bond shall be found and shall be enforceable at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder. In the event any such destroyed, stolen or lost Bond shall have matured, or be about to mature, the Issuer may, instead of issuing a new Bond, cause the Trustee to pay the same without surrender thereof upon compliance with the condition in the first sentence of this Section out of moneys held by the Trustee and available for such purpose. All Bonds shall be held and owned upon the express condition (to the extent lawful) that the foregoing provisions are exclusive with respect to the replacement or payment of any mutilated, destroyed or lost or stolen Bond and shall preclude any and all other rights and remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

**Section 3.08. Cancellation and Destruction of Bonds.** All Bonds paid or redeemed, either at or before maturity, shall be delivered to the Trustee when such payment or redemption is made, and such Bonds together with all Bonds purchased by the Trustee, shall thereupon be promptly cancelled. Bonds so cancelled shall be destroyed by the Trustee.

**Section 3.09. Requirements With Respect to Transfers.** In all cases in which the privilege of transferring Bonds is exercised, the Issuer shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such transfer shall forthwith be cancelled by the Trustee. For every such transfer of Bonds, the Issuer or the Trustee may, as a condition precedent to the privilege of making such transfer, make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer and may charge a sum sufficient to pay the cost of preparing each new Bond issued upon such transfer, which sum or sums shall be paid by the Person requesting such transfer.

**Section 3.10. Bond Registrar.** The Trustee shall also be Bond Registrar for the Bonds, and shall maintain a register showing the names of all registered Holders of Bonds, Bond numbers and amounts, and other information appropriate to the discharge of its duties hereunder. The Trustee shall make available to the Institution for its inspection during normal business hours the registration books for the Bonds, as may be requested by the Institution in connection with any purchase or tender offer by it with respect to the Bonds.

**Section 3.11. Payments Due on Saturdays, Sundays and Holidays.** In any case where any payment date of principal, Purchase Price, Sinking Fund Installment and/or interest on the Bonds, or the Redemption Date of any Bonds, shall be a day other than a Business Day, then payment of such principal, Purchase Price, Sinking Fund Installment and/or interest or the Redemption Price, if applicable, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the principal, Sinking Fund Installment and/or Interest Payment Date or the Redemption Date, as the case may be, except that interest shall continue to accrue on any unpaid principal.

41

#### ARTICLE V

##### CUSTODY AND INVESTMENT OF FUNDS

**Section 5.01. Creation of Funds and Accounts.** (a) The Issuer hereby establishes and creates the following special trust Funds and Accounts comprising such Funds:

- (1) Project Fund
- (2) Bond Fund
  - (A) Principal Account
  - (B) Interest Account
  - (C) Redemption Account
  - (D) Sinking Fund Installment Account
- (3) Renewal Fund
- (4) Earnings Fund
- (5) Rebate Fund
- (6) Debt Service Reserve Fund
- (7) Repair and Replacement Fund
- (8) Revenue Fund

(b) All of the Funds and Accounts created hereunder shall be held by the Trustee. All moneys required to be deposited with or paid to the Trustee for the credit of any Fund or Account under any provision of this Indenture and all investments made therewith shall be held by the Trustee in trust and applied only in accordance with the provisions of this Indenture, and while held by the Trustee shall constitute part of the Trust Estate (subject to the granting clauses of this Indenture), other than the Rebate Fund, and be subject to the lien hereof.

**Section 5.02. Project Fund.** (a) There shall be deposited in the Project Fund any and all amounts required to be deposited therein pursuant to Sections 4.01, 5.06 and 5.07 or otherwise required to be deposited therein pursuant to the Loan Agreement or this Indenture.

The Trustee shall apply the amounts on deposit in the Project Fund to the payment, or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer, of Project Costs to the extent requisitioned under subsection (b) hereto.

(b) The Trustee is hereby authorized to disburse from the Project Fund amounts required to pay (in whole or in part) the Project Costs and is directed to issue its checks (or, at the direction of the Institution, make wire transfers) for each disbursement from the

43

Project Fund for the Project Costs, upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Institution and approved by the Construction Monitor, as applicable; provided, however, that the Trustee shall retain in the Project Fund an amount equal to the greater of (a) \$60,000 or (b) the lesser of (i) one percent (1%) of the original principal amount of the Initial Bonds or (ii) \$500,000, until an Authorized Representative of the Institution shall have delivered the completion certificate and other documents required by Section 3.2(f) of the Loan Agreement.

The requisition from the Project Fund shall be accompanied by bills or invoices (stamped "paid" by the Person to whom payment was due or with other evidence of payment if reimbursement is to be made to the Institution), including evidence that the bill, invoice or other evidence was not incurred on a date prior to sixty (60) days prior to the date of adoption by the Issuer or the Institution of the Reimbursement Resolution for the Project. Such requisition shall be as set forth in Exhibit D-1 — "Form of Requisition from the Project Fund" and shall be submitted to the Trustee. In addition, in connection with any requisitions under which costs under the Construction Contract will be paid or reimbursed, the Institution shall also submit to the Trustee (i) the certificates set forth in Exhibit D-2 — "Form of Certificate of Construction Manager," Exhibit D-3 — "Form of Certificate of Architect" and Exhibit D-3 — "Form of Project Budget Balance Sheet" and (ii) the approval of the Construction Monitor to the requisitions submitted by the Institution as set forth in the preceding sentence; provided, however, the Initial Requisition (as defined below) shall not require the approval of the Construction Monitor. The Construction Monitor shall not approve any requisition under which costs under the Construction Contract will be paid or reimbursed unless (i) all necessary permits have been obtained in order for construction of the Facility to commence, except for an aggregate amount not to exceed \$1,620,000 which may be approved for "soft" costs and costs of pre-ordering materials and equipment under the Construction Contract for the Project; and (ii) the Construction Monitor receives a notice of title continuation or an endorsement to the title insurance policies as more particularly described in the next paragraph below. The Trustee shall disburse amounts from the Project Fund not later than five (5) Business Days following the receipt of the executed requisition (and approved by the Construction Monitor, as applicable) and accompanying bills or invoices, except that any such requisition and accompanying bills or invoices submitted on the Closing Date (the "Initial Requisition") shall have disbursements made by the Trustee on the Closing Date. The Trustee and the Construction Monitor shall be entitled to conclusively rely on the correctness and accuracy of such requisition as well as the propriety of the signature thereon.

In addition to the foregoing, any requisition submitted to the Trustee and the Construction Monitor for costs of construction, improving and/or renovating the Facility Realty shall be accompanied by a notice of title continuation or an endorsement to the title insurance policies theretofore delivered pursuant to Section 3.7 of the Loan Agreement, indicating that since the last preceding disbursement of any amounts held in the Project Fund, there has been no change in the state of title and no exceptions not theretofore approved by the Issuer and the Trustee (which approvals shall not be unreasonably withheld), which notice or endorsement shall contain no exception for inchoate mechanic's liens (and such affirmative insurance relating thereto as the Issuer and/or the Trustee shall reasonably require) and shall have the effect of redating such policies to the date of the disbursement then being made and increasing the

44

be deposited in the Redemption Account of the Bond Fund. In the event the unpaid principal amount of the Bonds shall be accelerated upon the occurrence of an Event of Default hereunder, the balance in the Revenue Fund, in the Project Fund, in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to Section 3.6 of the Tax Regulatory Agreement and Section 5.07), in the Repair and Replacement Fund and in the Debt Service Reserve Fund shall be deposited in the Bond Fund as provided in Section 8.03.

(g) Except as provided in Section 5.06, all earnings on amounts held in the Project Fund shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Project Fund.

#### Section 5.03. Payments into Renewal Fund; Application of Renewal Fund.

(a) The Net Proceeds resulting from any Loss Event with respect to the Facility, together with any other amounts so required to be deposited therein under the Loan Agreement or the Mortgage, shall be deposited in the Renewal Fund (except as otherwise provided in Section 3.11 of the Mortgage).

(b) In the event the Bonds shall be subject to redemption in whole (either by reason of such Loss Event or otherwise) pursuant to the terms thereof or this Indenture, and the Institution shall have so directed the Trustee in writing within ninety (90) days of the occurrence of such Loss Event, the Trustee shall, after making any transfer to the Rebate Fund as directed pursuant to Section 3.6 of the Tax Regulatory Agreement and Section 5.07, transfer the amounts deposited in the Renewal Fund to the Redemption Account of the Bond Fund.

If, on the other hand,

(1) the Bonds shall not be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise), or

(2) the Bonds shall be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise) and the Institution shall have failed to take action to effect such redemption, or

(3) the Institution shall have notified the Trustee of its intent to rebuild, replace, repair and restore the Facility,

the Trustee shall apply the amounts on deposit in the Renewal Fund, after making any transfer to the Rebate Fund as directed pursuant to Section 3.6 of the Tax Regulatory Agreement and Section 5.07, to such rebuilding, replacement, repair and restoration.

(c) If an Event of Default shall exist at the time of the receipt by the Trustee of the Net Proceeds in the Renewal Fund, the Trustee shall promptly request the written direction of the Majority Holders and shall thereupon apply such Net Proceeds, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and Section 5.07, to the rebuilding, replacement, repair and restoration of the Facility, or for deposit in the Redemption Account of the Bond Fund, as directed by the Majority Holders (or if no such

46

coverage of the policies by an amount equal to the disbursement then being made if the policies do not by their terms provide for such an increase.

No disbursement shall be made unless Bond proceeds in the Project Fund are "in balance" (as described below) with the construction budget for the Project in existence as of the Closing Date (the "Budget") all as provided below; provided, however, the Trustee has no obligation to review the Budget or make any determination with respect to the appropriateness of any disbursement made in accordance with any requisition. The Institution covenants that if the Project Fund is not "in balance" the Institution shall deposit funds with the Trustee in an amount sufficient so that the Project Fund will be "in balance." The Project Fund shall be deemed "in balance" if the Remaining Sources (defined below) equal or exceed the Remaining Uses (defined below) as certified by the Institution in connection with each disbursement from the Project Fund. As used herein, "Remaining Sources" shall mean the amount on deposit in the Project Fund. As used herein, "Remaining Uses" shall mean all amounts on the Budget which have not theretofore been paid.

(c) The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom and shall furnish copies of same to the Issuer or the Institution upon reasonable written request.

(d) The Trustee shall on written request furnish to the Issuer and the Institution within a reasonable time period a written statement of disbursements from the Project Fund, enumerating, among other things, item, cost, amount disbursed, date of disbursement and the person to whom payment was made, together with copies of all bills, invoices or other evidences submitted to the Trustee for such disbursement.

(e) The completion of the Project shall be evidenced as set forth in Section 3.2(f) of the Loan Agreement including the filing of the certificate of an Authorized Representative of the Institution referred to therein. Upon the filing of such certificate, the balance in the Project Fund in excess of the amount, if any, stated in such certificate for the payment of any remaining part of the costs of the Project, shall, after making any transfer to the Rebate Fund as directed pursuant to Section 3.6 of the Tax Regulatory Agreement and Section 5.07, be deposited by the Trustee in the Redemption Account of the Bond Fund. Upon payment of all the costs and expenses incident to the completion of the Project, any balance of such remaining amount in the Project Fund, together with any amount on deposit in the Earnings Fund derived from transfers made thereto from the Project Fund, shall, after making any such transfer to the Rebate Fund, and after depositing in the Debt Service Reserve Fund an amount equal to any deficiency therein, be deposited in the Redemption Account of the Bond Fund to be applied to the redemption of Bonds at the earliest practicable date as set forth in Section 2.03(d). The Trustee shall promptly notify the Institution of any amounts so deposited in the Redemption Account of the Bond Fund pursuant to this Section 5.02(e).

(f) In the event the Institution shall be required to or shall elect to cause the Bonds to be redeemed in whole pursuant to the Loan Agreement, the balance in the Revenue Fund, in the Project Fund, in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to Section 3.6 of the Tax Regulatory Agreement and Section 5.07), in the Repair and Replacement Fund and in the Debt Service Reserve Fund shall

45

direction shall be received within ninety (90) days after request therefor by the Trustee shall have been made, for deposit in the Redemption Account of the Bond Fund).

(d) The Trustee is hereby authorized to apply the amounts in the Renewal Fund to the payment (or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer) of the costs required for the rebuilding, replacement, repair and restoration of the Facility upon written instructions from the Institution. The Trustee is further authorized and directed to issue its checks for each disbursement from the Renewal Fund upon a requisition submitted to the Trustee and signed by an Authorized Representative of the Institution. Each such requisition shall be accompanied by bills, invoices or other evidences or documentation (including, without limitation, a title continuation or other evidence that no mechanics or other liens have been filed) satisfactory to the Trustee. The Trustee shall be entitled to rely on such requisition. The Trustee shall keep and maintain adequate records pertaining to the Renewal Fund and all disbursements therefrom and shall furnish copies of same to the Issuer and the Institution upon reasonable written request therefor.

(e) The date of completion of the restoration of the Facility shall be evidenced to the Issuer and the Trustee by a certificate of an Authorized Representative of the Institution stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Trustee, has been made, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that all property constituting part of the Facility is subject to the terms of the Loan Agreement, and that all property constituting part of the Mortgaged Property is subject to the mortgage lien and security interest of the Mortgage, subject to Permitted Encumbrances, (v) the Rebate Amount applicable with respect to the Net Proceeds and the earnings thereon (with a statement as to the determination of the Rebate Amount and a direction to the Trustee of any required transfer to the Rebate Fund), and (vi) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Institution against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and Section 6.4 of the Loan Agreement, and (z) that no Person other than the Issuer or the Trustee may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Institution will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by the Loan Agreement; (ii) a certificate of an Authorized Representative of the Institution that all costs of rebuilding, repair, restoration and reconstruction of the Facility have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence satisfactory to the Trustee that such costs have been appropriately bonded or that the Institution shall have posted a surety or security at least equal to the amount of such costs); and (iii) a search prepared by a title company, or other evidence satisfactory to the

47



Trustee, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances other than those encumbrances consented to by the Issuer and the Trustee or Permitted Encumbrances.

(f) All earnings on amounts on deposit in the Renewal Fund shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Renewal Fund.

(g) Any surplus remaining in the Renewal Fund after the completion of the rebuilding, replacement, repair and restoration of the Facility shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and Section 5.07, and after depositing, first, in the Debt Service Reserve Fund, and then, in the Repair and Replacement Fund, an amount equal to any deficiency therein, be transferred by the Trustee to the Redemption Account of the Bond Fund.

**Section 5.04. Payments into Bond Fund.** The Trustee shall promptly deposit the following receipts into the Bond Fund:

(a) The interest accruing on any Series of Bonds from the date of original issuance thereof to the date of delivery, which shall be credited to the Interest Account of the Bond Fund and applied to the payment of interest on such Series of Bonds.

(b) Any deposits made into the Redemption Account pursuant to this Indenture, including but not limited to the redemption provision provided in Section 2.03(d), and pursuant to the Loan Agreement, including but not limited to the provisions set forth in Sections 3.2(c), 3.5(a)(ii), 3.7, 6.3(b), 8.10(b), 8.10(c) and 11.4 of the Loan Agreement.

(c) Excess or remaining amounts in the Project Fund required to be deposited (subject to any transfer required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Regulatory Agreement and Section 5.07, or to the Debt Service Reserve Fund to the extent of any deficiency therein) (i) in the Redemption Account of the Bond Fund pursuant to Section 5.02(e) or the first sentence of Section 5.02(f), which shall be kept segregated from any other moneys within such Account, or (ii) in the Bond Fund pursuant to the second sentence of Section 5.02(f).

(d) Loan payments received by the Trustee pursuant to Section 4.3(a)(i), (ii), (iii) or (iv), or Section 4.3(i), of the Loan Agreement, which shall be deposited in the Revenue Fund and disbursed pursuant to Section 5.15.

(e) Advance loan payments received by the Trustee pursuant to Section 4.3(c) of the Loan Agreement, which shall be deposited in the Revenue Fund to be deposited in and credited to the Redemption Account of the Bond Fund.

(f) Any amounts transferred from the Earnings Fund pursuant to Section 5.06(c), which shall be deposited in and credited to the Interest Account of the Bond Fund.

48

Article VI. Bonds for which Sinking Fund Installments are applicable in a principal amount equal to the Sinking Fund Installment then due with respect to such Bonds. Such call for redemption shall be made even though at the time of mailing of the notice of such redemption sufficient moneys therefor shall not have been deposited in the Bond Fund.

(d) Amounts in the Redemption Account of the Bond Fund shall be applied, at the written direction of the Institution, as promptly as practicable, to the purchase of Bonds at prices not exceeding the Redemption Price thereof applicable on the earliest date upon which the Bonds are next subject to optional redemption, plus accrued interest to the Redemption Date. Any amount in the Redemption Account not so applied to the purchase of Bonds by forty-five (45) days prior to the next date on which the Bonds are so redeemable shall be applied to the redemption of Bonds on such Redemption Date. Any amounts deposited in the Redemption Account and not applied within twelve (12) months of their date of deposit to the purchase or redemption of Bonds (except if held in accordance with Article X) shall be transferred to the Interest Account. Upon the purchase of any Bonds out of advance loan payments as provided in this subsection, or upon the redemption of any Bonds, an amount equal to the principal of such Bonds so purchased or redeemed shall be credited against the next ensuing and future Sinking Fund Installments for such Bonds in chronological order of the due dates of such Sinking Fund Installments until the full principal amount of such Bonds so purchased or redeemed shall have been so credited. The portion of any such Sinking Fund Installment remaining after the deduction of such amounts so credited shall constitute and be deemed to be the amount of such Sinking Fund Installment for the purposes of any calculation thereof under this Indenture. The Bonds to be purchased or redeemed shall be selected by the Trustee in the manner provided in Section 6.02. Amounts in the Redemption Account to be applied to the redemption of Bonds shall be paid to the respective Paying Agents on or before the Redemption Date and applied by them on such Redemption Date to the payment of the Redemption Price of the Bonds being redeemed plus interest on such Bonds accrued to the Redemption Date.

(e) In connection with purchases of Bonds out of the Bond Fund as provided in this Section, the Institution shall arrange and the Trustee shall execute such purchases (through brokers or otherwise, and with or without receiving tenders) at the written direction of the Institution. The payment of the purchase price shall be made out of the moneys deposited in the Redemption Account of the Bond Fund and the payment of accrued interest shall be made out of moneys deposited in the Interest Account of the Bond Fund.

(f) The Issuer shall receive a credit in respect of Sinking Fund Installments for any Bonds which are subject to mandatory Sinking Fund Installment redemption and which are delivered by the Issuer or the Institution to the Trustee on or before the forty-fifth (45th) day next preceding any Sinking Fund Installment payment date and for any Bonds which prior to said date have been purchased or redeemed (otherwise than through the operation of the Sinking Fund Installment Account) and cancelled by the Trustee and not theretofore applied as a credit against any Sinking Fund Installment (whether pursuant to Section 5.05(d) or otherwise). Each Bond so delivered, cancelled or previously purchased or redeemed shall be credited by the Trustee at one hundred per cent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date with respect to Bonds of such Series and maturity and the principal amount of such Bonds to be redeemed by operation of the Sinking Fund Installment Account on the due date of such Sinking Fund Installment shall be reduced

50

(g) The excess amounts referred to in Section 5.05(d), which shall be deposited in and credited to the Interest Account of the Bond Fund.

(h) Any amounts transferred from the Redemption Account pursuant to Section 5.05(h), which shall be deposited to the Interest Account, the Principal Account and the Sinking Fund Installment Account of the Bond Fund, as the case may be and in such order of priority, and applied solely to such purposes.

(i) Amounts in the Renewal Fund required by Section 5.03 or by the Mortgage to be deposited (subject to any transfer required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Regulatory Agreement and Section 5.07 or first, to the Debt Service Reserve Fund, and then, to the Repair and Replacement Fund to the extent of any deficiency therein) to the Redemption Account of the Bond Fund pursuant to Section 5.03(g).

(j) All other receipts when and if required by the Loan Agreement or by this Indenture or by any other Security Document to be paid into the Bond Fund, which shall be credited (except as provided in Section 8.03) to the Redemption Account of the Bond Fund.

(k) Any amounts transferred from the Debt Service Reserve Fund pursuant to Section 5.13, which shall be deposited in and credited to the Interest Account, the Principal Account, the Sinking Fund Installment Account or the Redemption Account, as the case may be, of the Bond Fund.

(l) Any amounts transferred from the Repair and Replacement Fund pursuant to Section 5.14, which shall be deposited in and credited to the Interest Account, the Principal Account, the Sinking Fund Installment Account or the Redemption Account, as the case may be, of the Bond Fund.

**Section 5.05. Application of Bond Fund Moneys.** (a) The Trustee shall (i) on each Interest Payment Date pay or cause to be paid out of the Interest Account in the Bond Fund the interest due on the Bonds, and (ii) further pay out of the Interest Account of the Bond Fund any amounts required for the payment of accrued interest upon any purchase or redemption (including any mandatory Sinking Fund Installment redemption) of Bonds.

(b) The Trustee shall on each principal payment date on the Bonds pay or cause to be paid to the respective Paying Agents therefor out of the Principal Account of the Bond Fund, the principal amount, if any, due on the Bonds (other than such as shall be due by mandatory Sinking Fund Installment redemption), upon the presentation and surrender of the requisite Bonds.

(c) There shall be paid from the Sinking Fund Installment Account of the Bond Fund to the Paying Agents on each Sinking Fund Installment payment date in immediately available funds the amounts required for the Sinking Fund Installment due and payable with respect to Bonds which are to be redeemed from Sinking Fund Installments on such date (accrued interest on such Bonds being payable from the Interest Account of the Bond Fund). Such amounts shall be applied by the Paying Agents to the payment of such Sinking Fund Installment when due. The Trustee shall call for redemption, in the manner provided in

49

accordingly, and any excess over such principal amount shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by application of Sinking Fund Installment payments shall be accordingly reduced.

(g) The Institution shall on or before the forty-fifth (45th) day next preceding each Sinking Fund Installment payment date furnish the Trustee with the certificate of an Authorized Representative of the Institution indicating whether or not and to what extent the provisions of this Section are to be availed of with respect to such Sinking Fund Installment payment, stating, in the case of the credit provided for, that such credit has not theretofore been applied against any Sinking Fund Installment and confirming that immediately available cash funds for the balance of the next succeeding prescribed Sinking Fund Installment payment will be paid on or prior to the next succeeding Sinking Fund Installment payment date.

(h) Moneys in the Redemption Account of the Bond Fund which are not set aside or deposited for the redemption or purchase of Bonds shall be transferred by the Trustee to the Interest Account, to the Principal Account or to the Sinking Fund Installment Account of the Bond Fund.

**Section 5.06. Payments into Earnings Fund; Application of Earnings Fund.**

(a) All investment income or earnings on amounts held in the Project Fund, the Renewal Fund, the Debt Service Reserve Fund or any other special fund (other than the Rebate Fund, the Repair and Replacement Fund or the Bond Fund) shall be deposited upon receipt by the Trustee into the Earnings Fund (except that earnings on amounts in the Debt Service Reserve Fund shall be retained therein to the extent necessary to meet the Debt Service Reserve Fund Requirement). The Trustee shall keep separate accounts of all amounts deposited in the Earnings Fund and by journal entry indicate the Fund source of the income or earnings.

(b) On the first Business Day following each Computation Period (as defined in the Tax Regulatory Agreement), the Trustee shall withdraw from the Earnings Fund and deposit to the Rebate Fund an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of the last day of the Computation Period. In the event of any deficiency, the balance required shall be provided by the Institution pursuant to the Tax Regulatory Agreement. Computations of the amounts on deposit in each Fund and of the Rebate Amount shall be furnished to the Trustee by the Institution in accordance with the Tax Regulatory Agreement.

(c) The foregoing notwithstanding, the Trustee shall not be required to transfer amounts from the Earnings Fund to the Rebate Fund (and shall instead apply such amounts in the Earnings Fund as provided in the immediately following two sentences), if the Institution shall deliver to the Trustee a certificate of an Authorized Representative of the Institution to the effect that (x) the applicable requirements of a spending exception to rebate have been satisfied as of the relevant semiannual period as set forth in the Tax Regulatory Agreement, (y) the proceeds of the Bonds have been invested in obligations the interest on which is not included in gross income for federal income tax purposes under Section 103 of the Code or (z) the proceeds of the Bonds have been invested in obligations the Yield on which (calculated as set forth in the Tax Regulatory Agreement) does not exceed the Yield on such Bonds (calculated as set forth in the Tax Regulatory Agreement). Any amounts on deposit in the Earnings Fund

51



prior to the Project Completion Date shall be deposited in the Project Fund until the completion of the Project as provided in Section 3.2(f) of the Loan Agreement, and thereafter, but prior to the first Computation Date, in the Interest Account of the Bond Fund. Any amounts on deposit in the Earnings Fund after the Project Completion Date following the transfers to the Rebate Fund required by this Section shall be deposited in the Interest Account of the Bond Fund.

(d) Notwithstanding the foregoing, to the extent there are insufficient amounts in the Bond Fund to pay principal of or interest on the Bonds when due, amounts in the Earnings Fund shall be transferred to the Bond Fund up to the amount necessary to cure such insufficiency.

**Section 5.07. Payments into Rebate Fund; Application of Rebate Fund**

(a) The Rebate Fund and the amounts deposited therein shall not be subject to a security interest, pledge, assignment, lien or charge in favor of the Trustee, any Bondholder or any other Person.

(b) The Trustee, upon the receipt of a certification of the Rebate Amount (as defined in the Tax Regulatory Agreement) from an Authorized Representative of the Institution, shall deposit in the Rebate Fund within sixty (60) days following each Computation Date (as defined in the Tax Regulatory Agreement), an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of such Computation Date. If there has been delivered to the Trustee a certification of the Rebate Amount in conjunction with the completion of the Project pursuant to Section 3.2(f) of the Loan Agreement or the restoration of the Facility pursuant to Section 5.03, at any time during a Bond Year, the Trustee shall deposit in the Rebate Fund at that time an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated at the completion of the Project or the restoration of the Facility as aforesaid. The amount deposited in the Rebate Fund pursuant to the previous sentences shall be withdrawn from the Earnings Fund. If the amount on deposit in the Rebate Fund following such deposit is less than the Rebate Amount, the Trustee shall promptly deliver a notice stating the amount of such deficiency to the Institution. It is provided in the Loan Agreement that promptly upon receipt of such notice, the Institution shall deliver the amount necessary to make up such deficiency to the Trustee for deposit in the Rebate Fund.

(c) If within sixty (60) days following any Computation Date, the amount on deposit in the Rebate Fund exceeds the Rebate Amount, the Trustee, upon the receipt of written instructions from an Authorized Representative of the Institution, shall withdraw such excess amount and deposit it in the Project Fund until the completion of the Project as provided in Section 3.2(f) of the Loan Agreement, or, after the completion of the Project, deposit it in the Interest Account of the Bond Fund.

(d) The Trustee, upon the receipt of written instructions from an Authorized Representative of the Institution, shall pay to the United States, out of amounts in the Rebate Fund, (i) not less frequently than once every five (5) years after the Closing Date, an amount such that, together with prior amounts paid to the United States, the total paid to the United States is equal to 90% of the Rebate Amount with respect to the Initial Bonds as of the date of such payment and (ii) notwithstanding the provisions of Article X, not later than thirty (30) days after the date on which all Initial Bonds have been paid in full, 100% of the Rebate Amount as of the date of payment.

52

and Accounts as may be required from time to time pursuant to the provisions of this Article. The Trustee shall not be liable for losses incurred as a result of actions taken in good faith in accordance with this Section 5.09(c). As soon as practicable after any such sale, redemption or exchange, the Trustee shall give notice thereof to the Issuer and the Institution.

(d) Neither the Trustee nor the Issuer shall be liable for any loss arising from, or any depreciation in the value of any obligations in which moneys of the Funds and Accounts shall be invested in accordance with this Indenture. The investments authorized by this Section 5.09 shall at all times be subject to the provisions of applicable law, as amended from time to time.

(e) In computing the amount in any Fund or Account, obligations purchased as an investment of moneys therein shall be valued at fair market value as determined by the Trustee one month prior to each Interest Payment Date.

The fair market value of Qualified Investments shall be determined as follows:

(i) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*), the average bid and asked prices for such investments so published on or most recently prior to such time of determination;

(ii) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*, the average bid price at such nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or as quoted in the Interactive Data Service; and

(iii) as to certificates of deposit and bankers acceptances and other investments, the face amount thereof, plus accrued interest.

If more than one provision of this definition of "fair market value" shall apply at any time to any particular investment, the fair market value thereof at such time shall be determined in accordance with the provision establishing the lowest value for such investment.

(f) In the case of the Debt Service Reserve Fund, a "surplus" means the amount by which the amount on deposit therein is in excess of the Debt Service Reserve Fund Requirement. On each Fund Valuation Date, and upon any withdrawal from the Debt Service Reserve Fund, the Trustee shall determine the amount on deposit in the Debt Service Reserve Fund. If on any such date a deficiency exists, the Trustee shall notify the Issuer and the Institution of such deficiency and that such deficiency must be replenished by the Institution as required by Section 4.3(a)(vi) of the Loan Agreement. If a surplus exists, the Trustee shall notify the Issuer and the Institution thereof and, subject to the requirements of Section 3.6 of the Tax Regulatory Agreement, shall upon written instructions of the Institution transfer an amount equal to such surplus to the Project Fund until the completion of the Project as provided in Section 3.2(f) of the Loan Agreement and thereafter shall transfer such amount to the Interest Account of the Bond Fund.

54

**Section 5.08. Transfer to Rebate Fund.** The Trustee shall have no obligation under this Indenture to transfer any amounts to the Rebate Fund unless the Trustee shall have received specific written instructions from an Authorized Representative of the Institution to make such transfer.

**Section 5.09. Investment of Funds and Accounts.** (a) Amounts in any Fund or Account established under this Indenture may, if and to the extent then permitted by law, be invested only in Qualified Investments provided that any Qualified Investment shall not have a maturity date greater than five (5) years from the date of the making of such investment unless such Qualified Investment may be put at par at any time at the option of the owner thereof, and provided, further, that any investment of amounts held in the Debt Service Reserve Fund shall be limited to Government Obligations. Any investment herein authorized is subject to the condition that no portion of the proceeds derived from the sale of the Bonds shall be used, directly or indirectly, in such manner as to cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. In particular, (i) unexpended Bond proceeds transferred from the Project Fund (or from the Earnings Fund with respect to amounts deposited therein from the Project Fund) to the Redemption Account of the Bond Fund pursuant to Section 5.02(e) and (ii) excess title or property insurance proceeds, excess proceeds after the release or substitution of Facility Realty or Facility Personally, capital campaign proceeds or such other proceeds deposited to the Redemption Account of the Bond Fund pursuant to Section 5.04(b) may not be invested at a Yield (as defined in the Tax Regulatory Agreement) which is greater than the Yield on the applicable Series of Bonds. Such investments shall be made by the Trustee only at the written request of an Authorized Representative of the Institution; and if such investment is to be in one or more certificates of deposit, investment agreements or guaranteed investment contracts, then such written request shall include written assurance to the effect that such investment complies with the Tax Regulatory Agreement. Any investment hereunder shall be made in accordance with the Tax Regulatory Agreement, and the Institution shall so certify to the Trustee with each such investment direction as referred to below. Such investments shall mature in such amounts and at such times as may be necessary to provide funds when needed to make payments from the applicable Fund. Net income or gain received and collected from such investments shall be credited and losses charged to (i) the Rebate Fund with respect to the investment of amounts held in the Rebate Fund, (ii) the Bond Fund with respect to the investment of amounts held in the Bond Fund, (iii) the Repair and Replacement Fund with respect to the investment of amounts held in the Repair and Replacement Fund and (iv) the Earnings Fund with respect to the investment of amounts held in any other Fund.

(b) At the written request of an Authorized Representative of the Institution no sooner than ten (10) days prior to each Loan Payment Date under the Loan Agreement, the Trustee shall notify the Institution of the amount of such net investment income or gain received and collected subsequent to the last such loan payment and the amount then available in the various Accounts of the Bond Fund.

(c) Upon the written direction of an Authorized Representative of the Institution, the Trustee shall sell at the best price reasonably obtainable, or present for redemption or exchange, any obligations in which moneys shall have been invested to the extent necessary to provide cash in the respective Funds or Accounts, to make any payments required to be made therefrom, or to facilitate the transfers of moneys or securities between various Funds

53

(g) In the case of the Repair and Replacement Fund, a "surplus" means the amount by which the amount on deposit therein is in excess of the Repair and Replacement Fund Requirement. On each Fund Valuation Date, and upon any withdrawal from the Repair and Replacement Fund, the Trustee shall determine the amount on deposit in the Repair and Replacement Fund. If on any such date a deficiency exists, the Trustee shall notify the Issuer and the Institution of such deficiency and that such deficiency must be replenished by the Institution as required by Section 4.3(j) of the Loan Agreement. If a surplus exists, the Trustee shall notify the Issuer and the Institution thereof and shall upon written instructions of the Institution transfer an amount equal to such surplus to the Interest Account of the Bond Fund.

**Section 5.10. Application of Moneys in Certain Funds for Retirement of Bonds.** Notwithstanding any other provisions of this Indenture, if on any Interest Payment Date or Redemption Date the amounts held in the Funds established under this Indenture (other than the Earnings Fund and the Rebate Fund) are sufficient to pay one hundred percent (100%) of the principal or Redemption Price, as the case may be, of all Outstanding Bonds and the interest accruing on such Bonds to the next date on which such Bonds are redeemable or payable, as the case may be, whichever is earlier, the Trustee shall so notify the Issuer and the Institution. Upon receipt of written instructions from an Authorized Representative of the Institution directing such redemption, the Trustee shall proceed to redeem all such Outstanding Bonds in the manner provided for redemption of such Bonds by this Indenture.

**Section 5.11. Repayment to the Institution from the Funds.** After payment in full of the Bonds (in accordance with Article X) and the payment of all fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents and all other amounts required to be paid hereunder and under each of the Security Documents, and the payment of any amounts which the Trustee is directed to rebate to the federal government pursuant to this Indenture and the Tax Regulatory Agreement, all amounts remaining in any Fund shall be paid to the Institution upon the expiration or sooner termination of the term of the Loan Agreement as provided in Section 4.3(g) of the Loan Agreement.

**Section 5.12. Non-presentment of Bonds.** In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the Redemption Date thereof, or otherwise, and funds sufficient to pay any such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, together with interest to the date on which principal is due, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to pay such funds to the Person entitled thereto or if the Person is not known to the Trustee, to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond. Such amounts so held shall, pending payment to the Holder of such Bond, (y) be subject to any rebate requirement as set forth in the Tax Regulatory Agreement or this Indenture, and (z) shall be uninvested, or, if invested, invested or re-invested only in Government Obligations maturing within thirty (30) days. Funds remaining with the Trustee as above and unclaimed for the earlier of two (2) years or one month less than the applicable statutory escheat period shall be paid to the Institution. After the payment of such unclaimed moneys to the Institution, the Holder of such Bond shall thereafter look only to the Institution for the payment

55

thereof, and all obligations of the Trustee or such Paying Agent with respect to such moneys shall thereupon cease.

**Section 5.13. Debt Service Reserve Fund.** (a) If on any Interest Payment Date or Redemption Date on the Bonds the amount in the Interest Account of the Bond Fund (after taking into account amounts available to be transferred to the Interest Account from the Project Fund) shall be less than the amount of interest then due and payable on the Bonds, or if on any principal payment date on the Bonds the amount in the Principal Account shall be less than the amount of principal of the Bonds then due and payable, or if on any Sinking Fund Installment payment date for the Bonds the amount in the Sinking Fund Installment Account of the Bond Fund shall be less than the amount of the Sinking Fund Installment then due and payable on the Bonds, in each case, after giving effect to all payments received by the Trustee in immediately available funds by 10:00 a.m. (New York City time) on such date from or on behalf of the Institution or the Issuer on account of such interest, principal or Sinking Fund Installment (and after any transfers to the Bond Fund from the Earnings Fund and the Repair and Replacement Fund), the Trustee forthwith shall transfer moneys from the Debt Service Reserve Fund, first, to such Interest Account, second to such Principal Account, and third, to such Sinking Fund Installment Account, all to the extent necessary to make good any such deficiency, all pursuant to Section 5.15.

Upon the occurrence of an Event of Default hereunder and the exercise by the Trustee of remedies in the Loan Agreement and this Indenture, any moneys in the Debt Service Reserve Fund shall be transferred by the Trustee to the Bond Fund and applied in accordance with Section 8.03 hereof, notice of which shall be given by the Trustee to the Institution, the Issuer and the Bondholders. On the Loan Payment Date next preceding the final maturity date of the Bonds, any moneys in the Debt Service Reserve Fund shall be transferred to the Bond Fund and used to pay the principal and interest on the Bonds on the final maturity date.

(b) The Trustee shall give to the Institution on or prior to each Loan Payment Date on which the Institution is obligated pursuant to Section 4.3(a)(vi) of the Loan Agreement to pay to the Trustee amounts in respect of any deficiency in the Debt Service Reserve Fund, telephonic notice (to be promptly confirmed in writing) specifying any such deficiency in the Debt Service Reserve Fund. The failure of the Trustee to deliver such notice or any defect in such notice shall not relieve the Issuer from any of its obligations hereunder or any other obligor from any of its obligations under any of the Security Documents.

(c) In the event that the Institution shall deliver written notice to the Trustee of its intention to redeem Bonds, the Institution may direct the Trustee to apply such amounts in the Debt Service Reserve Fund to effect such redemption such that the amount remaining in the Debt Service Reserve Fund upon such redemption shall not be less than the reduced Debt Service Reserve Fund Requirement as will be applicable to the remainder of the Bonds Outstanding.

56

- SECOND: to the Rebate Fund, any amount of moneys required to be deposited in the Rebate Fund pursuant to Section 5.07 or the Tax Regulatory Agreement;
- THIRD: to the Debt Service Reserve Fund, upon the determination of a deficiency pursuant to Section 5.13(b), an amount of moneys equal to one-sixth (1/6) of such deficiency in that amount of moneys necessary to cause the sum on deposit in the Debt Service Reserve Fund to equal the Debt Service Reserve Fund Requirement;
- FOURTH: following the Project Completion Date, \$4,166.67 to the Repair and Replacement Fund until the amount on deposit in the Repair and Replacement Fund equals the Repair and Replacement Fund Requirement; provided that, following any disbursement from the Repair and Replacement Fund, the amount required to be deposited therein shall additionally include an amount necessary to replenish the Repair and Replacement Fund by the total amount of such disbursement deposited in equal amounts on each Loan Payment Date over the 24-month period to begin on the Loan Payment Date following such disbursement;
- FIFTH: with respect to a redemption pursuant to Section 2.03 (other than Section 2.03(c)), to the Bond Fund, an amount of money equal to the Redemption Price due on the Redemption Date, and
- SIXTH: to the Institution, all amounts of money remaining on deposit in the Revenue Fund, if any, after the Trustee has made the disbursements required in FIRST through FIFTH above; provided that if an Event of Default has occurred and is in then in effect, the Trustee shall only transfer to the Institution the amount necessary to pay operating and capital expenses required to be paid for that calendar month as provided in the Institution's annual budget as shall be certified by the Institution to the Trustee.

58

#### Section 5.14. Repair and Replacement Fund.

(a) The Trustee shall deposit into the Repair and Replacement Fund all amounts required to be deposited therein pursuant to this Indenture and all payments required to be made by the Institution pursuant to Section 4.3(j) of the Loan Agreement.

(b) The Trustee shall, at the request of an Authorized Representative of the Institution, disburse moneys from the Repair and Replacement Fund in payment of the costs set forth in subsection (c) below upon receipt by the Trustee of requisitions in the form set forth in Exhibit E — "Form of Requisition from the Repair and Replacement Fund" signed by an Authorized Representative of the Institution. The Trustee shall be fully protected in releasing moneys from the Repair and Replacement Fund based on such requisition signed by an Authorized Representative of the Institution.

(c) After the Project Completion Date, moneys in the Repair and Replacement Fund shall be disbursed by the Trustee (y) to the Institution or to the Institution's order to pay the cost of (i) improvements to the Facility, (ii) replacement or repair of furniture and equipment or other components of the Facility, and (iii) purchasing additional furniture and equipment for the Facility; and (z) to pay principal and interest on the Bonds to the extent payments by the Institution are insufficient therefor (prior to the use of moneys in the Debt Service Reserve Fund and after the use of moneys in the Earning Fund for such purpose). In no event will the balance of the Repair and Replacement Fund be required to exceed the Repair and Replacement Fund Requirement. As long as no Event of Default has occurred and is continuing, if, at any time, the balance of the Repair and Replacement Fund exceeds the Repair and Replacement Fund Requirement, at the written request of the Institution, the sum of such excess shall be delivered by the Trustee to the Institution to be applied by the Institution for any lawful purpose of the Institution.

**Section 5.15. Revenue Fund.** There shall be deposited in the Revenue Fund as and when received, (i) the payments paid to the Trustee by the Institution pursuant to Section 4.3 of the Loan Agreement, (ii) transfers made by the Depository Bank pursuant to the Account Direction Agreement and (iii) all other moneys to be deposited into the Revenue Fund pursuant to the Loan Agreement or this Indenture.

All moneys held on deposit in the Revenue Fund shall be transferred or disbursed by the Trustee on each Loan Payment Date, in the following order of priority:

- FIRST: (i) to the Bond Fund, an amount of moneys, less any credits received against such amounts, equal to one-third (1/3) of the interest due on the Bonds on the next Interest Payment Date, plus (ii) to the Bond Fund, an amount of money equal to one-sixth (1/6) of the Sinking Fund Installment due on any Sinking Fund Installment payment date occurring in the next 12 months, plus (iii) to the Bond Fund, an amount of money equal to one-sixth (1/6) of the principal due on any principal payment date occurring in the next 12 months, plus (iv) any amount previously due under this paragraph but that remains unpaid because of an insufficiency in moneys available therefor;

57

#### ARTICLE VI

##### REDEMPTION OF BONDS

**Section 6.01. Privilege of Redemption and Redemption Price.** Bonds or portions thereof subject to redemption prior to maturity shall be redeemable, upon mailed notice as provided in this Article, at the times, at the Redemption Prices and upon such terms in addition to and consistent with the terms contained in this Article as shall be specified in this Indenture and in said Bonds.

**Section 6.02. Selection of Bonds to be Redeemed.** In the event of redemption of less than all the Outstanding Bonds of the same Series and maturity, the particular Bonds or portions thereof to be redeemed shall be selected by the Trustee in such manner as the Trustee in its discretion may deem fair, except that (i) Bonds of a Series to be redeemed from Sinking Fund Installments shall be redeemed by lot, and (ii) to the extent practicable, the Trustee shall select Bonds of a Series for redemption such that no Bond of such Series shall be of a denomination of less than the Authorized Denomination for such Series of Bonds. In the event of redemption of less than all the Outstanding Bonds of the same Series stated to mature on different dates, the principal amount of such Series of Bonds to be redeemed shall be applied in inverse order of maturity of the Outstanding Series of Bonds to be redeemed and by lot within a maturity. The portion of Bonds of any Series to be redeemed in part shall be in the principal amount of the minimum Authorized Denomination thereof or some integral multiple thereof and, in selecting Bonds of a particular Series for redemption, the Trustee shall treat each such Bond as representing that number of Bonds of such Series which is obtained by dividing the principal amount of such registered Bond by the minimum Authorized Denomination thereof (referred to below as a "unit") then issuable rounded down to the integral multiple of such minimum Authorized Denomination. If it is determined that one or more, but not all, of the units of principal amount represented by any such Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Holder of such Bond shall forthwith surrender such Bond to the Trustee for (a) payment to such Holder of the Redemption Price of the unit or units of principal amount called for redemption and (b) delivery to such Holder of a new Bond or Bonds of such Series in the aggregate unpaid principal amount of the unredeemed balance of the principal amount of such Bond. New Bonds of the same Series and maturity representing the unredeemed balance of the principal amount of such Bond shall be issued to the registered Holder thereof, without charge therefor. If the Holder of any such Bond of a denomination greater than a unit shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the unit or units of principal amount called for redemption (and to that extent only).

**Section 6.03. Notice of Redemption.** When redemption of any Bonds is requested or required pursuant to this Indenture, the Trustee shall give notice of such redemption in the name of the Issuer, specifying the name of the Series, CUSIP number, Bond numbers, the date of original issue of such Series, the date of mailing of the notice of redemption, maturities, interest rates and principal amounts of the Bonds or portions thereof to be redeemed, the Redemption Date, the Redemption Price, and the place or places where amounts due upon such redemption will be payable (including the name, address and telephone number of a contact person at the Trustee) and specifying the principal amounts of the Bonds or portions thereof to be

59

payable and, if less than all of the Bonds of any maturity are to be redeemed, the numbers of such Bonds or portions thereof to be so redeemed. Such notice shall further state that on such date there shall become due and payable upon each Bond or portion thereof to be redeemed the Redemption Price thereof together with interest accrued to the Redemption Date, and that from and after such date interest thereon shall cease to accrue and be payable. Such notice may set forth any additional information relating to such redemption. The Trustee, in the name and on behalf of the Issuer, (i) shall mail a copy of such notice by first class mail, postage prepaid, not more than sixty (60) nor less than thirty (30) days prior to the Redemption Date, to the registered owners of any Bonds which are to be redeemed, at their last addresses, if any, appearing upon the registration books, but any defect in such notice shall not affect the validity of the proceedings for the redemption of such Series of Bonds with respect to which proper mailing was effected; and (ii) cause notice of such redemption to be sent to the national information service that disseminates redemption notices. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. In the event of a postal strike, the Trustee shall give notice by other appropriate means selected by the Trustee in its discretion. If any Bond shall not be presented for payment of the Redemption Price within sixty (60) days of the Redemption Date, the Trustee shall mail a second notice of redemption to such Holder by first class mail, postage prepaid. Any amounts held by the Trustee due to non-presentment of Bonds for payments on or after any Redemption Date shall be retained by the Trustee for a period of at least one year after the final maturity date of such Bonds. Further, if any Holders of Bonds shall constitute registered depositories, the notice of redemption described in the first sentence of this Section 6.03 shall be mailed to such Holders at least two (2) days prior to the mailing of such notice to all Holders.

If notice of redemption shall have been given as aforesaid, the Bonds of such Series called for redemption shall become due and payable on the Redemption Date, provided, however, that with respect to any optional redemption of the Bonds of a Series, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds of such Series to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem the Bonds of such Series. In the event that such notice of optional redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. If a notice of optional redemption shall be unconditional, or if the conditions of a conditional notice of optional redemption shall have been satisfied, then upon presentation and surrender of the Bonds of such Series so called for redemption at the place or places of payment, such Series of Bonds shall be redeemed.

Under no circumstances shall the Trustee be required to expend any of its own funds for any purpose for which funds are to be disbursed under this Indenture.

So long as the Securities Depository is effecting book entry transfers of the Bonds, the Trustee shall provide the notices specified above only to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the

60

## ARTICLE VII

### PARTICULAR COVENANTS

**Section 7.01. Payment of Principal and Interest.** The Issuer covenants that it will from the sources herein contemplated promptly pay or cause to be paid the interest, principal, Purchase Price or Redemption Price of, and Sinking Fund Installments for, the Bonds, together with interest accrued thereon, at the place, on the dates and in the manner provided in this Indenture and in the Bonds according to the true intent and meaning thereof.

**Section 7.02. Performance of Covenants; Authority.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto. The Issuer covenants that it is duly authorized under the Constitution and laws of the State, including particularly its Organizational Documents, to issue the Bonds authorized hereby and to execute this Indenture, to make the Loan to the Institution pursuant to the Loan Agreement and the Promissory Note, to assign the Loan Agreement and the Promissory Note, to execute and deliver the Assignment of Mortgage, and to pledge the loan payments, revenues and receipts hereby pledged in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the Holders thereof are and will be the valid and enforceable special limited revenue obligations of the Issuer according to the import thereof.

**Section 7.03. Books and Records; Certificate as to Defaults.** The Issuer and the Trustee each covenant and agree that, so long as any of the Bonds shall remain Outstanding, proper books of record and account will be kept showing complete and correct entries of all transactions relating to the Project and the Facility, and that the Bondholders shall have the right at all reasonable times to inspect all records, accounts and data relating thereto. In this regard, so long as the Loan Agreement is in full force and effect, records furnished by the Issuer and the Institution to, or kept by, the Trustee in connection with its duties as such shall be deemed to be in compliance with the Issuer's obligations under this Section 7.03. Within thirty (30) days after receiving the certificate from the Institution as provided in Section 8.29(b) of the Loan Agreement, the Trustee shall render to the Issuer a statement that moneys received by the Trustee pursuant to the Loan Agreement and the Promissory Note were applied by it to the payment of the principal or Redemption Price, if any, of, Sinking Fund Installments for, and interest on the Bonds, at the place, on the dates and in the manner provided in this Indenture and that the Trustee has no knowledge of any defaults under this Indenture, the Promissory Note or the Loan Agreement or any other Security Document or specifying the particulars of such defaults which may exist.

Upon reasonable written request, the Trustee shall make available to the Institution for its inspection during normal business hours, its records with respect to the Project and the Facility.

62

part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Bond (having been mailed notice from the Trustee, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

**Section 6.04. Payment of Redeemed Bonds.** (a) Notice having been given in the manner provided in Section 6.03, the Bonds or portions thereof so called for redemption shall become due and payable on the Redemption Dates so designated at the Redemption Price, plus interest accrued and unpaid to the Redemption Date. If, on the Redemption Date, moneys for the redemption of all the Bonds or portions thereof to be redeemed, together with interest to the Redemption Date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the Redemption Date, (i) interest on the Bonds or portions thereof so called for redemption shall cease to accrue and become payable, (ii) the Bonds or portions thereof so called for redemption shall cease to be entitled to any lien, benefit or security under this Indenture, and (iii) the Holders of the Bonds or portions thereof so called for redemption shall have no rights in respect thereof, except to receive payment of the Redemption Price together with interest accrued to the Redemption Date. If said moneys shall not be so available on the Redemption Date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

(b) Payment of the Redemption Price plus interest accrued to the Redemption Date shall be made to or upon the order of the registered owner only upon presentation of such Bonds for cancellation and exchange as provided in Section 6.05; provided, however, that any Holder of at least \$1,000,000 in original aggregate principal amount of the Initial Bonds may, by written request to the Trustee no later than five (5) days prior to the Redemption Date, direct that payments of Redemption Price and accrued interest to the Redemption Date be made by wire transfer as soon as practicable after tender of the Bonds in federal funds at such wire transfer address as the owner shall specify to the Trustee in such written request.

**Section 6.05. Cancellation of Redeemed Bonds.** (a) All Bonds redeemed in full under the provisions of this Article, shall forthwith be cancelled and returned to the Issuer and no Bonds shall be executed, authenticated or issued hereunder in exchange or substitution therefor, or for or in respect of any paid portion of a Bond.

(b) If there shall be drawn for redemption less than all of a Bond, as described in Section 6.02, the Issuer shall execute and the Trustee shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, a Bond or Bonds of like Series and maturity in any of the authorized denominations.

**Section 6.06. No Partial Redemption After Default.** Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing an Event of Default hereunder, there shall be no redemption of less than all of the Bonds Outstanding.

61

The Trustee agrees that, upon the written request of the Institution or the Issuer, it will, not more than twice in each calendar year, provide a statement to the requesting party setting forth the principal amount of Bonds Outstanding as of the date of such statement.

**Section 7.04. Loan Agreement.** An executed copy of the Loan Agreement will be on file in the office of the Issuer and in the designated corporate trust office of the Trustee. Reference is hereby made to the Loan Agreement for a detailed statement of the terms and conditions thereof and for a statement of the rights and obligations of the parties thereunder. All covenants and obligations of the Institution under the Loan Agreement shall be enforceable either by the Issuer or by the Trustee, to whom, in its own name or in the name of the Issuer, is hereby granted the right, to the extent provided therefor in this Section 7.04 and subject to the provisions of Section 9.02, to enforce all rights of the Issuer and all obligations of the Institution under the Loan Agreement, whether or not the Issuer is enforcing such rights and obligations. The Trustee shall take such action in respect of any matter as is provided to be taken by it in the Loan Agreement (including, without limitation, Sections 3.5, 6.3 and 8.10 thereof) upon compliance or noncompliance by the Institution and the Issuer with the provisions of the Loan Agreement relating to the same.

**Section 7.05. Creation of Liens; Indebtedness.** It is the intention of the Issuer and the Trustee that the Mortgage is and will continue to be a mortgage lien upon the Mortgaged Property (subject only to Permitted Encumbrances). The Issuer shall not create or suffer to be created, or incur or issue any evidences of indebtedness secured by, any lien or charge upon or pledge of the Trust Estate, except the lien, charge and pledge created by this Indenture and the other Security Documents.

**Section 7.06. Ownership; Instruments of Further Assurance.** The Trustee on behalf of the Institution, subject to Section 7.04 and only upon the written direction of any Bondholder, shall defend the interest of the Institution in the Facility and every part thereof for the benefit of the Holders of the Bonds, to the extent permitted by law, against the claims and demands of all Persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular the property described herein and in the remainder of the Trust Estate, subject to the liens, pledge and security interests of this Indenture and of the other Security Documents and the loan payments, revenues and receipts pledged hereby to the payment of the principal, Purchase Price or Redemption Price, if any, of, Sinking Fund Installments for, and interest on the Bonds. Any and all property hereafter acquired which is of the kind or nature herein provided to be and become subject to the lien, pledge and security interest hereof (other than the Institution's Property as defined in the Loan Agreement) and of the other Security Documents shall ipso facto, and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the lien, pledge and security interest of this Indenture and the Mortgage as fully and completely as though specifically described herein and therein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer heretofore made by this Section 7.06.

63

**Section 7.07. Security Agreement; Filing.** (a) This Indenture constitutes a "security agreement" within the meaning of Article 9 (Secured Transactions) of the New York State Uniform Commercial Code. The security interest of the Trustee, as created by this Indenture, in the rights and other intangible interests described herein, shall be perfected by the filing of a financing statement by the Institution, at the direction of the Issuer, in the office of the Secretary of State of the State of New York, which financing statement shall be in accordance with the New York State Uniform Commercial Code-Secured Transactions. Subsequent to the foregoing filings, this Indenture shall be re-indexed, and financing and continuation statements shall be filed and re-filed, by the Trustee whenever in the Opinion of Counsel to the Institution (which opinion shall be reasonably acceptable to and addressed to the Trustee) such action is necessary to preserve the lien and security interest hereof. Any such filings or re-filings shall be prepared and filed by the Institution and delivered to the Trustee (if electronic filing is not elected by the Issuer) on a timely basis accompanied by any fees or requisite charges and the Opinion of Counsel referred to above. The Trustee will thereupon effect any such filings and re-filings of financing and continuation statements in said office of the Secretary of State, and promptly notify the Institution of any such filings.

(b) The Issuer and the Trustee acknowledge that, as of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code provides that an initial financing statement filed in connection with a "public-finance transaction" is effective for a period of thirty (30) years after the date of filing if such initial financing statement indicates that it is filed in connection with a public-finance transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code defines a "public-finance transaction" as a secured transaction in connection with which (x) debt securities are issued, (y) all or a portion of the debt securities issued have an initial stated maturity of at least twenty (20) years, and (z) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a security interest is a state or a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

(c) The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Initial Bonds, and because the Initial Bonds are municipal debt securities with a term that is at least twenty (20) years in duration, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statements in order to preserve the liens and security interests that they create for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

Subsequent to the initial filings, if it is necessary to re-file financing statements and/or file continuation statements and/or take any other actions to preserve the lien and security

64

Recognized Bond Counsel to the Issuer), shall have any responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section, or the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

(f) All costs (including reasonable and documented attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Institution.

**Section 7.08. Issuer Tax Covenant.** The Issuer covenants that it shall not take any action within its control, nor refrain from taking any action reasonably requested by the Institution or the Trustee, that would cause the interest on the Bonds to become includable in gross income for federal income tax purposes; provided, however, the breach of this covenant shall not result in any pecuniary liability of the Issuer and the only remedy to which the Issuer shall be subject shall be specific performance.

66

interest of this Indenture (individually or collectively, the "Continuation Action(s)"), then the Institution in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Trustee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Trustee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Trustee written certification (upon which the Trustee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause "(i)" and the others in the manner described in clause "(ii)"; and (B) if requested by the Trustee (acting at the direction of the Majority Holders) or the Issuer, deliver or cause to be delivered to the Issuer and the Trustee the Opinion of Counsel to the Institution as described below. The Trustee may conclusively rely upon (y) when applicable, the certification referred to in clause "(A)(ii)," and (z) in all instances, the Opinion of Counsel to the Institution. In the event the Institution chooses to have the Trustee perform all or some of the Continuation Actions, as provided in clause "(A)(i)", the Trustee shall reasonably promptly perform such Continuation Actions at the Institution's sole expense. The Institution shall perform the obligations described hereinabove in clauses "(A)" (in every case) and "(B)" (if so requested) no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause "(i)") on which a Continuation Action is to be taken to preserve the lien and security interest of this Indenture.

If an Opinion of Counsel to the Institution is requested pursuant to clause "(B)", then the Opinion of Counsel to the Institution shall be addressed to the Institution, the Issuer and the Trustee. If so requested, the Institution shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year anniversary thereafter through the term of the Initial Bonds, and/or (ii) the date of any required Continuation Action not covered by clause "(i)," in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Institution, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Trustee with instruments and papers prepared by the Institution, or (ii) the Institution through electronic filing, or (iii) the Trustee as to some Continuation Actions, and the Institution as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Institution, the Issuer and the Trustee then requisite to the maintenance of the perfection of the security interest of the Trustee in and to all property and interests which by the terms of this Indenture are to be subjected to the lien and security interest of this Indenture.

(d) Any filings with respect to Uniform Commercial Code financing statements may be made electronically, and the Issuer shall have the right to designate a company (which shall be reasonably acceptable to the Trustee) to facilitate the filing of Uniform Commercial Code financing statements.

(e) The Trustee acknowledges and agrees (on behalf of itself and the Bondholders) that neither the Issuer, nor any of its directors, members, officers, employees, servants, agents, persons under its control or supervision, or attorneys (including Nationally

65

## ARTICLE VIII

### EVENTS OF DEFAULT; REMEDIES OF BONDHOLDERS

**Section 8.01. Events of Default; Acceleration of Due Date.** (a) Each of the following events is hereby defined as and shall constitute an "Event of Default":

(1) Failure in the payment of the interest on any Bond when the same shall become due and payable;

(2) Failure in the payment of the principal, Purchase Price or redemption premium, if any, of, or Sinking Fund Installment for, any Bonds, when the same shall become due and payable, whether at the stated maturity thereof or upon proceedings for redemption thereof or otherwise, or interest accrued thereon to the Redemption Date after notice of redemption therefor or otherwise;

(3) Failure of the Issuer to observe or perform any covenant, condition or agreement in the Bonds or hereunder on its part to be performed (except as set forth in Section 8.01(a)(1) or (2)) and (A) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Issuer and the Institution specifying the nature of same from the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding, or (B) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Issuer or the Institution fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice; or

(4) The occurrence of an "Event of Default" under the Loan Agreement or any other Security Document.

(b) Upon the happening and continuance of any Event of Default, unless the principal of all the Bonds shall have already become due and payable, either the Trustee (by notice in writing to the Issuer and the Institution) or the Majority Holders (by notice in writing to the Issuer, the Institution and the Trustee) may declare the principal or Redemption Price, if any, of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything in this Indenture or in any of the Bonds contained to the contrary notwithstanding.

(c) If there shall occur an Event of Default under Section 9.1(e) or (f) of the Loan Agreement, the unpaid principal of all the Bonds (and all principal installments of loan payments under the Loan Agreement) and the interest accrued thereon shall be due and payable immediately without the necessity of any declaration or other action by the Trustee or any other Person.

(d) The right of the Trustee or of the Majority Holders to make any such declaration as aforesaid, however, is subject to the condition that if, at any time before such

67

declaration, all overdue installments of principal and of interest on all of the Bonds which shall have matured by their terms and the unpaid Redemption Price of the Bonds or principal portions thereof to be redeemed has been paid by or for the account of the Issuer, and all other Events of Default have been otherwise remedied, and the reasonable and proper charges, expenses and liabilities of the Trustee, shall either be paid by or for the account of the Issuer or provision satisfactory to the Trustee shall be made for such payment and the Facility shall not have been sold or otherwise encumbered, and all defaults have been otherwise remedied as provided in this Article VIII, then and in every such case any such default and its consequences shall ipso facto be deemed to be annulled, but no such annulment shall extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

(e) Pursuant to the Loan Agreement, the Issuer has granted to the Institution full authority for the account of the Issuer to perform any covenant or obligation the non-performance of which is alleged in any notice received by the Institution to constitute a default hereunder, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts with power of substitution. The Trustee agrees to accept such performance by the Institution as performance by the Issuer.

**Section 8.02. Enforcement of Remedies.** (a) Upon the occurrence and continuance of any Event of Default, then and in every case the Trustee may proceed, and upon the written request of the Majority Holders shall proceed, to protect and enforce its rights and the rights of the Bondholders under the Bonds, the Loan Agreement, this Indenture and under any other Security Document forthwith by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, whether for the specific performance of any covenant or agreement contained in this Indenture or in any other Security Document or in aid of the execution of any power granted in this Indenture or in any other Security Document or for the enforcement of any legal or equitable rights or remedies as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights or to perform any of its duties under this Indenture or under any other Security Document. In addition to any rights or remedies available to the Trustee hereunder or elsewhere, upon the occurrence and continuance of an Event of Default the Trustee may take such action, without notice or demand, as it deems advisable.

(b) In the enforcement of any right or remedy under this Indenture or under any other Security Document, the Trustee shall be entitled to sue for, enforce payment on and receive any or all amounts then or during any default becoming, and any time remaining, due from the Issuer, for principal, interest, Sinking Fund Installments, Redemption Price, or otherwise, under any of the provisions of this Indenture, of any other Security Document or of the Bonds, and unpaid, with interest on overdue payments at the rate or rates of interest specified in the Bonds, together with any and all costs and expenses of collection and of all proceedings under this Indenture, under any such other Security Document and under the Bonds, without prejudice to any other right or remedy of the Trustee or of the Bondholders, and to recover and enforce judgment or decree against the Issuer, but solely as provided in this Indenture and in the Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect (but solely from the moneys in the Bond Fund and other moneys available therefor to the extent provided in this Indenture) in any manner provided by law, the moneys adjudged or

68

due on such date, to the Persons entitled thereto without any discrimination or privilege.

(ii) If the principal of all the Bonds shall have become or have been declared due and payable, to the payment to the Bondholders of the principal and interest (at the rate or rates expressed in the Bonds) then due and unpaid upon the Bonds and if applicable to the Redemption Price of the Bonds without preference or priority of principal over interest or of interest over principal, Sinking Fund Installments, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

(iii) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article VIII, then, subject to the provisions of Section 8.03(a)(ii) which shall be applicable in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of Section 8.03(a)(i).

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue; provided, however, that if the principal or Redemption Price of the Bonds Outstanding, together with accrued interest thereon, shall have been declared to be due and payable pursuant to Section 8.01, such date of declaration shall be the date from which interest shall cease to accrue. The Trustee shall give such written notice to all Bondholders as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 8.04. Actions by Trustee.** All rights of actions under this Indenture, under any other Security Document or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall, subject to the provisions of Section 8.03, be for the equal benefit of the Holders of the Outstanding Bonds.

**Section 8.05. Majority Holders Control Proceedings.** Anything in this Indenture to the contrary notwithstanding, the Majority Holders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other

decreed to be payable. The Trustee shall file proof of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Bondholders allowed in any judicial proceedings relative to the Institution or the Issuer or their creditors or property.

(c) Regardless of the occurrence of an Event of Default, the Trustee, if requested in writing by the Majority Holders, and furnished with reasonable security and indemnity, shall institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Indenture or under any other Security Document by any acts which may be unlawful or in violation of this Indenture or of such other Security Document or of any resolution authorizing any Bonds, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders; provided, that such request shall not be otherwise than in accordance with the provisions of law and of this Indenture and shall not be unduly prejudicial to the interests of the Holders of the Bonds not making such request.

**Section 8.03. Application of Revenues and Other Moneys After Default.** (a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article or under any other Security Document, and all moneys held in all Funds and Accounts (other than the Rebate Fund), shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances (including legal fees and expenses) incurred or made by the Trustee, and after making any required deposits to the Rebate Fund in accordance with the Tax Regulatory Agreement, be deposited in the Bond Fund, and all moneys so deposited and available for payment of the Bonds shall be applied, subject to Section 9.04, as follows:

(i) Unless the principal of all of the Bonds shall have become or have been declared due and payable,

**First** - To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

**Second** - To the payment to the Persons entitled thereto of the unpaid principal, Purchase Price or Redemption Price, if any, of any of the Bonds or principal installments which shall have become due (other than Bonds or principal installments called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds, at the rate or rates expressed thereon, from the respective dates upon which they become due and, if the amount available shall not be sufficient to pay in full Bonds or principal installments due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal

69

proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

**Section 8.06. Individual Bondholder Action Restricted.** (a) No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity (i) with respect to the Bonds, this Indenture or any other Security Document, (ii) for the enforcement of any provisions of the Bonds, this Indenture or of any other Security Document, (iii) for the execution of any trust under this Indenture or (iv) for any remedy under the Bonds, this Indenture or under any other Security Document, unless such Holder shall have previously given to the Trustee written notice of the occurrence of an Event of Default as provided in this Article, and the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, and shall have offered it reasonable opportunity either to exercise the powers granted in the Bonds, this Indenture or in such other Security Document or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by his, its or their action to affect, disturb or prejudice the pledge created by this Indenture, or to enforce any right under this Indenture except in the manner herein provided; and that all proceedings at law or in equity to enforce any provision of the Bonds or this Indenture shall be instituted, had and maintained in the manner provided in this Indenture and, subject to the provisions of Section 8.03, be for the equal benefit of all Holders of the Outstanding Bonds.

(b) Nothing in this Indenture, in any other Security Document or in the Bonds contained shall affect or impair the right of any Bondholder to payment of the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on each of the Bonds to the respective Holders thereof at the time, place, from the source and in the manner herein and in said Bonds expressed.

**Section 8.07. Effect of Discontinuance of Proceedings.** In case any proceedings taken by the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Institution, the Issuer, the Trustee and the Bondholders shall be restored, respectively, to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Trustee shall continue as in effect prior to the commencement of such proceedings.

**Section 8.08. Remedies Not Exclusive.** No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given under this Indenture or now or hereafter existing at law or in equity or by statute.

70

71

**Section 8.09. Delay or Omission.** No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power arising upon any default shall impair any right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Trustee and the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Bondholders.

**Section 8.10. Notice of Default.** The Trustee shall promptly mail to the Issuer, to registered Holders of Bonds and to the Institution by first class mail, postage prepaid, written notice of the occurrence of any Event of Default. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail any notice required by this Section.

**Section 8.11. Waivers of Default.** The Trustee shall waive any default hereunder and its consequences and rescind any declaration of acceleration only upon the written request of the Majority Holders; provided, however, that there shall not be waived without the consent of the Holders of all the Bonds Outstanding (a) any default in the payment of the principal of any Outstanding Bonds at the date specified therein or (b) any default in the payment when due of the interest on any such Bonds, unless, prior to such waiver, all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds on overdue installments of interest in respect of which such default shall have occurred, and all arrears of payment of principal when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case the Institution, the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

72

Indenture or under any other Security Document except for its own willful misconduct or gross negligence. The immunities and exemptions from liability of the Trustee shall extend to its directors, officers, employees, agents and servants and persons under the Trustee's control or supervision.

(c) The Trustee, prior to the occurrence of an Event of Default and after curing of all Events of Default which may have occurred, if any, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise as a prudent man would exercise under the circumstances in the conduct of his own affairs. The Trustee shall not be charged with knowledge of the occurrence of an Event of Default unless, (i) the Trustee has not received any certificate, financial statement, insurance notice or other document regularly required to be delivered to the Trustee under the Loan Agreement or any other Security Document, (ii) the Trustee has not received payment of any amount required to be remitted to the Trustee under the Loan Agreement or any other Security Document, (iii) a Responsible Officer of the Trustee has actual knowledge thereof, or (iv) the Trustee has received written notice thereof from the Institution, the Issuer or any Bondholder. The Trustee shall not be charged with the knowledge of a Determination of Taxability unless the Trustee has received written notice thereof from the Internal Revenue Service, the Institution, the Issuer or any Bondholder or former Bondholder.

(d) The Trustee shall not be liable or responsible for the failure of the Institution to effect or maintain insurance on the Facility as provided in the Loan Agreement or the Mortgage nor shall it be responsible for any loss by reason of want or insufficiency in insurance or by reason of the failure of any insurer in which the insurance is carried to pay the full amount of any loss against which it may have insured the Issuer, the Institution, the Trustee or any other Person.

(e) The Trustee shall execute and cause to be filed those continuation statements, any additional financing statements and all other instruments required by it by Section 7.07 at the expense of the Institution.

(f) The Trustee shall on the same date as it shall render the statement required of it by Section 7.03, make annual reports to the Issuer and the Institution of all moneys received and expended during the preceding year by it under this Indenture and of any Event of Default known to it under the Loan Agreement or this Indenture or under any other Security Document.

(g) With respect to the Tax Regulatory Agreement, the Trustee shall not be required to make any payment of a Rebate Amount or any transfer of funds or take any other action required to be taken thereunder except upon the receipt of a written certificate of direction of an Authorized Representative of the Institution delivered to the Trustee in accordance with the terms of the Tax Regulatory Agreement. Notwithstanding any provision of the Tax Regulatory Agreement or any other Security Document, nothing in the Tax Regulatory Agreement, either expressed or implied, shall be deemed to impose upon the Trustee any responsibility for the legal sufficiency of the Tax Regulatory Agreement to effect compliance with the Code nor any duty to

74

## ARTICLE IX

### TRUSTEE, BOND REGISTRAR AND PAYING AGENTS

**Section 9.01. Appointment and Acceptance of Duties of Trustee.** The entity identified as the Trustee on the cover page hereof is hereby appointed as Trustee. The Trustee shall signify its acceptance of the duties and obligations of the Trustee hereunder and under each Security Document by executing this Indenture and agrees to perform said trusts as a corporate trustee ordinarily would under a corporate mortgage subject to the express terms and conditions herein. All provisions of this Article IX shall be construed as extending to and including all the rights, duties and obligations imposed upon the Trustee under the Loan Agreement and under any other Security Document to which it shall be a party as fully for all intents and purposes as if this Article IX were contained in the Loan Agreement and each such other Security Document.

**Section 9.02. Indemnity of Trustee.** The Trustee shall be under no obligation to institute any suit, or to take any remedial or legal action under this Indenture or under or pursuant to any other Security Document or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers or fulfillment of any extraordinary duties under this Indenture, or under any other Security Document, until it shall be indemnified to its satisfaction against any and all reasonable compensation for services, costs and expenses, outlays, and counsel fees and other disbursements, and against all liability not due to its willful misconduct or gross negligence.

**Section 9.03. Responsibilities of Trustee.** (a) The Trustee shall have no responsibility in respect of the validity or sufficiency of this Indenture or of any other Security Document or the security provided hereunder or thereunder or any offering document or the due execution of this Indenture by the Issuer, or the due execution of any other Security Document by any party (other than the Trustee) thereto, or in respect of the title or the value of the Facility, or in respect of the validity of the Bonds authenticated and delivered by the Trustee in accordance with this Indenture or to see to the recording or filing of any document or instrument whatsoever except as otherwise provided in Section 7.07. The recitals, statements and representations contained in this Indenture and in the Bonds shall be taken and be construed as made by and on the part of the Issuer and not by the Trustee, and the Trustee does not assume any responsibility for the correctness of the same; provided, however, that the Trustee shall be responsible for its representation contained in its certificate on the Bonds and for its responsibility as to filing or re-filing as contained in Section 7.07.

(b) The Trustee shall not be liable or responsible because of the failure of the Issuer to perform any act required of it by this Indenture or by any other Security Document or because of the loss of any moneys arising through the insolvency or the act or default or omission of any depository other than itself in which such moneys shall have been deposited under this Indenture or the Tax Regulatory Agreement. The Trustee shall not be responsible for the application of any of the proceeds of the Bonds or any other moneys deposited with it and paid out, invested, withdrawn or transferred in accordance with this Indenture or the Tax Regulatory Agreement or for any loss resulting from any such investment. The Trustee shall not be liable in connection with the performance of its duties under the Loan Agreement, under this

73

independently review or verify any information or calculation furnished to the Trustee by the Institution.

(h) The permissive right of the Trustee to do things enumerated in this Indenture or the other Security Documents shall not be construed as a duty, and in doing or not doing so the Trustee shall not be answerable for other than its gross negligence or willful misconduct.

**Section 9.04. Compensation of Trustee, Bond Registrar and Paying Agents.** The Trustee, the Bond Registrar and Paying Agents shall be entitled to receive and collect from the Institution as provided in the Loan Agreement payment or reimbursement for reasonable fees for services rendered hereunder and under each other Security Document and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee, the Bond Registrar or Paying Agents in connection therewith. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first right of payment prior to payment on account of the principal of or interest on any Bonds, upon the revenues (but not including any amounts held by the Trustee under Section 5.12, 6.04 or Article X) for the foregoing advances, fees, costs and expenses incurred.

**Section 9.05. Evidence on Which Trustee May Act.** (a) In case at any time it shall be necessary or desirable for the Trustee to make any investigation respecting any fact preparatory to taking or not taking any action, or doing or not doing anything, as such Trustee, and in any case in which this Indenture provides for permitting or taking any action, it may rely upon any certificate required or permitted to be filed with it under the provisions of this Indenture, and any such certificate shall be evidence of such fact to protect it in any action that it may or may not take, or in respect of anything it may or may not do, in good faith, by reason of the supposed existence of such fact.

(b) The Trustee may conclusively rely and shall be fully protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Indenture, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or person, or to have been prepared and furnished pursuant to any of the provisions of this Indenture, or, at the sole cost and expense of the Institution, and when determined necessary in the reasonable discretion of the Trustee, upon the written opinion of any attorney (who may be an attorney for the Issuer or an employee of the Institution), engineer, appraiser, architect or accountant believed by the Trustee to be qualified in relation to the subject matter.

**Section 9.06. Trustee and Paying Agents May Deal in Bonds.** Any national banking association, bank or trust company acting as a Trustee or Paying Agent, and its respective directors, officers, employees or agents, may in good faith buy, sell, own, hold and deal in any of the Bonds, and may join in any action which any Bondholder may be entitled to take with like effect as if such association, bank or trust company were not such Trustee or Paying Agent.

75

**Section 9.07. Resignation or Removal of Trustee.** The Trustee may resign and thereby become discharged from the trusts created under this Indenture for any reason by giving written notice by first class mail, postage prepaid, to the Issuer, to the Institution and to the Holders of all Bonds not less than sixty (60) days before such resignation is to take effect, but such resignation shall not take effect until the appointment and acceptance thereof of a successor Trustee pursuant to Section 9.08.

The Trustee may be removed at any time by an instrument or concurrent instruments in writing filed with the Trustee and signed by the Issuer or the Majority Holders or their attorneys-in-fact duly authorized. Such removal shall become effective either upon the appointment and acceptance of such appointment by a successor Trustee or at the date specified in the instrument of removal. The Trustee shall promptly give notice of such filing to the Issuer and the Institution. No removal shall take effect until the appointment and acceptance thereof of a successor Trustee pursuant to Section 9.08.

If the Trustee shall resign or shall be removed, such Trustee must transfer and assign to the successor Trustee, not later than the date of this acceptance by the successor Trustee of its appointment as such, or thirty (30) days from the date specified in the instrument of removal or resignation, if any, whichever shall last occur, (i) all amounts (including all investments thereof) held in any Fund or Account under this Indenture, together with a full accounting thereof, (ii) all records, files, correspondence, registration books, Bond inventory, all information relating to this Indenture and to Bond payment status (i.e., outstanding principal balances, principal payment and interest payment schedules, Sinking Fund Installment schedules, pending notices of redemption, payments made and to whom, delinquent payments, default or delinquency notices, deficiencies in any Fund or Account balance, etc.) and all such other information (in whatever form) relating to all Funds and Accounts in the possession of the Trustee being removed or resigning, and (iii) all Security Documents and other documents or agreements, including, without limitation, all Uniform Commercial Code Financing Statements, all insurance policies or certificates, letters of credit or other instruments provided to the Trustee being removed or resigning (clauses (i), (ii) and (iii), together with the Trust Estate, being collectively referred to as the "Trust Corpus").

**Section 9.08. Successor Trustee.** (a) If at any time the Trustee shall be dissolved or otherwise become incapable of acting or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator thereof, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason or if the Trustee shall resign, the Institution shall cooperate with the Issuer and the Issuer shall appoint a successor Trustee and shall use its best efforts to obtain acceptance of such trust by the successor Trustee within sixty (60) days from such vacancy or notice of resignation. Within twenty (20) days after such appointment and acceptance, the Issuer shall notify in writing the Institution and the Holders of all Bonds.

(b) In the event of any such vacancy or resignation and if a successor Trustee shall not have been appointed within sixty (60) days of such vacancy or notice of resignation, the Majority Holders, by an instrument or concurrent instruments in writing, signed by such Bondholders or their attorneys-in-fact thereunto duly authorized and filed with the Issuer, may

76

imposed upon it by this Indenture and each other Security Document shall be the successor to such Trustee without the execution or filing of any paper or the performance of any further act.

**Section 9.09. Paying Agents.** (a) The Trustee is hereby appointed as Paying Agent for the Bonds. The Issuer may also from time to time appoint one or more other Paying Agents in the manner and subject to the conditions set forth in Section 9.09(b) for the appointment of a successor Paying Agent. Each Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to the Issuer, and in the case of all Paying Agents other than the Trustee, to the Trustee a written acceptance thereof. The principal offices of the Paying Agents are designated as the respective offices or agencies of the Issuer for the payment of the principal, Purchase Price or Redemption Price, if any, of, Sinking Fund Installments for, and interest on the Bonds. Each Paying Agent shall not be liable in connection with the performance of its duties hereunder except for its own willful misconduct or gross negligence.

(b) Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days prior written notice to the Issuer and the Trustee. Any Paying Agent may be removed at any time by an instrument filed with such Paying Agent and the Trustee and signed by the Issuer. Any successor Paying Agent shall be appointed by the Issuer, with the approval of the Trustee, and shall be a commercial bank or trust company duly organized under the laws of any state of the United States or a national banking association, having a capital stock and surplus aggregating at least \$40,000,000, having an investment grade rating of at least "Baa3" or "P-3", and willing and able to accept the office on reasonable and customary terms and authorized by law and its charter to perform all the duties imposed upon it by this Indenture.

(c) In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys held by it as Paying Agent to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.

**Section 9.10. Appointment of Co-Trustee.** (a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or under any other Security Document, and in particular in case of the enforcement of any powers, rights or remedies on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional institution as a separate trustee or co-trustee. The following provisions of this Section are adapted to these ends.

(b) In the event that the Trustee appoints an additional institution as a separate trustee or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in

appoint a successor Trustee which shall, immediately upon its acceptance of such trusts, and without further act, supersede the predecessor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section 9.08, within ninety (90) days of such vacancy or notice of resignation, the Holder of any Bond then Outstanding, the Issuer or any retiring Trustee or the Institution may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

(c) Any Trustee appointed under this Section shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States authorized to exercise corporate trust powers under the laws of the State and authorized by law and its charter to perform all the duties imposed upon it by this Indenture and each other Security Document. At the time of its appointment, any successor Trustee shall (x) have a capital stock and surplus aggregating not less than \$100,000,000 and (y) have an investment grade rating of at least "Baa3" or "P-3".

(d) Any predecessor Trustee shall transfer to any successor Trustee appointed under this Section as a result of a vacancy in the position the Trust Corpus by a date not later than thirty (30) days from the date of the acceptance by the successor Trustee of its appointment as such. Where no vacancy in the position of the Trustee has occurred, the transfer of the Trust Corpus shall take effect in accordance with the provisions of Section 9.07.

(e) Every successor Trustee shall execute, acknowledge and deliver to its predecessor, and also to the Issuer, an instrument in writing accepting such appointment, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers and trusts, and subject to all the duties and obligations, of its predecessor, with like effect as if originally named as such Trustee; but such predecessor shall, nevertheless, on the written request of its successor or of the Issuer, and upon payment of the compensation, expenses, charges and other disbursements of such predecessor which are due and payable pursuant to Section 9.04, execute and deliver an instrument transferring to such successor Trustee all the estate, properties, rights, immunities, powers and trusts of such predecessor and the Trust Corpus; and every predecessor Trustee shall deliver all property and moneys, together with a full accounting thereof, held by it under this Indenture to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such Trustee the estate, properties, rights, immunities, powers and trusts vested or intended to be vested in the predecessor Trustee, any such instrument in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Any successor Trustee shall promptly notify the Issuer and the Paying Agent of its appointment as Trustee.

(f) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States and shall be authorized by law and its charter to perform all the duties

77

such separate trustee or co-trustee but only to the extent necessary to enable such separate trustee or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate trustee or co-trustee shall run to and be enforceable by either of them. Such co-trustee may be removed by the Trustee at any time, with or without cause.

(c) Should any instrument in writing from the Issuer be required by the separate trustee or co-trustee so appointed or removed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

(d) No trustee shall be liable for the acts or omissions of any other trustee hereunder.

**Section 9.11. Patriot Act.** The Trustee hereby acknowledges that in accordance with Section 326 of the U.S.A. Patriot Act (being the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended, and signed into law October 26, 2001), each depository bank, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with a depository bank. The Trustee hereby acknowledges that it shall obtain such information from the other Notice Parties as may be required in order for it to satisfy the requirements of the U.S.A. Patriot Act.

78

79



## ARTICLE X

### DISCHARGE OF INDENTURE; DEFEASANCE

**Section 10.01. Defeasance.** (a) If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, interest and all other amounts due or to become due thereon or in respect thereof, at the times and in the manner stipulated therein and in this Indenture, and all fees and expenses and other amounts due and payable under this Indenture and the Loan Agreement, and any other amounts required to be rebated to the federal government pursuant to the Tax Regulatory Agreement or this Indenture, shall be paid in full, then the pledge of any loan payments, revenues or receipts from or in connection with the Security Documents or the Facility under this Indenture and the estate and rights hereby granted, and all covenants, agreements and other obligations of the Issuer to the Bondholders hereunder shall thereupon cease, terminate and become void and be discharged and satisfied and the Bonds shall thereupon cease to be entitled to any lien, benefit or security hereunder, except as to moneys or securities held by the Trustee or the Paying Agents as provided below in this subsection. At the time of such cessation, termination, discharge and satisfaction, (1) the Trustee shall cancel and discharge the lien of this Indenture and of the Mortgage and execute and deliver to the Institution all such instruments as may be appropriate to satisfy such liens and to evidence such discharge and satisfaction, and (2) the Trustee and the Paying Agents shall pay over or deliver to the Institution or on its order all moneys or securities held by them pursuant to this Indenture which are not required (i) for the payment of the principal or Redemption Price, if applicable, Sinking Fund Installments for, or interest on Bonds not theretofore surrendered for such payment or redemption, (ii) for the payment of all such other amounts due or to become due under the Security Documents, or (iii) for the payment of any amounts the Trustee has been directed to pay to the federal government under the Tax Regulatory Agreement or this Indenture.

(b) Bonds or interest installments for the payment or redemption of which moneys (or Defeasance Obligations which shall not be subject to call or redemption or prepayment prior to maturity and the full and timely payment of the principal of and interest on which when due, together with the moneys, if any, set aside at the same time, will provide funds sufficient for such payment or redemption) shall then be set aside and held in trust by the Trustee or Paying Agents, whether at or prior to the maturity or the Redemption Date of such Bonds, shall be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section, if (i) in case any such Bonds are to be redeemed prior to the maturity thereof, all action necessary to redeem such Bonds shall have been taken and notice of such redemption shall have been duly given or provision satisfactory under the requirements of this Indenture to the Trustee shall have been made for the giving of such notice, and (ii) if the maturity or Redemption Date of any such Bond shall not then have arrived, (y) provision shall have been made by deposit with the Trustee or other methods satisfactory to the Trustee for the payment to the Holders of any such Bonds of the full amount to which they would be entitled by way of principal or Redemption Price, Sinking Fund Installments, and interest and all other amounts then due under the Security Documents to the date of such maturity or redemption, and (z) provision satisfactory to the Trustee shall have been made for the mailing of a notice to the Holders of such Bonds that such moneys are so available for such payment on such maturity or Redemption Date.

80

## ARTICLE XI

### AMENDMENTS OF INDENTURE

**Section 11.01. Limitation on Modifications.** This Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article.

**Section 11.02. Supplemental Indentures Without Bondholders' Consent.** (a) The Issuer and the Trustee may, from time to time and at any time, enter into Supplemental Indentures without the consent of the Bondholders for any of the following purposes:

(1) To cure any formal defect, omission or ambiguity in this Indenture or in any description of property subject to the lien hereof, if such action is not materially adverse to the interests of the Bondholders. The Issuer and the Trustee may request an Opinion of Counsel with respect to any foregoing matters.

(2) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as theretofore in effect.

(3) To add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect.

(4) To add to the limitations and restrictions in this Indenture other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect.

(5) To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Indenture, of the properties of the Facility, or revenues or other income from or in connection with the Facility or of any other moneys, securities or funds, or to subject to the lien or pledge of this Indenture additional revenues, properties or collateral.

(6) To modify or amend such provisions of this Indenture as shall, in the opinion of Nationally Recognized Bond Counsel, be necessary to assure that the interest on the Bonds not be includable in gross income for federal income tax purposes.

(7) To effect any other change herein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Bondholders.

(8) To modify, amend or supplement this Indenture or any Supplemental Indenture in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so

82

**Section 10.02. Defeasance Opinion and Verification.** Prior to any defeasance becoming effective as provided in Section 10.01(b), there shall have been delivered to the Issuer and to the Trustee (A) an opinion of Nationally Recognized Bond Counsel to the effect that interest on any Bonds being discharged by such defeasance will not become subject to federal income taxation by reason of such defeasance, and (B) a verification from an independent certified public accountant or firm of independent certified public accountants (in each case reasonably satisfactory to the Issuer and the Trustee) to the effect that the moneys and/or Defeasance Obligations are sufficient, without reinvestment, to pay the principal of, Sinking Fund Installments for, interest on, and redemption premium, if any, of the Bonds to be defeased.

**Section 10.03. No Limitation of Rights of Holders.** No provision of this Article X, including any defeasance of Bonds, shall limit the rights of the Holder of any Bonds under Section 3.06, 3.07 or 3.09 until such Bonds shall have been paid in full.

81

determine, to add to this Indenture or any Supplemental Indenture such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.

(b) Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to this Section, there shall have been filed with the Trustee an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms.

**Section 11.03. Supplemental Indentures With Bondholders' Consent.** (a) Subject to the terms and provisions contained in this Article, the Majority Holders shall have the right from time to time, to consent to and approve the entering into by the Issuer and the Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein. Nothing herein contained shall permit, or be construed as permitting, (i) a change in the times, amounts or currency of payment of the principal of, Sinking Fund Installments for, Purchase Price or redemption premium, if any, or interest on any Outstanding Bonds, a change in the terms of redemption, purchase or maturity of the principal of or the interest on any Outstanding Bonds, or a reduction in the principal amount of or the Purchase Price or the Redemption Price of any Outstanding Bond or the rate of interest thereon, or any extension of the time of payment thereof, without the consent of the Holder of such Bond, (ii) the creation of a lien upon or pledge of the Trust Estate other than the liens or pledge created by this Indenture and the other Security Documents, except as provided in this Indenture with respect to Additional Bonds, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Indenture, or (v) a modification, amendment or deletion with respect to any of the terms set forth in this Section 11.03(a), without, in the case of items (ii) through and including (v) of this Section 11.03(a), the written consent of one hundred percent (100%) of the Holders of the Outstanding Bonds.

(b) If at any time the Issuer shall determine to enter into any Supplemental Indenture for any of the purposes of this Section, it shall cause notice of the proposed Supplemental Indenture to be mailed, postage prepaid, to all Bondholders. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture, and shall state that a copy thereof is on file at the offices of the Trustee for inspection by all Bondholders.

(c) Within one year after the date of such notice, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice only if there shall have first been filed with the Trustee (i) the written consents of the Majority Holders of not less than 100%, as the case may be, in aggregate principal amount of the Bonds then Outstanding and (ii) an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture (A) is authorized or permitted by this Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms and (B) will not cause the interest on any Series of Bonds to become includable in gross income for federal income tax purposes. Each valid consent shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds

83



with respect to which such consent is given. A certificate or certificates by the Trustee that it has examined such proof and that such proof is sufficient in accordance with this Indenture shall be conclusive that the consents have been given by the Holders of the Bonds described in such certificate or certificates. Any such consent shall be binding upon the Holder of the Bonds giving such consent and upon any subsequent Holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Holder of such Bonds giving such consent or a subsequent Holder thereof by filing such revocation with the Trustee prior to the execution of such Supplemental Indenture.

(d) If the Holders of not less than the percentage of Bonds required by this Section shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to the execution of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

(e) Upon the execution of any Supplemental Indenture pursuant to the provisions of this Section, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under this Indenture, subject in all respects to such modifications and amendments.

**Section 11.04. Supplemental Indenture Part of this Indenture.** Any Supplemental Indenture executed in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplemental Indenture as to any provisions authorized to be contained therein shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes. The Trustee shall execute any Supplemental Indenture entered into in accordance with the provisions of Section 11.02 or 11.03.

84

forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by all Bondholders. The Trustee may, but shall not be obligated to, enter into any such amendment, change or modification to a Related Security Document which affects the Trustee's own rights, duties or immunities under such Related Security Document or otherwise. Before the Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Bonds to cease to be excluded from gross income for federal income tax purposes under the Code.

86

## ARTICLE XII

### AMENDMENTS OF RELATED SECURITY DOCUMENTS

**Section 12.01. Rights of Institution.** Anything herein to the contrary notwithstanding, any Supplemental Indenture entered into pursuant to Article XI which materially and adversely affects any rights, powers and authority of the Institution under the Loan Agreement or requires a revision of the Loan Agreement shall not become effective unless and until the Institution shall have given its written consent to such Supplemental Indenture signed by an Authorized Representative of the Institution.

**Section 12.02. Amendments of Related Security Documents Not Requiring Consent of Bondholders.** The Issuer and the Trustee may, without the consent of or notice to the Bondholders, consent (if required) to any amendment, change or modification of any of the Related Security Documents for any of the following purposes: (i) to cure any ambiguity, inconsistency, formal defect or omission therein; (ii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred; (iii) to subject thereto additional revenues, properties or collateral; (iv) to evidence the succession of a successor Trustee or to evidence the appointment of a separate or co-Trustee or the succession of a successor separate or co-Trustee; (v) to make any change required in connection with a permitted amendment to a Related Security Document or a permitted Supplemental Indenture; (vi) to provide for changes to Section 5.1 of the Loan Agreement; and (vii) to make any other change that, in the judgment of the Trustee (which, in exercising such judgment, may conclusively rely, and shall be protected in relying, in good faith, upon an Opinion of Counsel or an opinion or report of engineers, accountants or other experts) does not materially adversely affect the Bondholders. The Trustee shall have no liability to any Bondholder or any other Person for any action taken by it in good faith pursuant to this Section. Before the Issuer or the Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Bonds to cease to be excluded from gross income for federal income tax purposes under the Code.

**Section 12.03. Amendments of Related Security Documents Requiring Consent of Bondholders.** Except as provided in Section 12.02, the Issuer and the Trustee shall not consent to any amendment, change or modification of any of the Related Security Documents, without mailing of notice and the written approval or consent of the Majority Holders given and procured as in Section 11.03 set forth; provided, however, there shall be no amendment, change or modification to (i) the obligation of the Institution to make loan payments with respect to the Bonds under the Loan Agreement or the Promissory Note or (ii) the Tax Regulatory Agreement, without the delivery of an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change, modification, reduction or postponement will not cause the interest on any Series of Bonds to become includable in gross income for federal income tax purposes. If at any time the Institution shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change or modification to be mailed in the same manner as is provided in Article XI with respect to Supplemental Indentures. Such notice shall briefly set

85

## ARTICLE XIII

### MISCELLANEOUS

**Section 13.01. Evidence of Signature of Bondholders and Ownership of Bonds.** (a) Any request, consent, revocation of consent, approval, objection or other instrument which this Indenture may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by any Bondholder in person or by his duly authorized attorney appointed in writing. Proof of the execution of any such instrument, or of an instrument appointing any such attorney, shall be sufficient for any purpose of this Indenture (except as otherwise therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable: the fact and date of the execution by any Bondholder or his attorney of such instruments may be proved by a guarantee of the signature thereon by a member of the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15, or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. For the purposes of the transfer or exchange of any Bond, the fact and date of the execution of the Bondholder or his attorney of the instrument of transfer shall be proved by a guarantee of the signature thereon by a member of the Stock Exchanges Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guarantee, certificate or affidavit shall also constitute sufficient proof of his authority.

(b) The ownership of Bonds and the amount, numbers and other identification shall be proved by the registry books.

(c) Except as otherwise provided in Section 11.03 with respect to revocation of a consent, any request or consent by the owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Issuer or the Trustee or any Paying Agent in accordance therewith.

**Section 13.02. Notices.** Any notice, demand, direction, certificate, Opinion of Counsel, request, instrument or other communication authorized or required by this Indenture to be given to or filed with the Issuer, the Institution or the Trustee shall be sufficient if sent (i) by return receipt requested or registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

87

- (1) if to the Issuer, to
- Build NYC Resource Corporation  
110 William Street  
New York, New York 10038  
Attention: General Counsel
- with a copy to
- Build NYC Resource Corporation  
110 William Street  
New York, New York 10038  
Attention: Deputy Executive Director
- (2) if to the Institution, to
- New Dawn Charter Schools  
242 Hoyt Street  
Brooklyn, New York 11217  
Attention: Executive Director
- with a copy to
- Davidoff Hatcher & Citron LLP  
605 Third Avenue  
New York, New York 10158  
Attention: Maria Groeneveld, Esq.
- (3) if to the Trustee, to
- The Bank of New York Mellon  
240 Greenwich Street, Floor 7W  
New York, New York 10286  
Attention: Corporate Trust Administration

The Issuer, the Institution and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

In addition to the above means of delivering notice, the Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and delivered using Electronic Means; provided, however, that

88

simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 13.06. Laws Governing Indenture.** This Indenture shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

**Section 13.07. No Pecuniary Liability of Issuer or Members; No Debt of the State or the City.** Every agreement, covenant and obligation of the Issuer under this Indenture is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall not create a debt of the State or the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor but shall be a limited revenue obligation of the Issuer payable by the Issuer solely from the loan payments, revenues and receipts pledged to the payment thereof in the manner and to the extent in this Indenture specified and nothing in the Bonds, in the Loan Agreement, in this Indenture or in any other Security Document shall be considered as pledging any other funds or assets of the Issuer. The Issuer shall not be required under this Indenture or the Loan Agreement or any other Security Document to expend any of its funds other than (i) the proceeds of the Bonds, (ii) the loan payments, revenues and receipts and other moneys pledged to the payment of the Bonds, (iii) any income or gains therefrom, and (iv) the Net Proceeds with respect to the Facility. No provision, covenant or agreement contained in this Indenture or in the Bonds or any obligations herein or therein imposed upon the Issuer or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit.

All covenants, stipulations, promises, agreements and obligations of the Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, employee or agent of the Issuer in his individual capacity, and no recourse shall be had for the payment of the principal or Purchase Price or Redemption Price, if any, of, Sinking Fund Installments for, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. Neither the Bonds, the interest thereon, the Sinking Fund Installments therefor, nor the Purchase Price or the Redemption Price thereof shall ever constitute a debt of the State or of the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor.

**Section 13.08. Priority of Mortgage Over Liens.** The Mortgage is given in order to secure funds to pay for the Project and by reason thereof, it is intended that the Mortgage shall be superior to any laborers', mechanics' or materialmen's liens which may be placed upon the Facility subsequent to the recordation of the Mortgage. In compliance with Section 13 of the Lien Law, the Issuer will receive the advances secured by this Indenture and the Mortgage and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of improvements and that the Issuer will apply the same first to the payment of the costs of improvements before using any part of the total of the same for any other purpose.

90

the Institution shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Institution whenever a person is to be added or deleted from the listing. If the Institution elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Institution understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Institution shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Institution and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Institution. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Institution agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that each is individually fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Institution; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

**Section 13.03. Parties Interested Herein.** Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Issuer, the Institution, the Trustee, the Bond Registrar, the Paying Agents and the Holders of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation thereof. All covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Institution, the Trustee, the Bond Registrar, the Paying Agents and the Holders of the Bonds.

**Section 13.04. Partial Invalidity.** If any one or more of the provisions of this Indenture or of the Bonds shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof or of the Bonds, but this Indenture and the Bonds shall be construed and enforced as of such illegal or invalid provision had not been contained herein.

**Section 13.05. Effective Date; Counterparts.** The date of this Indenture shall be for reference purposes only and shall not be construed to imply that this Indenture was executed on the date first above written. This Indenture was delivered on the Closing Date. This Indenture shall become effective upon its delivery on the Closing Date. It may be

89

**Section 13.09. Consent to Jurisdiction.** Each party hereto irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of or related to this Indenture may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (x) to move to dismiss on grounds of forum non conveniens, (y) to remove to any federal court other than the United States District Court for the Southern District of New York, and (z) to move for a change of venue to a New York State Court outside New York County.

**Section 13.10. Waiver of Trial by Jury.** Each party hereto hereby expressly waives all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Indenture or any matters whatsoever arising out of or in any way connected with this Indenture. The provisions of this Indenture relating to waiver of trial by jury shall survive the termination or expiration of this Indenture.

**Section 13.11. Legal Counsel; Mutual Drafting.** Each party acknowledges that this Indenture is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Indenture. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Indenture and agrees that this Indenture and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the *contra proferentem* doctrine, that would require interpretation of any ambiguities in this Indenture against the party that has drafted it.

[Remainder of Page Intentionally Left Blank]

91

IN WITNESS WHEREOF, Build NYC Resource Corporation, New York, New York, has caused these presents to be executed in its name and behalf by its Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, and, to evidence its acceptance of the trust hereby created, the Trustee has caused these presents to be signed in its name and behalf by an authorized representative, all as of the day and year first above written.

**BUILD NYC RESOURCE CORPORATION**

By: \_\_\_\_\_  
Krishna Omolade  
Deputy Executive Director

**THE BANK OF NEW YORK MELLON**, as  
Trustee

By: \_\_\_\_\_  
Craig S. Wenzler  
Vice President

STATE OF NEW YORK                    )  
  : ss.:  
COUNTY OF NEW YORK                )

On the \_\_\_\_ day of February, in the year two thousand nineteen, before me, the undersigned, personally appeared Krishna Omolade known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public/Commissioner of Deeds

[Signature Page to Indenture of Trust]

STATE OF NEW YORK                    )  
  : ss.:  
COUNTY OF NEW YORK                )

On the \_\_\_\_ day of February, in the year two thousand nineteen, before me, the undersigned, personally appeared Craig S. Wenzler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**APPENDICES**

#### EXHIBIT A

##### DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northwesterly side of Hoyt Street, distant 25 feet northeasterly from the corner formed by the intersection of the northwesterly side of Hoyt Street with the northeasterly side of Douglass Street;

THENCE northwesterly parallel with Douglass Street and part of the distance through a party wall, 100 feet;

THENCE northeasterly parallel with Hoyt Street, 75 feet;

THENCE southeasterly parallel with Douglass Street, 100 feet to the northwesterly side of Hoyt Street;

THENCE southwesterly along the said northwesterly side of Hoyt Street, 75 feet to the point or place of BEGINNING.

#### EXHIBIT B

##### DESCRIPTION OF THE FACILITY PERSONALTY

(72) Evaporator Units (84 Tons) and associated ductwork.

(7) Condensers (84 Tons) and associated piping

(1) 3,200 CFM Make Up Air Unit With Associated Ductwork

(1) 4,000 CFM Kitchen Exhaust Fan With Associated Ductwork

(1) 5,000 CFM ERV with Associated Ductwork

(1) Dedicated 3 Ton Split Elevator Machine Room A/C System

(1) Dedicated 1.5 Ton Split IDF Room A/C System

(1) 250 MBH Gas Fired Hot Water Boilers

(1) 1600 Amp CT Cabinet

(4) Electrical Service Switches

Lighting Fixtures

Fire Alarm System

4" Sprinkler Service with Associated Piping and Valves

(1) 100 Gallon 199 MBTU/Hr. Gas Fired Water Heater

(1) 2,500 lb Five Stop Traction Elevator

Cold Applied Roof Membrane

Thermal Windows

Food Service Equipment

#### EXHIBIT C

##### FORM OF FULLY REGISTERED INITIAL BOND

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), IN RELIANCE UPON EXEMPTIONS PROVIDED BY THE SECURITIES ACT. NO RESALE OR OTHER TRANSFER OF THIS BOND MAY BE MADE UNLESS SUCH TRANSFER IS MADE PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS AND IN ACCORDANCE WITH THE INDENTURE OF TRUST REFERRED TO HEREIN. NEITHER THE ISSUER NOR THE TRUSTEE IS OBLIGATED TO REGISTER THIS BOND UNDER THE SECURITIES ACT OR ANY OTHER SECURITIES OR "BLUE SKY" LAW.

THIS BOND MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (1) SO LONG AS THIS BOND IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A OF THE SECURITIES ACT, TO A PERSON CONSTITUTING A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, OR (2) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 OF REGULATION D UNDER THE SECURITIES ACT.

THIS BOND SHALL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE STATE OF NEW YORK OR OF THE CITY OF NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR THE CITY OF NEW YORK SHALL BE LIABLE HEREON, NOR SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OF THE BUILD NYC RESOURCE CORPORATION OTHER THAN THOSE PLEDGED THEREFOR.

BUILD NYC RESOURCE CORPORATION  
REVENUE BOND  
(NEW DAWN CHARTER SCHOOLS PROJECT), SERIES 2019

Bond Date:

Maturity Date:

Registered Owner: Cede & Co.

Principal Amount:

Interest Rate:

Bond Number: R-

CUSIP:

Promise to Pay. Build NYC Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York (herein called the "Issuer"), for value received, hereby promises to pay as hereinafter provided, solely from the loan payments, revenues and receipts as provided in the Indenture of Trust hereinafter referred to, to the Registered Holder identified above or registered assigns, upon presentation and surrender hereof, on the Maturity Date set forth above, the Principal Amount set forth above, and in like manner to pay interest at the Interest Rate set forth above on the unpaid principal balance hereof from the Bond Date set forth above until the Issuer's obligation with respect to the payment of such Principal Amount shall be discharged. Payment of interest shall be made on February 1 and August 1 in each year, commencing August 1, 2019 (or, if such day is not a Business Day, the immediately succeeding Business Day) (each, an "Interest Payment Date"). Such interest shall be computed on the basis of a 360-day year of twelve 30-day months. In no event shall the interest rate payable hereon exceed the maximum permitted by, or enforceable under, applicable law. Payment shall be made in any coin or currency of the United States of America which, on the respective dates of payment, is legal tender for the payment of public and private debts. Capitalized terms used but not defined in this bond shall have the respective meanings assigned to such terms in the Indenture hereinafter referred to.

This bond shall bear interest from the Bond Date indicated above, if authenticated prior to the first Interest Payment Date. If authenticated on or after the first Interest Payment Date, in exchange for or upon the registration of transfer of Bonds (as defined below), this bond shall bear interest from and including the Interest Payment Date next preceding the date of the authentication hereof, unless the date of such authentication shall be an Interest Payment Date to which interest hereon has been paid in full or duly provided for, in which case, this bond shall bear interest from and including such Interest Payment Date.

Method of Currency. The principal, Purchase Price or Redemption Price of, Sinking Fund Installments for, and interest on the Bonds shall be payable in any coin or currency of the United States of America that on the respective dates of payment thereof is legal tender for the payment of public and private debts.

Payments. The principal of, Sinking Fund Installments for, and the Purchase Price or the Redemption Price, if applicable, on all Bonds shall be payable by check or draft or wire transfer of immediately available funds at maturity or upon earlier purchase or redemption to the Persons in whose names such Bonds are registered on the bond registration books maintained by the Trustee as Bond Registrar at the maturity or Redemption Date thereof, provided, however, that the payment in full of any Bond either at final maturity or upon purchase or redemption in whole shall only be payable upon the presentation and surrender of such Bonds at the designated corporate trust office of The Bank of New York Mellon in New York, New York, as trustee and paying agent (the "Paying Agent"), or at the corporate trust office of any successor Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid by the Trustee to the registered owner of such Bond as shown on the bond registration books of the Trustee as Bond Registrar at the close of business on the Record Date for such interest, (1) by check or draft mailed to such registered owner at his address as it appears on the bond

registration books or at such other address as is furnished to the Trustee in writing by such owner, or (2) if such Bonds are held by a Securities Depository or, at the written request addressed to the Trustee by any registered owner of Bonds in the aggregate principal amount of at least \$1,000,000 that all such payments be made by wire transfer, by electronic transfer in immediately available funds to the bank for credit to the ABA routing number and account number filed with the Trustee no later than five (5) Business Days before an Interest Payment Date, but no later than a Record Date for any interest payment.

Interest on any Bond that is due and payable but not paid on the date due ("Defaulted Interest") shall cease to be payable to the owner of such Bond on the relevant Record Date and shall be payable to the owner in whose name such Bond is registered at the close of business on a special record date (the "Special Record Date") for the payment of such Defaulted Interest, which Special Record Date shall be fixed as provided in the Indenture.

**Authorization and Purpose.** This bond is one of an authorized issue of bonds designated as "Build NYC Resource Corporation Revenue Bonds (New Dawn Charter Schools Project), Series 2019" (the "Bonds") issued in the aggregate principal amount of \$20,685,000. The Bonds are being issued under and pursuant to and in full compliance with the Constitution and laws of the State of New York, particularly the Not-for-Profit Corporation Law of the State of New York, and under and pursuant to a resolution adopted by the members of the Issuer on June 12, 2018 authorizing the issuance of the Bonds and under and pursuant to an Indenture of Trust, dated as of February 1, 2019 (as the same may be amended or supplemented, the "Indenture"), made and entered into by and between the Issuer and The Bank of New York Mellon, as trustee (said bank and any successor thereto under the Indenture being referred to herein as the "Trustee"), for the purpose of financing a portion of the cost of the acquisition, construction, renovation, equipping and furnishing by the Issuer of a facility (the "Facility") consisting of an approximately 24,000 square-foot building on an approximately 7,500 square-foot parcel of land located at 238-242 Hoyt Street, Brooklyn, New York, which is being operated by the Institution (as defined below) as a public charter school for over-aged and under-credited students in grades 9-12 (the "Project"), on behalf of New Dawn Charter Schools, a not-for-profit education corporation, created and existing under the laws of the State of New York (hereinafter together with any assignee of the Loan Agreement hereafter referred to, called the "Institution"). In order to finance a portion of the costs of the Project, the Issuer has made a loan to the Institution in the original principal amount of the Bonds from the proceeds of the Bonds pursuant to a certain Loan Agreement, dated as of February 1, 2019, between the Issuer and the Institution (as the same may be amended or supplemented, the "Loan Agreement"), and the Institution has executed a certain Promissory Note dated the date of original issuance of the Bonds in favor of the Issuer (as the same may be amended or supplemented, the "Promissory Note") to evidence the Institution's obligation under the Loan Agreement to repay such loan. Each of the Loan Agreement and the Promissory Note requires the payment by the Institution of loan payments sufficient to provide for the payment of the principal or Purchase Price or Redemption Price, if any, of, Sinking Fund Installments for, and interest on the Bonds as the same become due. Copies of the Indenture, the Loan Agreement, the Promissory Note and the Mortgage hereinafter referred to are on file at the designated corporate trust office of the Trustee in New York, New York, and reference is made to such documents for the provisions relating, among other things, to the terms and security of the Bonds, the charging and collection of loan payments, the custody

C-3

**Redemption of Bonds.** (A) **General Optional Redemption.** The Bonds are subject to redemption on or after February 1, 2026 in whole or in part on any Business Day (but if in part in integral multiples of \$5,000 and in the minimum principal amount of \$100,000) at the option of the Issuer (which option shall be exercised only upon the giving of notice by the Institution of its intention to prepay loan payments due under the Loan Agreement), at the Redemption Price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the Redemption Date.

(B) **Extraordinary Redemption.** The Bonds are subject to redemption prior to maturity, at the option of the Issuer exercised at the direction of the Institution (which option shall be exercised only upon the giving of notice by the Institution of its intention to prepay loan payments due under the Loan Agreement), as a whole on any date, upon notice or waiver of notice as provided in the Indenture, at a Redemption Price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the Redemption Date, if one or more of the following events shall have occurred:

(i) The Facility shall have been damaged or destroyed to such extent that, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee, (A) the Facility cannot be reasonably restored within a period of two (2) years from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Institution is thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of two (2) years from the date of such damage or destruction, or (C) the restoration cost of the Facility would exceed the total amount of all insurance proceeds, including any deductible amount, in respect of such damage or destruction; or

(ii) Title to, or the temporary use of, all or substantially all of the Facility shall have been taken or condemned by a competent authority which taking or condemnation results, or is likely to result, in the Institution being thereby prevented or likely to be prevented from carrying on its normal operation at the Facility for a period of two (2) years from the date of such taking or condemnation, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee; or

(iii) As a result of changes in the Constitution of the United States of America or of the State of New York or of legislative or executive action of said State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court after the contest thereof by the Institution, the Loan Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein or unreasonable burdens or excessive liabilities are imposed upon the Institution by reason of the operation of the Facility.

If the Bonds are to be redeemed in whole as a result of the occurrence of any of the events described above, the Institution shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution stating that, as a result of the occurrence of the event giving rise to such redemption, the Institution has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes.

C-5

and application of the proceeds of the Bonds, the rights and remedies of the holders of the Bonds, and the rights, duties and obligations of the Issuer, the Institution and the Trustee.

**Pledge and Security.** Pursuant to the Indenture, the Issuer has assigned to the Trustee all of its right, title and interest in and to the Promissory Note and substantially all of its right, title and interest in and to the Loan Agreement, including all rights to receive loan payments sufficient to pay the principal or Purchase Price or Redemption Price, if any, of, Sinking Fund Installments for, and interest and all other amounts due on the Bonds as the same become due, to be made by the Institution pursuant to the Loan Agreement and the Promissory Note. The Bonds are also secured by mortgage liens on and security interests in the Institution's fee title interest in the Facility pursuant to a Mortgage and Security Agreement (Acquisition Loan), a Mortgage and Security Agreement (Building Loan) and a Mortgage and Security Agreement (Indirect Loan), each dated as of February 1, 2019, and each from the Institution to the Issuer and the Trustee (as each of the same may hereafter be amended or supplemented, collectively the "Mortgage"). Pursuant to an Assignment of Mortgage, the Issuer has assigned to the Trustee all of the Issuer's right, title and interest in and to the Mortgage.

The Bonds are special limited revenue obligations of the Issuer and shall never constitute a debt of the State of New York or of The City of New York, and neither the State of New York nor The City of New York shall be liable thereon, nor shall the Bonds be payable out of any funds of the Issuer other than those pledged therefor.

Reference is hereby made to the Indenture for the definition of any capitalized word or term used but not defined herein and for a description of the property pledged, assigned and otherwise available for the payment of the Bonds, the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer, the Trustee and the holders of the Bonds, and the terms upon which the Bonds are issued and secured.

**Additional Bonds.** As provided in the Indenture, upon satisfying certain conditions including obtaining certain prescribed Bondholder consents, a Series of Additional Bonds may be issued from time to time in one or more series for the purpose of financing the cost of completing the Project, providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, providing extensions, additions or improvements to the Facility, or refunding outstanding Bonds (to the extent that such Bonds shall be subject to earlier redemption). All bonds issued and to be issued under the Indenture are and will be equally secured by the pledge and covenants made therein, except as may otherwise be expressly provided in the Indenture.

**General Interest Rate Limitation.** Anything herein or in the Indenture to the contrary notwithstanding, the obligations of the Issuer hereunder and under the Indenture shall be subject to the limitation that payments of interest or other amounts hereon shall not be required to the extent that receipt of any such payment by a holder of this bond would be contrary to the provisions of law applicable to such holder of this bond which would limit the maximum rate of interest which may be charged or collected by such holder of this bond.

C-4

(C) **Mandatory Sinking Fund Installment Redemption.** The Bonds maturing on February 1, 2033 are subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the Redemption Date, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in the Indenture:

Sinking Fund Installment Payment Date (February 1)	Sinking Fund Installment	Sinking Fund Installment Payment Date (February 1)	Sinking Fund Installment
2021	\$295,000	2027	\$400,000
2022	310,000	2028	420,000
2023	325,000	2029	440,000
2024	345,000	2030	460,000
2025	360,000	2031	485,000
2026	380,000	2032	505,000
		2033*	535,000

\*Final Maturity

The Bonds maturing on February 1, 2039 shall be subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the Redemption Date, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in Sections 5.05(d) and (f):

Sinking Fund Installment Payment Date (February 1)	Sinking Fund Installment	Sinking Fund Installment Payment Date (February 1)	Sinking Fund Installment
2034	\$560,000	2037	\$660,000
2035	590,000	2038	695,000
2036	625,000	2039*	735,000

\* Final Maturity

The Bonds maturing on February 1, 2049 shall be subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof, together with accrued interest to the Redemption Date, from mandatory Sinking Fund Installments on the dates and in the principal amounts set forth below, provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in Sections 5.05(d) and (f):

C-6

Sinking Fund Installment Payment Date (February 1)	Sinking Fund Installment	Sinking Fund Installment Payment Date (February 1)	Sinking Fund Installment
2040	\$775,000	2045	\$1,025,000
2041	820,000	2046	1,085,000
2042	870,000	2047	1,150,000
2043	920,000	2048	1,215,000
2044	970,000	2049*	2,730,000

\*Final Maturity

(D) Mandatory Redemption from Excess Proceeds and Certain Other Amounts. The Bonds shall be redeemed, on or after February 1, 2026, in whole or in part by lot prior to maturity in the event and to the extent:

(i) excess Bond proceeds shall remain in the Project Fund after the completion of the Project,

(ii) excess title insurance or property insurance proceeds or condemnation awards shall remain after the application thereof pursuant to the Loan Agreement and the Indenture,

(iii) excess proceeds shall remain after the release or substitution of Facility Realty or Facility Personality, or

(iv) certain funds received by the Institution pursuant to any capital campaign which are earmarked for specific Project Costs shall remain with the Institution and shall not be required for completion of the Project or related Project Costs as provided in the Loan Agreement,

in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Bonds to be redeemed, together with interest accrued thereon to the Redemption Date.

(E) Mandatory Redemption Upon Failure to Operate the Facility for the Approved Project Operations, Material Violation of Material Legal Requirements, False Representation or Failure to Maintain Liability Insurance. The Bonds are also subject to mandatory redemption prior to maturity, at the option of the Issuer, as a whole only, in the event (i) the Issuer shall determine that (w) the Institution is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations, (x) the Institution, any Principal of the Institution or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Institution has committed a material violation of a material Legal Requirement, (y) any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, or (ii) the Institution shall fail to obtain or maintain the liability insurance with respect to the Facility required under the Loan Agreement,

C-7

redemption shall become due and payable on the Redemption Date, provided, however, that with respect to any optional redemption of the Bonds as provided in this bond, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, redemption premium, if any, and interest on such Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem such Bonds. In the event that such notice of optional redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. If a notice of optional redemption shall be unconditional, or if the conditions of a conditional notice of optional redemption shall have been satisfied, then upon presentation and surrender of Bonds so called for redemption at the place or places of payment, such Bonds shall be redeemed.

Amendment of Indenture. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the holders of the Bonds at any time by the Issuer with the consent of the holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding thereunder. Any such consent shall be conclusive and binding upon each such holder and upon all future holders of each Bond and of any such Bond issued upon the transfer thereof, whether or not notation of such consent is made thereon.

Denominations. The Bonds are issuable in the form of fully registered bonds in the denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof.

Exchange of Bonds. The holder of this bond may surrender the same, at the designated corporate trust office of the Trustee, in exchange for an equal aggregate principal amount of Bonds of any of the Authorized Denominations of the same maturity and maturities and interest rate as this bond or the Bonds so surrendered, subject to the conditions and upon payment of the charges provided in the Indenture. However, the Trustee will not be required to (i) transfer or exchange any Bonds during the period between a Record Date and the following Interest Payment Date or during the period of fifteen (15) days next preceding any day for the selection of Bonds to be redeemed, or (ii) transfer or exchange any Bonds selected, called or being called for redemption in whole or in part.

Transfer of Bonds. This bond is transferable, as provided in the Indenture, only upon the books of the Issuer kept for that purpose at the designated corporate trust office of the Trustee by the registered owner hereof in person, or by his duly authorized attorney-in-fact, upon surrender of this bond (together with a written instrument of transfer in the form appearing on this bond duly executed by the registered owner or his duly authorized attorney-in-fact with a guaranty of the signature thereon by a member of the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15, and thereupon a new fully registered Bond in the same aggregate principal amount and maturity and interest rate shall be issued to the transferee in exchange therefor as provided in the Indenture and upon payment of the charges therein prescribed. The Issuer, the Bond Registrar, the Trustee and any Paying Agent may deem and treat the Person in whose name this bond is registered as the absolute owner hereof for the

C-9

and, in the case of clause (i) or (ii) above, the Institution shall fail to cure any such default or failure within the applicable time periods set forth in the Loan Agreement following the receipt by the Institution of written notice of such default or failure from the Issuer and a demand by the Issuer on the Institution to cure the same. Any such redemption shall be made upon notice or waiver of notice to the Bondholders as provided in the Indenture, at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Bonds, together with interest accrued thereon to the Redemption Date.

(F) Mandatory Taxability Redemption. Upon the occurrence of a Determination of Taxability, the Bonds shall be redeemed prior to maturity on any date within one hundred twenty (120) days following such Determination of Taxability, at a Redemption Price equal to one hundred three percent (103%) of the principal amount thereof, together with accrued interest to the Redemption Date. The Bonds shall be redeemed in whole unless redemption of a portion of the Bonds Outstanding would have the result that interest payable on the Bonds remaining Outstanding after such redemption would not be includable in the gross income of any holder of a Bond. In such event, the Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

(G) Purchase in Lieu of Optional Redemption. In lieu of calling Bonds for optional redemption, the Bonds shall be subject to mandatory tender for purchase at the direction of the Issuer, upon the direction of the Institution, in whole or in part (and, if in part, in such manner as determined by the Institution) on any date on or after February 1, 2026, at a purchase price equal to the applicable Redemption Price for any optional redemption of such Bonds as provided above, plus accrued interest to the purchase date. Purchases of tendered Bonds may be made without regard to any provision of the Indenture relating to the selection of Bonds in a partial optional redemption. The Bonds purchased pursuant to any mandatory tender(s) are not required to be cancelled, and if not so cancelled (subject to the Loan Agreement), shall, prior to any resale by or on behalf of the Institution, not be deemed Outstanding in connection with any subsequent partial optional redemption solely for purposes of those provisions of the Indenture relating to the selection of Bonds in a partial redemption.

Purchases in lieu of an optional redemption shall be permitted, with the consent of the Issuer, upon the delivery to the Issuer and the Trustee of (i) an opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee substantially to the effect that (A) such purchases in lieu of optional redemption comply with the provisions of the Indenture and (B) neither such purchases in lieu of an optional redemption nor any transaction directly related thereto will adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation, and (ii) such other opinions, certificates or documentation as the Issuer may require.

Redemption Procedures. If any of the Bonds are to be called for redemption, the Indenture requires a copy of the redemption notice to be mailed at least thirty (30) days prior to such Redemption Date to the registered owner of each Bond to be redeemed at the address shown on the registration books. All Bonds so called for redemption will cease to bear interest after the Redemption Date if funds for their redemption are on deposit at the place of payment at that time. If notice of redemption shall have been given as aforesaid, the Bonds called for

C-8

purpose of receiving payment of, or on account of, the principal or Purchase Price or Redemption Price hereof, the Sinking Fund Installments therefor, and interest due hereon and for all other purposes whatsoever, and all payments made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer, the Institution, the Bond Registrar, the Trustee nor any Paying Agent shall be affected by any notice to the contrary.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Issuer or the Trustee may make a charge sufficient to reimburse it for any expenses and any tax, fee or other governmental charge required to be paid in connection therewith; any such expenses shall be paid by the Institution but any such tax, fee or other governmental charge shall be paid by the Holder requesting such transfer or exchange.

Book Entry System. The Bonds are being issued by means of a book entry system with no physical distribution of bond certificates to be made except as provided in the Indenture. One Bond certificate with respect to each date on which the Bonds are stated to mature, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody or in the custody of its agent. The book entry system will evidence positions held in the Bonds by the Securities Depository's Participants, beneficial ownership of the Bonds in Authorized Denominations being evidenced in the records of such Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Participants pursuant to rules and procedures established by the Securities Depository and its Participants. The Issuer and the Trustee will recognize the Securities Depository nominee, while the registered owner of this bond, as the owner of this bond for all purposes, including (i) payments of principal of, Sinking Fund Installments for, if any, redemption premium, if any, and interest on, this bond, (ii) notices, and (iii) voting. Transfer of principal, Sinking Fund Installments, interest and any redemption premium payments to Participants of the Securities Depository, and transfer of principal, Sinking Fund Installments, interest and any redemption premium payments to Beneficial Owners of the Bonds by Participants of the Securities Depository will be the responsibility of such Participants and other nominees of such Beneficial Owners. The Issuer and the Trustee will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its Participants or persons acting through such Participants. While the Securities Depository nominee is the owner of this bond, notwithstanding the provision hereinabove contained, payments of principal of, Sinking Fund Installments, if any, redemption premium, if any, and interest on this bond shall be made in accordance with existing arrangements among the Issuer, the Trustee and the Securities Depository.

Special Agreement by Holder. Each holder of this bond, by the purchase and acceptance of this bond, is deemed to have represented and agreed as follows:

(A) (i) it is a qualified institutional buyer as defined in Rule 144A ("Rule 144A") of the Securities Act of 1933, as amended (the "Securities Act"), and it is aware that the sale made to it of this bond has been made in reliance on Rule 144A; it has acquired this bond for its own account or for the account of a qualified institutional buyer; or (ii) it is an "accredited investor" as defined in Rule 501 under the Securities Act; and

C-10

(B) it understands that this bond has not been registered under the Securities Act, and that, if in the future it decides to offer, resell, pledge or otherwise transfer this bond, this bond may be offered, resold, pledged or transferred only in accordance with the above transfer restrictions set forth in this bond and in the legend appearing hereon.

**Acceleration of Bonds.** In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds and Additional Bonds issued under the Indenture and then Outstanding may be declared and may become due and payable before the stated maturities thereof, together with accrued interest thereon.

**Limitation on Bondholder Enforcement Rights.** The holder of this bond shall have no right to enforce the provisions of the Indenture, to institute action to enforce the provisions and covenants thereof or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture.

**Special Obligation of the Issuer.** This bond and the issue of which it forms a part are special limited revenue obligations of the Issuer, payable by the Issuer solely out of the loan payments, revenues or other receipts, funds or moneys of the Issuer pledged under the Indenture and from any amounts otherwise available under the Indenture for the payment of the Bonds.

**Estoppel Clause.** It is hereby certified, recited and declared that all conditions, acts and things required by law and the Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this bond, exist, have happened and have been performed, and that the issuance of this bond and the issue of which it forms a part are within every debt and other limit prescribed by the laws of the State of New York.

**No Personal Liability.** Neither the members, directors, officers or agents of the Issuer nor any person executing this bond shall be liable personally or be subject to any personal liability or accountability by reason of the issuance hereof.

**Authentication by Trustee.** This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been signed by the Trustee.

[Remainder of Page Intentionally Left Blank]

C-11

(FORM OF ASSIGNMENT)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

(Please print or typewrite name, address and taxpayer identification number of transferee)

the within bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer such bond on the books kept for the registration thereof, with full power of substitution in the premises.

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

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED  
MEDALLION GUARANTEED

\_\_\_\_\_  
(Signature Guarantee Program Name)

[Signature Guarantee must be by a member of the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Signature Program in accordance with Securities and Exchange Commission Rule 17Ad-15]

C-13

IN WITNESS WHEREOF, Build NYC Resource Corporation has caused this bond to be executed in its name by the manual or facsimile signature of its Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel and its official seal or a facsimile thereof to be hereunto impressed or imprinted hereon and attested by the manual or facsimile signature of its Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, all as of the Bond Date indicated above.

BUILD NYC RESOURCE CORPORATION

By: \_\_\_\_\_  
Authorized Signatory

(SEAL)

ATTEST:

\_\_\_\_\_  
Authorized Signatory

CERTIFICATE OF AUTHENTICATION

This bond is one of the Bonds of the issue described in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Date of Authentication: \_\_\_\_\_

C-12

EXHIBIT D-1

Form of Requisition from the Project Fund

REQUISITION NO. \_\_\_\_\_

TO: The Bank of New York Mellon, as Trustee

FROM: New Dawn Charter Schools

Ladies and Gentlemen:

You are requested to draw from the Project Fund, established by Section 5.01 of the Indenture of Trust, dated as of February 1, 2019 (the "Indenture"), between Build NYC Resource Corporation (the "Issuer") and yourself, a check or checks or wire transfer, as applicable, in the amounts, payable to the order of those persons and for the purpose of paying those costs set forth on Schedule A attached hereto. All capitalized terms used in this Requisition not otherwise defined herein shall have the meanings given such terms by the Indenture or by the Loan Agreement referred to in the Indenture.

I hereby certify that

(i) I am an Authorized Representative of New Dawn Charter Schools (the "Institution");

(ii) the number of this Requisition is \_\_\_\_\_;

(iii) the items of cost set forth on Schedule A attached hereto are correct and proper under Section 5.02 of the Indenture and under Section 3.2 of the Loan Agreement and each such item has been properly paid or incurred as an item of Project Cost;

(iv) none of the items for which this Requisition is made has formed the basis for any disbursement heretofore made from the Project Fund;

(v) the payees and amounts stated in Schedule A attached hereto are true and correct and each item of cost so stated is due and owing;

(vi) each such item stated in Schedule A attached hereto is a proper charge against the Project Fund;

(vii) each such item in Schedule A attached hereto represents the value of work actually furnished, or labor or services actually rendered and no item relates to materials, that are not incorporated into the improvement or deposits toward same;

(viii) each item of cost set forth in Schedule A attached hereto is consistent in all material respects with the Tax Regulatory Agreement;

D-1-1

(ix) if the payment herein requested is a reimbursement to the Institution for costs or expenses of the Institution incurred by reason of work performed or supervised by officers or employees of the Institution or any Affiliate, such officers or employees were specifically employed for such purpose and the amount to be paid does not exceed the actual cost thereof to the Institution and such costs or expenses will be treated by the Institution on its books as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis;

(x) no portion of the proceeds of the Bond will be applied to reimburse the Institution for Project Costs paid more than sixty (60) days prior to June 12, 2018, the date the Issuer adopted its reimbursement resolution for the Project, except for amounts which do not exceed twenty percent (20%) of the Project Costs financed with the proceeds of the Bonds which were applied to finance certain preliminary expenses with respect to the Project. Preliminary expenses, for purposes of this exception, include architectural, engineering, surveying, soil testing and similar costs incurred prior to the commencement of construction or rehabilitation of the Project, but do not include land acquisition, site preparation and similar costs incident to the commencement of construction or rehabilitation of the Project. No portion of the proceeds of the Bonds will be applied to reimburse the Institution for a cost (other than preliminary expenditures) paid more than eighteen (18) months prior to the date of this Requisition or the date the Facility to which the cost relates was placed in service, whichever is later. In no event shall the proceeds of the Bonds be applied to reimburse the Institution for a Project Cost paid more than three (3) years prior to the date of issuance of the Bonds, unless such cost is attributable to a preliminary expenditure, as described above;

(xi) no Determination of Taxability has occurred, and no Event of Default exists and is continuing under the Indenture or the Loan Agreement or any other Security Document nor any condition, event or act which, with notice or lapse of time or both, would constitute such an Event of Default;

(xii) I have no knowledge of any vendor's lien, mechanic's lien or security interest which should be satisfied or discharged before the payment herein requested is made or which will not be discharged by such payment or, to the extent that any such costs shall be the subject of a bona fide dispute, for which such costs have not been appropriately bonded or for which a surety or security has not been posted which is at least equal to the amount of such costs;

(xiii) each item which payment under this Requisition is to be made when added to all other payments previously made from the Project Fund, will not result in less than 95% of the proceeds of the Bonds (exclusive of costs of issuance of the Bonds or any reasonably required reserve) (including any earnings thereon) being used for the acquisition, construction, reconstruction or improvement of land or property that is subject to the allowance for depreciation provided in section 167 of the Code;

(xiv) such item of cost for which payment is herein requested is chargeable to the capital account of the Facility for federal income tax purposes, or would

be so chargeable either with an election by the Institution or but for the election of the Institution to deduct the amount of such item; and

(xv) the representations and warranties made by the Institution in the Security Documents are correct on and as of the date of such disbursement as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

In addition, I certify that [this Requisition is not related to items to be paid or reimbursed under the Construction Contract.] [this Requisition is related to items to be paid or reimbursed under the Construction Contract. Attached hereto are the executed certificates set forth in Exhibits D-2, D-3 and D-4 of the Indenture, and set forth below is the approval of this Requisition by the Construction Monitor.]

Attached to this Requisition is a schedule of or a copy of bills, invoices or other documents evidencing and supporting this Requisition.

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

NEW DAWN CHARTER SCHOOLS

By: \_\_\_\_\_  
Authorized Representative

[APPROVED BY CONSTRUCTION MONITOR  
pursuant to Section 5.02 of the Indenture:

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

D-1-2

D-1-3

SCHEDULE A TO REQUISITION NO. \_\_\_\_\_

Amount	Payee (with address or wire information)	Purpose
--------	--	---------

Receipt is hereby acknowledged of a payment in the amount of \$ \_\_\_\_\_ in connection with the submission of the attached Requisition.

NEW DAWN CHARTER SCHOOLS

By: \_\_\_\_\_  
Authorized Representative

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

D-1-4

D-1-5



**EXHIBIT D-2**

**Form of Certificate of Construction Manager**

Pursuant to Section 3.2 of the Loan Agreement (the "Agreement"), dated as of February 1, 2019, between Build NYC Resource Corporation (the "Issuer") and New Dawn Charter Schools (the "Institution"), and Section 5.02 of the Indenture of Trust, dated as of February 1, 2019 (the "Indenture"), between the Issuer and The Bank of New York Mellon, as Trustee (the "Trustee"), and as a requirement for the authorization by the Trustee for the disbursement of funds to reimburse or pay costs of Benchmark Builders, Inc. (the "Construction Manager"), hereby certifies as follows:

- (i) the cost of that portion of the improvements completed since the last disbursement is \$ \_\_\_\_\_;
- (ii) all construction completed prior to the date of the requisition submitted by the Institution in connection herewith (the "Disbursement Requisition") has been performed and completed in accordance with the Project's plans and specifications on file with the Construction Monitor;
- (iii) all outstanding claims for labor, materials and fixtures have been paid (together with any lien waivers or partial lien waivers and/or paid invoices evidencing such payment);
- (iv) to the Construction Manager's knowledge, there are no mechanics' or materialmen's liens outstanding;
- (v) all funds previously disbursed to the Construction Manager have been applied directly to the payment of the costs shown on the Project Budget as requested pursuant to prior draw requests;
- (vi) the aggregate of all increases to the original cost of the Project as a result of change orders made under the construction contract for the Project does not exceed the amount of the owners' and construction contingency under such contract; and
- (vii) the location of the improvements does not and will not encroach upon any adjoining property, building setback area or violate any easement.

D-2-1

All capitalized terms used in this Certificate and not otherwise defined herein have the meanings set forth in the Indenture.

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

**BENCHMARK BUILDERS, INC.**

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

Its: \_\_\_\_\_

D-2-2

**EXHIBIT D-3**

**Form of Certificate of Architect**

Pursuant to Section 3.2 of the Loan Agreement (the "Agreement"), dated as of February 1, 2019, between Build NYC Resource Corporation (the "Issuer") and New Dawn Charter Schools (the "Institution"), and Section 5.02 of the Indenture of Trust, dated as of February 1, 2019 (the "Indenture"), between the Issuer and The Bank of New York Mellon, as Trustee (the "Trustee"), and as a requirement for the authorization by the Trustee for the disbursement of funds to reimburse or pay costs of construction, the undersigned, on behalf of, as the architect for and as an authorized officer of Gerner Kronick & Valcarcel, Architects D.P.C. (the "Architect"), hereby approves the requisition submitted by the Institution in connection herewith (the "Disbursement Requisition") and further certifies as follows:

- (i) the cost of that portion of the improvements completed since the last disbursement is \$ \_\_\_\_\_;
- (ii) all construction completed prior to the date of the Disbursement Requisition has been performed and completed in accordance with the Project's plans and specifications on file with the Construction Monitor (the "Plans and Specifications");
- (iii) the undisbursed amount on deposit in the Project Fund created under the Indenture is sufficient to pay the cost of completing the construction of improvements in accordance with the Plans and Specifications;
- (iv) all change orders for the Project since the next preceding requisition are as follows:

<u>Contractor</u>	<u>Nature of Change Order</u>	<u>Increase or Decrease in Project Cost</u>
-------------------	-------------------------------	---

(v) the aggregate amount of all change orders for the Project since the date of the construction contract for the Project, including the change orders described in Paragraph (iv) of this Certificate, is \$ \_\_\_\_\_. The aggregate of all increases to the original cost of the Project as a result of change orders made under the construction contract for the Project does not exceed the amount of the owners' and construction contingency under such contract;

(vi) no known change order to any contract related to construction of the Project is required to complete the Project in accordance with the Plans and Specifications, except (if none, write "None");

D-3-1

\_\_\_\_\_  
\_\_\_\_\_  
(vii) no funds requested under the Disbursement Requisition, are for material stored off the Project site except as follows (if none, write "None"):

\_\_\_\_\_  
and

(viii) we have executed the certificate entitled "Architect's Certificate for Payment" contained on the "Application and Certificate for Payment" (AIA Document G702) presented concurrently with this Certificate, in those places requiring the signature of an architect for the Project.

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

**GERNER KRONICK & VALCARCEL,  
ARCHITECTS D.P.C.**

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

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

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

D-3-2

**EXHIBIT D-4****Form of Project Budget Balance Sheet**

The undersigned Institution hereby certifies that the Budget (as defined in the Indenture) is "in balance" and will remain "in balance" based on the following balance sheet:

Original Amount in Project Fund as of [DATE]	
Costs previously disbursed from Project Fund	
Amounts deposited by Institution (incl. earned interest)	
Amount in Project Fund as of the date hereof	
Amount hereby requested (by type)	
Projected balance in Project Fund upon completion of Draw	

The undersigned Authorized Representative of the Institution hereby certifies that:

- (i) the dates and amounts of each change order to any contract for construction of the Project since the date of the last requisition are (if none, write "None"):

\_\_\_\_\_, and

- (ii) the aggregate of all change orders to the original cost of the Project, to date, is less than \$ \_\_\_\_\_. The aggregate of all increases to the original cost of the Project as a result of change orders made under the construction contract for the Project does not exceed the amount of the owners' and construction contingency under such contract.

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

NEW DAWN CHARTER SCHOOLS

By: \_\_\_\_\_  
Authorized Representative

D-4-1

All capitalized terms used in this Requisition not otherwise defined herein shall have the meanings given such terms by the Indenture.

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

NEW DAWN CHARTER SCHOOLS

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

E-2

**EXHIBIT E****Form of Requisition from the Repair and Replacement Fund**

REQUISITION NO.

TO: The Bank of New York Mellon, as Trustee  
FROM: New Dawn Charter Schools

Pursuant to Section 5.14 of the Indenture of Trust, dated as of February 1, 2019 (the "Indenture"), between Build NYC Resource Corporation (the "Issuer") and yourself, you are requested to draw from the Repair and Replacement Fund, established by Section 5.01, a check or checks or wire transfer, as applicable, in the amounts, payable to the order of those persons and for the purpose of paying those costs set forth below:

PAYABLE TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AMOUNT DUE: \$ \_\_\_\_\_

Attached are the following:

\_\_\_\_\_ Invoice

\_\_\_\_\_ Cancelled check (attach only if invoice is already paid)

I hereby certify that I am an Authorized Representative of New Dawn Charter Schools (the "Institution").

The obligation(s) has (have) been properly incurred and is (are) a proper charge against the Repair and Replacement Fund and has (have) not been the basis of any previous withdrawal. The disbursement requested will be used to either (a) pay improvements to the Facility, repairs and/or replacements of furniture and equipment or other components of the Facility, or pay for the purchase of additional furniture and equipment for the Facility, or (b) reimburse the Institution for payment of improvements to the Facility, repairs and replacements paid for furniture and equipment or other components of the Facility or for payment for purchase of additional equipment and furniture for the Facility.

[Pursuant to Section 5.14 of the Indenture, you are hereby directed to transfer \$ \_\_\_\_\_ from the Repair and Replacement Fund to the Bond Fund to pay principal and interest on the Bonds.]

E-1

[THIS PAGE INTENTIONALLY LEFT BLANK]

---

**APPENDIX F**

**FORM OF LOAN AGREEMENT**

---

[THIS PAGE INTENTIONALLY LEFT BLANK]

## TABLE OF CONTENTS

Page

### FORM OF LOAN AGREEMENT

Dated as of February 1, 2019

by and between

#### BUILD NYC RESOURCE CORPORATION,

a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038,  
as "Issuer"

and

#### NEW DAWN CHARTER SCHOOLS,

a not-for-profit education corporation created and existing under the laws of the State of New York, having its principal office in New York City at  
238-242 Hoyt Street, Brooklyn, New York 11217,  
as "Institution"

\$20,685,000  
Build NYC Resource Corporation  
Revenue Bonds  
(New Dawn Charter Schools Project), Series 2019

### TABLE OF CONTENTS (continued)

Page

#### ARTICLE VI

##### DAMAGE, DESTRUCTION AND CONDEMNATION

Section 6.1. Damage, Destruction and Condemnation .....	48
Section 6.2. Loss Proceeds .....	48
Section 6.3. Election to Rebuild or Terminate .....	48
Section 6.4. Effect of Election to Build .....	49

#### ARTICLE VII

##### COVENANTS OF THE ISSUER

Section 7.1. Assignment of Promissory Note and Assignment of Mortgage .....	52
Section 7.2. Issuance of Initial Bonds .....	52
Section 7.3. Issuance of Additional Bonds .....	52
Section 7.4. Pledge and Assignment to Trustee .....	52

#### ARTICLE VIII

##### COVENANTS OF THE INSTITUTION

Section 8.1. Insurance .....	53
Section 8.2. Indemnity .....	59
Section 8.3. Compensation and Expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents; Administrative and Project Fees .....	61
Section 8.4. Current Facility Personality Description .....	62
Section 8.5. Signage at Facility Site .....	62
Section 8.6. Environmental Matters .....	62
Section 8.7. Employment Matters .....	63
Section 8.8. Non-Discrimination .....	64
Section 8.9. Assignment of this Agreement or Lease of Facility .....	64
Section 8.10. Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of Facility .....	67
Section 8.11. Discharge of Liens .....	69
Section 8.12. Filing .....	70
Section 8.13. No Further Encumbrances Permitted .....	73
Section 8.14. Documents Automatically Deliverable to the Issuer .....	73
Section 8.15. Requested Documents .....	74
Section 8.16. Periodic Reporting Information for the Issuer .....	75
Section 8.17. Taxes, Assessments and Charges .....	76
Section 8.18. Compliance with Legal Requirements .....	77
Section 8.19. Operation as Approved Facility .....	78
Section 8.20. Restrictions on Dissolution and Merger .....	78

#### ARTICLE I

##### DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions .....	3
Section 1.2. Construction .....	26

#### ARTICLE II

##### REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties by Issuer .....	28
Section 2.2. Representations and Warranties by the Institution .....	29

#### ARTICLE III

##### THE PROJECT; MAINTENANCE; REMOVAL OF PROPERTY AND TITLE INSURANCE

Section 3.1. Agreement to Undertake Project .....	33
Section 3.2. Manner of Project Completion .....	33
Section 3.3. Maintenance .....	35
Section 3.4. Alterations and Improvements .....	35
Section 3.5. Removal of Property of the Facility .....	36
Section 3.6. Implementation of Additional Improvements and Removals .....	37
Section 3.7. Title Insurance .....	37
Section 3.8. No Warranty of Condition or Suitability .....	38

#### ARTICLE IV

##### LOAN; PAYMENT PROVISIONS

Section 4.1. Loan of Proceeds .....	39
Section 4.2. Promissory Note .....	39
Section 4.3. Loan Payments; Pledge of this Agreement and of the Promissory Note .....	39
Section 4.4. Loan Payments and Other Payments Payable Absolutely Net .....	43
Section 4.5. Nature of Institution's Obligation Unconditional .....	43
Section 4.6. Advances by the Issuer or the Trustee .....	44

#### ARTICLE V

##### RECAPTURE OF BENEFITS

Section 5.1. Recapture of Benefits .....	45
--	----

### TABLE OF CONTENTS (continued)

Page

Section 8.21. Preservation of Exempt Status .....	81
Section 8.22. Securities Law Status .....	81
Section 8.23. Further Assurances .....	81
Section 8.24. Tax Regulatory Agreement .....	82
Section 8.25. Compliance with the Indenture .....	82
Section 8.26. Reserved .....	82
Section 8.27. Continuing Disclosure .....	82
Section 8.28. Special Charter School Covenants and Account Direction Agreement .....	82
Section 8.29. Financial Records; Financial Covenants .....	83
Section 8.30. Living Wage .....	89
Section 8.31. Limitations on Incurrence of Additional Indebtedness .....	97
Section 8.32. Separate Facilities .....	98
Section 8.33. Waiver of Financial Covenants .....	99

#### ARTICLE IX

##### REMEDIES AND EVENTS OF DEFAULT

Section 9.1. Events of Default .....	100
Section 9.2. Remedies on Default .....	101
Section 9.3. Bankruptcy Proceedings .....	102
Section 9.4. Remedies Cumulative .....	102
Section 9.5. No Additional Waiver Implied by One Waiver .....	103
Section 9.6. Effect on Discontinuance of Proceedings .....	103
Section 9.7. Agreement to Pay Fees and Expenses of Attorneys and Other Consultants .....	103
Section 9.8. Certain Continuing Representations .....	103
Section 9.9. Late Delivery Fees .....	104

#### ARTICLE X

##### TERMINATION OF THIS AGREEMENT

Section 10.1. Termination of this Agreement .....	105
Section 10.2. Actions on Termination .....	105
Section 10.3. Survival of Institution Obligations .....	106

#### ARTICLE XI

##### CERTAIN PROVISIONS RELATING TO THE BONDS

Section 11.1. Issuance of Additional Bonds .....	107
Section 11.2. Determination of Taxability .....	107
Section 11.3. Mandatory Redemption of Bonds as Directed by the Issuer .....	108
Section 11.4. Mandatory Redemption As a Result of Project Gifts or Grants .....	108

**TABLE OF CONTENTS**  
(continued)

	Page
Section 11.5. Right to Cure Issuer Defaults.....	109
Section 11.6. Prohibition on the Purchase of Bonds.....	109
Section 11.7. Investment of Funds.....	109

**ARTICLE XII**

**MISCELLANEOUS**

Section 12.1. Force Majeure .....	110
Section 12.2. Assignment of Mortgage and Pledge under Indenture .....	110
Section 12.3. Amendments .....	111
Section 12.4. Service of Process .....	111
Section 12.5. Notices .....	111
Section 12.6. Consent to Jurisdiction .....	113
Section 12.7. Prior Agreements Superseded.....	113
Section 12.8. Severability .....	113
Section 12.9. Effective Date; Counterparts.....	114
Section 12.10. Binding Effect.....	114
Section 12.11. Third Party Beneficiaries .....	114
Section 12.12. Law Governing .....	114
Section 12.13. Waiver of Trial by Jury.....	114
Section 12.14. Recourse Under This Agreement.....	114
Section 12.15. Legal Counsel; Mutual Drafting.....	115

**EXHIBITS**

Exhibit A - Description of the Land
Exhibit B - Description of the Facility Personality
Exhibit C - Authorized Representative
Exhibit D - Principals of Institution
Exhibit E - Project Cost Budget
Exhibit F - Form of Required Disclosure Statement
Exhibit G - Form of Project Completion Certificate
Exhibit H - Form of Promissory Note
Exhibit I - Reserved
Exhibit J - Form of L.W. Agreement

**WHEREAS**, as a result of such negotiations, the Institution has requested the Issuer to issue its bonds to finance a portion of the costs of the Project; and

**WHEREAS**, the Issuer adopted the Approving and Bond Resolution authorizing the Project and the issuance of its revenue bonds to finance a portion of the costs of the Project; and

**WHEREAS**, to facilitate the Project and the issuance by the Issuer of its revenue bonds to finance a portion of the costs of the Project, the Issuer and the Institution have entered into negotiations pursuant to which (i) the Issuer will make the Loan of the proceeds of the Initial Bonds, in the original aggregate principal amount of the Initial Bonds, to the Institution pursuant to this Agreement, and (ii) the Institution will execute the Promissory Note in favor of the Issuer to evidence the Institution's obligation under this Agreement to repay the Loan, and the Issuer will endorse the Promissory Note to the Trustee; and

**WHEREAS**, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Initial Bonds, the Issuer has authorized the issuance of the Initial Bonds in the Authorized Principal Amount pursuant to the Authorizing and Bond Resolution and the Indenture; and

**WHEREAS**, concurrently with the execution hereof, in order to secure the Initial Bonds, the Institution will grant mortgage liens on and security interests in its fee interest in the Mortgaged Property to the Issuer and the Trustee pursuant to the Mortgage, and the Issuer will assign its right, title and interest under the Mortgage to the Trustee pursuant to the Assignment of Mortgage.

**NOW, THEREFORE**, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

**LOAN AGREEMENT**

This **LOAN AGREEMENT**, dated as of February 1, 2019 (this "Agreement"), is by and between **BUILD NYC RESOURCE CORPORATION**, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038 (the "**Issuer**"), party of the first part, and **NEW DAWN CHARTER SCHOOLS**, a not-for-profit education corporation created and existing under the laws of the State of New York pursuant to Article 56 of the Education Law, having its principal office in New York City at 238-242 Hoyt Street, Brooklyn, New York 11217 (the "**Institution**"), party of the second part (capitalized terms used herein shall have the respective meanings assigned to such terms throughout this Agreement).

**WITNESSETH:**

**WHEREAS**, the Issuer is authorized pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended, and its Certificate of Incorporation and By-Laws (i) to promote community and economic development and the creation of jobs in the non-profit and for-profit sectors for the citizens of The City of New York (the "City") by developing and providing programs for not-for-profit institutions, manufacturing and industrial businesses and other entities to access tax-exempt and taxable financing for their eligible projects; (ii) to issue and sell one or more series or classes of bonds, notes and other obligations through private placement, negotiated underwriting or competitive underwriting to finance such activities above, on a secured or unsecured basis; and (iii) to undertake other eligible projects that are appropriate functions for a non-profit local development corporation for the purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, carrying on scientific research for the purpose of aiding the City by attracting new industry to the City or by encouraging the development of or retention of an industry in the City, and lessening the burdens of government and acting in the public interest; and

**WHEREAS**, the Certificate of Incorporation of the Issuer further provides that the lessening of the burdens of government and the exercise of the powers conferred on the Issuer are the performance of an essential governmental function, which activities will assist the City in reducing unemployment and promoting additional job growth and economic development; and

**WHEREAS**, the Institution has entered into negotiations with officials of the Issuer for the Issuer's assistance with a tax-exempt bond transaction, the proceeds of which, together with other funds of the Institution, will be used by the Institution for the acquisition, construction, renovation, equipping and furnishing of the Improvements as part of the Project; and

**WHEREAS**, the Issuer has determined that the providing of financial assistance to the Institution for the Project will promote and is authorized by and will be in furtherance of the corporate purposes of the Issuer; and

**ARTICLE I**

**DEFINITIONS AND CONSTRUCTION**

**Section 1.1. Definitions.** The following capitalized terms shall have the respective meanings specified for purposes of this Agreement:

**Account Direction Agreement** shall mean any and all agreements, whether there be one or more, among the Institution, the Depository Bank and the Trustee, pursuant to which the Institution directs the Depository Bank to initiate automatic transfers from the Institution's designated account at the Depository Bank to the Trustee with respect to the Institution's debt service payment obligations under this Agreement; the initial Account Direction Agreement being, that certain Account Direction Agreement, dated as of the Closing Date, among the Institution, the Depository Bank and the Trustee.

**Additional Bonds** shall mean one or more Series of additional bonds issued, executed, authenticated and delivered under the Indenture.

**Additional Improvements** shall have the meaning specified in Section 3.4(a).

**Affiliate** shall mean, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

**Agreement** shall mean this Loan Agreement, dated as of the date set forth in the first paragraph hereof, between the Issuer and the Institution, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith and with the Indenture.

**Annual Administrative Fee** shall mean that annual administrative fee established from time to time by the Issuer's Board of Directors as generally applicable to Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from such general applicability as may be established by the Issuer's Board of Directors).

**Approved Facility** shall mean the Facility as occupied, used and operated by the Institution substantially for the Approved Project Operations, including such other activities as may be substantially related to or substantially in support of such operations, all to be effected in accordance with this Agreement.

**Approved Project Operations** shall mean the facility located at 238-242 Hoyt Street, Brooklyn, New York, for the operation by the Institution as a public charter school for over-aged and under-credited students in grades 9-12.

**Approving and Bond Resolution** shall mean the resolution of the Issuer adopted on June 12, 2018 authorizing the Project and the issuance of the Initial Bonds to finance the Project.

**Asserted Cure** shall have the meaning specified in Section 8.30(k)(i).

**Asserted LW Violation** shall have the meaning specified in Section 8.30(k)(i).

**Assignment of Contracts** shall mean the Assignment of Contracts and Interest in Licenses, Permits and Agreements, dated as of even date herewith, from the Institution to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Assignment of Mortgage** shall mean collectively, the Assignment of Mortgage and Security Agreement (Acquisition Loan), the Assignment of Mortgage and Security Agreement (Building Loan) and the Assignment of Mortgage and Security Agreement (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Issuer to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Authorized Denomination** shall mean, in the case of the Initial Bonds, \$100,000 or any integral multiple of \$5,000 in excess thereof.

**Authorized Principal Amount** shall mean, in the case of the Initial Bonds, \$20,685,000.

**Authorized Representative** shall mean, (i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Institution, a person named in Exhibit C — "Authorized Representative", or any other officer or employee of the Institution who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Institution has given written notice to the Issuer and the Trustee; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

**Beneficial Owner** shall mean, whenever used with respect to an Initial Bond, the Person in whose name such Initial Bond is recorded as the Beneficial Owner of such Initial Bond by the respective systems of DTC and each of the Participants of DTC. If at any time the Initial Bonds are not held in the Book-Entry System, Beneficial Owner shall mean "Holder" for purposes of the Security Documents.

**Benefits** shall have the meaning set forth in Section 5.1(a).

**Bond Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Bondholder, Holder of Bonds, Holder or holder** shall mean any Person who shall be the registered owner of any Bond or Bonds.

4

**CM** shall have the meaning set forth in Section 8.1(a).

**Code** shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder. All references to Sections of the Code or regulations thereunder shall be deemed to include any such Sections or regulations as they may hereafter be renumbered in any subsequent amendments to the Code or such regulations.

**Completed Improvements Square Footage** shall mean approximately 24,000 square feet, the square footage of the Improvements upon completion of the Project Work.

**Completion Deadline** shall mean February 1, 2021.

**Comptroller** shall have the meaning specified in Section 8.30(b).

**Concessionaire** shall have the meaning specified in Section 8.30(b).

**Conduct Representation** shall mean any representation by the Institution under Section 2.2(t), or by any other Person in any Required Disclosure Statement delivered to the Issuer.

**Construction** shall have the meaning set forth in Section 8.1(a).

**Construction Monitor** shall mean Carl B. Edwards Construction Consultant, Chicago, Illinois.

**Continuing Disclosure Undertaking** shall mean, with respect to the Initial Bonds, the Continuing Disclosure Agreement, dated the Closing Date, between the Institution and the Trustee, as dissemination agent, pursuant to Section 8.27 and, as to any Series of Additional Bonds, the continuing disclosure undertaking executed by the Institution.

**Contractor** shall have the meaning set forth in Section 8.1(a).

**Control or Controls**, including the related terms "controlled by" and "under common control with", shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

**Costs of Issuance** shall mean issuance costs with respect to the Initial Bonds described in Section 1.47(g) of the Code and any regulations thereunder, including but not limited to the following: Underwriter's spread (whether realized directly or derived through the purchase of the Initial Bonds at a discount below the price at which they are expected to be sold to the public); counsel fees (including bond counsel, Underwriter's counsel, Trustee's counsel, Issuer's counsel, Institution's counsel, as well as any other specialized counsel fees incurred in connection with the borrowing); financial advisor fees of any financial advisor to the Issuer or the Institution incurred in connection with the issuance of the Initial Bonds; engineering and feasibility study costs; guarantee fees (other than Qualified Guarantee Fees, as defined in the Tax Regulatory Agreement); Trustee and Paying Agent fees; accountant fees and other expenses

6

**Bond Registrar** shall mean the Trustee acting as registrar as provided in Section 3.10 of the Indenture.

**Bonds** shall mean the Initial Bonds and any Additional Bonds.

**Building Loan Agreement** shall mean the Building Loan Agreement, dated as of even date herewith, among the Issuer, the Institution and the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Business Day** shall mean any day that shall not be:

(i) a Saturday, Sunday or legal holiday;

(ii) a day on which banking institutions in the City are authorized by law or executive order to close; or

(iii) a day on which the New York Stock Exchange or the payment system of the Federal Reserve System is closed.

**Business Incentive Rate** shall mean the discount energy transportation and delivery rate provided through the Business Incentive Rate program co-administered by NYCEDC and Consolidated Edison Company of New York, Inc.

**Cash and Investments** shall mean the Institution's unrestricted cash and unrestricted investments related to its operations at the Facility as shown in the Institution's audited financial statements with respect to the Facility, determined in accordance with GAAP, provided, however, that there shall be excluded from "Cash and Investments" (i) any investments that cannot readily be converted to cash within thirty (30) days, (ii) cash or investments subject to legal or contractual restrictions that prevent use thereof for payment of principal and interest on the Bonds, (iii) cash or investments held by the Trustee pursuant to the Indenture, and (iv) cash or investments with respect to any Separate Facility.

**Certificate** shall have the meaning set forth in Section 8.1(a).

**CGL** shall have the meaning set forth in Section 8.1(a).

**Charter Agreement** shall have the meaning set forth in Section 2.2(a).

**Charter School Act** shall mean the New York Charter Schools Act of 1998, as amended (N.Y. Educ. Law Section 2850 et seq.).

**City** shall mean The City of New York, New York.

**Claims** shall have the meaning set forth in Section 8.2(a).

**Closing Date** shall mean February 28, 2019, the date of the initial issuance and delivery of the Initial Bonds.

5

related to issuance of the Initial Bonds; printing costs for the Initial Bonds and for the preliminary and final offering documents relating to the Initial Bonds; public approval and process costs; fees and expenses of the Issuer incurred in connection with the issuance of the Initial Bonds; Blue Sky fees and expenses; and similar costs.

**Covered Counterparty** shall have the meaning specified in Section 8.30(b).

**Covered Employer** shall have the meaning specified in Section 8.30(b).

**Days Cash on Hand** shall mean, as of each June 30, commencing June 30, 2019, the quotient of (i) Cash and Investments, divided by, (ii) the quotient obtained by dividing the Operating Expenses for the then-ending Fiscal Year of the Institution by three hundred sixty-five (365) (provided that for this purpose, Operating Expenses shall include interest payable by the Institution on its Long-Term Indebtedness).

**DCA** shall have the meaning specified in Section 8.30(b).

**Debt Service Coverage Ratio** shall mean, for any Fiscal Year, the ratio obtained by dividing the Net Income Available for Debt Service for such Fiscal Year by the Maximum Annual Debt Service.

**Debt Service Requirements** shall mean, for a specified period, the principal of and interest on Indebtedness payable during such period, or for a particular date, the amount of principal, interest and premium or penalty, if any, payable on such date.

**Debt Service Reserve Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Debt Service Reserve Fund Requirement** shall mean (a) \$1,444,356.26 with respect to the Series 2019 Bonds (provided that if the Series 2019 Bonds shall be redeemed in part, the Debt Service Reserve Fund Requirement shall mean the Maximum Annual Debt Service of the Series 2019 Bonds), and (b) with respect to each Series of Additional Bonds, shall mean the Maximum Annual Debt Service of such Series of Additional Bonds.

**Defeasance Obligations** shall mean Government Obligations that are not subject to redemption prior to maturity.

**Depository Bank** shall mean Israel Discount Bank of New York, in its capacity as the financial institution receiving all Education Aid under the Account Direction Agreement, its successors and assigns, and any successor Depository Bank pursuant to Section 8.28(d).

**Determination of Taxability** shall mean:

(i) (A) the adoption, promulgation or enactment of any federal statute or regulation, or any determination, decision, decree or ruling made by the Commissioner or any District Director of the Internal Revenue Service;

7

(B) the issuance of a public or private ruling or a technical advice memorandum by the Internal Revenue Service in which the Institution has participated or has been given the opportunity to participate, and which ruling or memorandum the Institution, in its discretion, does not contest or from which no further right of judicial review or appeal exists;

(C) a determination from which no further right of appeal exists of any court of competent jurisdiction in the United States in a proceeding in which the Institution has participated or has been a party, or has been given the opportunity to participate or be a party; or

(D) the admission in writing by the Institution;

in any case, to the effect that the interest payable on the Bond of a Holder or a former Holder thereof is includable in gross income for federal income tax purposes; or

(ii) the receipt by the Trustee of a written opinion of Nationally Recognized Bond Counsel to the effect that the interest payable on the Bonds is includable in gross income for federal income tax purposes or the refusal of any such counsel to render a written opinion that the interest on the Bonds is not so includable when required pursuant to a request by a Bondholder in accordance with the procedures set forth in the Indenture;

provided, however, that no such Determination of Taxability described in clauses (i)(B) or (i)(C) of this definition shall be considered to exist unless (1) the Holder or former Holder of the Bond involved in such proceeding (a) gives the Institution and the Trustee prompt notice of the commencement thereof and (b) (if the Institution agrees to pay all expenses in connection therewith) offers the Institution the opportunity to control the defense thereof and (2) either (a) the Holder does not agree within thirty (30) days of receipt of such offer to pay such expenses and to control such defense or (b) the Institution shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Institution determines to be appropriate. A Bondholder shall have the right to request the Trustee to obtain a written opinion of Nationally Recognized Bond Counsel pursuant to clause (ii) above, at the expense of the Institution, upon delivery by the Bondholder to the Institution of a letter from the Bondholder's accountant stating that, in his or her reasonable opinion, interest on the Bonds is includable in the gross income of such Bondholder for federal income tax purposes and stating the reasons for such determination. No Determination of Taxability described above will result from the inclusion of interest on any Bond in the computation of minimum or indirect taxes.

**Disability Aid** shall mean those certain federal and State payments payable to the Institution for operations at the Facility attributable to students with disabilities.

**DOL** shall have the meaning set forth in Section 8.7(a).

8

**Final Project Cost Budget** shall mean that certain budget of costs paid or incurred for the Project to be submitted by the Institution pursuant to Section 3.2(f) upon completion of the Project.

**Fiscal Year** shall mean a year of 365 or 366 days, as the case may be, commencing on July 1 and ending on June 30 of the next calendar year, or such other fiscal year of similar length used by the Institution for accounting purposes as to which the Institution shall have given prior written notice thereof to the Issuer and the Trustee at least ninety (90) days prior to the commencement thereof.

**Fitch** shall mean Fitch Ratings, Inc., a Delaware corporation, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Fixed Date Deliverables** shall have the meaning set forth in Section 9.9(a)(ii).

**GAAP** shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Closing Date, so as to properly reflect the financial position of the Institution, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

**GC** shall have the meaning set forth in Section 8.1(a).

**Governing Body** shall mean, when used with respect to any Entity, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Entity are exercised.

**Government Obligations** shall mean the following:

(i) direct and general obligations of, or obligations unconditionally guaranteed by, the United States of America;

(ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America for the timely payment thereof; or

(iii) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clauses (i) or (ii) above.

**DTC** shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, and its successors and assigns.

**Due Date** shall have the meaning set forth in Section 9.9(a).

**Earnings Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Education Aid** shall mean, collectively, all School District Payments, State Education Operating Aid, Disability Aid and any Other Education Aid payable to the Institution pursuant to the New York State Education Law or federal law for the payment of operations of the Institution at the Facility.

**Employment Information** shall have the meaning set forth in Section 8.7(c).

**Entity** shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

**Environmental Audit** shall mean that certain Phase I Environmental Site Assessment Report dated January 21, 2019, prepared by the Environmental Auditor.

**Environmental Auditor** shall mean French & Parrello Associates.

**Estimated Project Cost** shall mean \$26,685,000.

**Event of Default** shall have the meaning specified in Section 9.1.

**Existing Facility Property** shall have the meaning set forth in Section 3.5(a).

**Facility** shall mean, collectively, the Facility Personality and the Facility Realty.

**Facility Personality** shall mean those items of machinery, equipment and other items of personality the acquisition and/or the installation of which is to be financed in whole or in part with the proceeds of the Bonds for installation or use at the Facility Realty as part of the Project pursuant to Section 3.2 and described in Exhibit B — "Description of the Facility Personality", together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personality shall, in accordance with the provisions of Sections 3.5 and 6.4, include all property substituted for or replacing items of Facility Personality and exclude all items of Facility Personality so substituted for or replaced, and further exclude all items of Facility Personality removed as provided in Section 3.5.

**Facility Realty** shall mean, collectively, the Land and the Improvements.

9

**Hazardous Materials** shall include any petroleum, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

**Impositions** shall have the meaning set forth in Section 8.17(a).

**Improvements** shall mean:

(i) all buildings, structures, foundations, related facilities, fixtures and other improvements of every nature whatsoever existing on the Closing Date and hereafter erected or situated on the Land;

(ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2); and

(iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

**Indebtedness** shall mean all indebtedness of the Institution for borrowed moneys, no matter how created, whether or not incurred with respect to the Facility or any Separate Facility and whether or not such indebtedness is assumed by the Institution, including any leases required to be capitalized in accordance with GAAP, installment purchase obligations and guaranties.

**Indemnification Commencement Date** shall mean June 12, 2018, the date on which the Issuer first adopted a resolution with respect to the Project.

**Indemnified Parties** shall have the meaning set forth in Section 8.2(a).

**Indenture** shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

**Independent** shall mean a Person who is not a member of the governing body of the Institution or its Affiliates or an officer or employee of the Institution or its Affiliates.

**Independent Accountant** shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Institution and approved by the Issuer and the Trustee (such approvals not to be unreasonably withheld or delayed).



**Independent Engineer** shall mean a Person (not an employee of either the Issuer or the Institution or any Affiliate of either thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Institution.

**Information Recipients** shall have the meaning set forth in Section 8.7(c).

**Initial Annual Administrative Fee** shall mean \$1,250.

**Initial Bonds** shall mean the Issuer's \$20,685,000 Revenue Bonds (New Dawn Charter Schools Project), Series 2019, authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

**Institution** shall mean New Dawn Charter Schools, a not-for-profit education corporation created and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Institution under Section 8.9 or 8.20.

**Institution's Property** shall have the meaning specified in Section 3.4(d).

**Insured** shall have the meaning set forth in Section 8.1(a).

**Insurer** shall have the meaning set forth in Section 8.1(a).

**Interest Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

**Interest Payment Date** shall mean, with respect to the Initial Bonds, February 1 and August 1 of each year, commencing August 1, 2019 (or, if any such day is not a Business Day, the immediately succeeding Business Day), and with respect to any Series of Additional Bonds, the dates set forth therein in the Supplemental Indenture pursuant to which such Series of Additional Bonds are issued.

**IRS Determination Letter** shall mean that certain ruling letter dated May 17, 2013 issued by the Internal Revenue Service to the Institution confirming that the Institution is a Tax-Exempt Organization.

**ISO** shall have the meaning set forth in Section 8.1(a).

**ISO Form CG-0001** shall have the meaning set forth in Section 8.1(a).

**Issuer** shall mean Build NYC Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

**Issuer's Reserved Rights** shall mean, collectively,

- (i) the right of the Issuer in its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies, binders or

12

**Liens** shall have the meaning specified in Section 8.11(a).

**Loan** shall mean the loan made by the Issuer to the Institution pursuant to this Agreement as described in Section 4.1.

**Loan Payment Date** shall mean the fifteenth (15<sup>th</sup>) day of each January, March, May, July, September and November, commencing March 15, 2019 (or, if any such day shall not be a Business Day, the immediately preceding Business Day).

**Long-Term Indebtedness** shall mean Indebtedness which matures or is scheduled for payment in full within one year.

**Loss Event** shall have the meaning specified in Section 6.1.

**LW** shall have the meaning specified in Section 8.30(b).

**LW Agreement** shall have the meaning specified in Section 8.30(b).

**LW Agreement Delivery Date** shall have the meaning specified in Section 8.30(b).

**LW Event of Default** shall have the meaning specified in Section 8.30(b).

**LW Law** shall have the meaning specified in Section 8.30(b).

**LW Term** shall have the meaning specified in Section 8.30(b).

**LW Violation Final Determination** shall have the meaning specified in Section 8.30(k)(i)(1), Section 8.30(k)(i)(2)(A) or Section 8.30(k)(i)(2)(B), as applicable.

**LW Violation Initial Determination** shall have the meaning specified in Section 8.30(k)(i)(2).

**LW Violation Notice** shall have the meaning specified in Section 8.30(k)(i).

**LW Violation Threshold** shall have the meaning specified in Section 8.30(b).

**Majority Holders** shall mean the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

**Management Consultant** shall mean an Independent management consultant or certified public accountant experienced in the management and operations of charter schools, acceptable to the Majority Holders.

**Maturity Date** shall mean, in the case of the Initial Bonds, those maturity dates set forth in Section 2.02(b) of the Indenture.

14

certificates, or other notices or communications required to be delivered to the Issuer under this Agreement;

(ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under this Agreement;

(iii) the right of the Issuer to enforce in its own behalf the obligation of the Institution under this Agreement to complete the Project;

(iv) the right of the Issuer to enforce or otherwise exercise in its own behalf all agreements of the Institution under this Agreement with respect to ensuring that the Facility shall always constitute the Approved Facility;

(v) the right of the Issuer to amend with the Institution the provisions of Section 5.1 without the consent of the Trustee or any Bondholder;

(vi) the right of the Issuer in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Article III (except for Section 3.1), Sections 4.4, 4.5 and 4.6, Article V, Article VI, Article VIII (except for Sections 8.29, 8.31 and 8.32), Article IX, Article X, Sections 11.1, 11.3 and 11.5, and Article XII (except Section 12.2); and

(vii) the right of the Issuer in its own behalf to declare a default with respect to any of the Issuer's Reserved Rights and exercise the remedies set forth in Section 9.2(b).

**Land** shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn, Block 409 and Lot 38, generally known by the street address 238-242 Hoyt Street, Brooklyn, New York, all as more particularly described in Exhibit A — "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c).

**Land Square Footage** shall mean approximately 7,500 square feet.

**Legal Requirements** shall mean the Constitutions of the United States and the State of New York and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wage, living wage, prevailing wage, sick leave, healthcare, benefits and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Institution, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

**Liability** shall have the meaning set forth in Section 8.2(a).

13

**Maximum Annual Debt Service** shall mean, as of any date of calculation, the highest principal and interest payment requirements (net of any Debt Service Reserve Fund balance to be applied against Bond-related Indebtedness in the final year) on all Indebtedness of the Institution for the then current or any succeeding Fiscal Year.

**Merge** shall have the meaning specified in Section 8.20(a)(v).

**Moody's** shall mean Moody's Investors Service Inc., a Delaware corporation, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Mortgage** shall mean, collectively, the Mortgage and Security Agreement (Acquisition Loan), the Mortgage and Security Agreement (Building Loan) and the Mortgage and Security Agreement (Indirect Loan) relating to the Facility, each dated as of even date herewith, and each from the Institution to the Issuer and the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Mortgaged Property** shall have the meaning specified in the Mortgage.

**MSRB** shall mean the Municipal Securities Rulemaking Board or its successor entity.

**Nationally Recognized Bond Counsel** shall mean Hawkins Delafield & Wood LLP or other counsel acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

**Net Income Available for Debt Service** shall mean, for any period of determination thereof, the net sum of (i) Revenues for such period, plus the interest earnings on moneys held in the Debt Service Reserve Fund established under the Indenture, minus (ii) the Operating Expenses, but excluding from such net sum (A) any profits or losses resulting from Operating Expenses or Revenues which are extraordinary items under GAAP, (B) gain or loss in the extinguishment of Indebtedness of the Institution, (C) proceeds of the Initial Bonds and any other Indebtedness, (D) proceeds of insurance policies, other than policies for business interruption insurance, maintained by or for the benefit of the Institution, (E) the proceeds of any sale, transfer or other disposition of the Facility, and (F) any condemnation or any other damage award received by or owing to the Institution.

**Net Proceeds** shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including documented reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

**Notice Parties** shall mean the Issuer, the Institution, the Bond Registrar, the Paying Agents and the Trustee.

15

**Notification of Failure to Deliver** shall have the meaning specified in Section 9.9(b).

**NYCDOF** shall mean the New York City Department of Finance.

**NYCEDC** shall mean New York City Economic Development Corporation, a New York not-for-profit corporation, and any successor thereof.

**NYCIDA** shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

**Operating Expenses** shall mean fees and expenses of the Institution arising from its operations at the Facility, including maintenance, repair expenses, utility expenses, administrative and legal expenses, miscellaneous operating expenses, advertising costs, payroll expenses (including taxes), the cost of materials and supplies used for current operations of the Institution, the cost of vehicles, equipment leases and service contracts, taxes upon the operations of the Institution, charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but that are such as may reasonably be expected to be incurred in accordance with GAAP, all in such amounts as reasonably determined by the Institution; provided, however, "Operating Expenses" shall not include interest expense, depreciation, amortization or other non-cash expenses, or those expenses that are actually paid from any revenues of the Institution that are not Revenues. Further, in determining the "Operating Expenses," there shall be excluded unrealized investment losses and losses related to the extinguishment of Indebtedness. "Operating Expenses" shall not include expenses arising from operations of the Institution at any Separate Facility, except only to the extent of any shared costs or services reasonably allocated to the Facility which are by contract provided by employees of the Institution with respect to the Facility and any Separate Facility.

**Operations Commencement Date** shall have the meaning set forth in Section 5.1(a).

**Opinion of Counsel** shall mean a written opinion of counsel for the Institution or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

**Organizational Documents** shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the charter, articles of incorporation or certificate of incorporation, and the bylaws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

16

**Participants** shall mean those financial institutions for whom the Securities Depository effects book entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**Paying Agent** shall mean any paying agent for the Bonds appointed pursuant to the Indenture (and may include the Trustee) and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to the Indenture.

**Per Diem Fees** shall mean, collectively, the Per Diem Late Fee and the Per Diem Supplemental Late Fee.

**Per Diem Late Fee** shall mean that per diem late fee established from time to time by the Issuer's Board of Directors generally imposed upon Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from such general applicability as may be established by the Issuer's Board of Directors) and that have not (x) paid to the Issuer the Annual Administrative Fee on the date required under Section 8.3, (y) delivered to the Issuer all or any of the Fixed Date Deliverables on the respective dates required under Section 8.14 or 8.16, and/or (z) delivered to the Issuer all or any of the Requested Document Deliverables under Section 8.15 within five (5) Business Days of the Issuer having made the request therefor.

**Per Diem Supplemental Late Fee** shall mean that supplemental per diem late fee established from time to time by the Issuer's Board of Directors generally imposed upon Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from general applicability as may be established by the Issuer's Board of Directors).

**Permitted Encumbrances** shall mean:

(i) the Mortgage (as assigned by the Assignment of Mortgage), the Building Loan Agreement and any other Project Document;

(ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;

(iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien, security interest, encumbrance or charge or right in respect thereof, placed on or with respect to the Facility or any part thereof, if payment is not yet due and payable, or if such payment is being disputed pursuant to Section 8.11(b);

(iv) utility, access and other easements and rights of way, restrictions and exceptions that an Authorized Representative of the Institution certifies to the Issuer and the Trustee will not materially interfere with or impair the Institution's use and enjoyment of the Facility as provided in this Agreement;

(v) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to property similar in character to the Facility as do not, as set forth in a certificate of an Authorized Representative of

18

**Other Education Aid** shall mean any federal or State payments, other than School District Payments, State Education Operating Aid or Disability Aid, payable to the Institution for the purpose of funding operations of the Institution at the Facility.

**Outstanding**, when used with reference to a Bond or Bonds, as of any particular date, shall mean all Bonds which have been issued, executed, authenticated and delivered under the Indenture, except:

(i) Bonds cancelled by the Trustee because of payment or redemption prior to maturity or surrendered to the Trustee under the Indenture for cancellation;

(ii) any Bond (or portion of a Bond) for the payment or redemption of which, in accordance with Article X of the Indenture, there has been separately set aside and held in the Redemption Account of the Bond Fund either:

(A) moneys, and/or

(B) Defeasance Obligations in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications as shall be necessary to provide moneys,

in an amount sufficient to effect payment of the principal or applicable Redemption Price of such Bond, together with accrued interest on such Bond to the payment or Redemption Date, which payment or Redemption Date shall be specified in irrevocable instructions given to the Trustee to apply such moneys and/or Defeasance Obligations to such payment on the date so specified, provided, that, if such Bond or portion thereof is to be redeemed, notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(iii) Bonds in exchange for or in lieu of which other Bonds shall have been authenticated and delivered under Article III of the Indenture,

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder or under any other Security Document, Bonds owned by the Institution or any Affiliate of the Institution shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. Bonds which have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Institution or any Affiliate of the Institution.

**Owed Interest** shall have the meaning specified in Section 8.30(b).

**Owed Monies** shall have the meaning specified in Section 8.30(b).

17

the Institution delivered to the Issuer and the Trustee, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired or purport to impose liabilities or obligations on the Issuer;

(vi) those exceptions to title to the Mortgaged Property enumerated in the title insurance policy delivered pursuant to Section 3.7 insuring the Trustee's mortgage interest in the Mortgaged Property, a copy of which is on file at the offices of the Issuer and at the designated corporate trust office of the Trustee;

(vii) liens arising by reason of good faith deposits with the Institution in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Institution to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Institution to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(ix) any judgment lien against the Institution, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed;

(x) any purchase money security interest in movable personal property, including equipment leases and financing;

(xi) liens on property due to rights of governmental entities or third party payors for recoupment of excess reimbursement paid;

(xii) a lien, restrictive declaration, performance mortgage or other encumbrances with respect to the operation of the Facility arising by reason of a grant or other funding received by the Institution from the City, the State or any governmental agency or instrumentality; and

(xiii) any lien, security interest, encumbrances or charge which exists in favor of the Trustee, or, at the written direction of the Majority Holders, to which the Trustee shall consent in writing.

**Person** shall mean an individual or any Entity.

**Policy(ies)** shall have the meaning specified in Section 8.1(a).

19

**Predecessor Institution** shall have the meaning specified in Section 8.20(b)(ii).

**Prevailing Wage Law** shall have the meaning specified in Section 8.30(b).

**Principal Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

**Principals** shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity and any Person as shall have the power to Control such Entity, and "principal" shall mean any of such Persons.

**Project** shall mean the acquisition, construction, renovation, equipping and furnishing of an approximately 24,000 square-foot building on an approximately 7,500 square-foot parcel of land located at 238-242 Hoyt Street, Brooklyn, New York, which is being operated by the Institution as a public charter school for over-aged and under-credited students in grades 9-12.

**Project Application Information** shall mean the eligibility application and questionnaire submitted to the Issuer by or on behalf of the Institution, for approval by the Issuer of the Project and the providing of financial assistance by the Issuer therefor, together with all other letters, documentation, reports and financial information submitted in connection therewith.

**Project Completion Date** shall mean the date by which all of the following conditions have been satisfied: (i) the Issuer shall have received a signed and complete certificate of an Authorized Representative of the Institution in substantially the form set forth in Exhibit G - "Form of Project Completion Certificate", together with all attachments required thereunder, (ii) the Project Work shall have been finished and shall have been completed substantially in accordance with the plans and specifications therefor, (iii) the Issuer shall have received a copy of a certificate of occupancy or a temporary certificate of occupancy issued by the New York City Department of Buildings from the Institution, (iv) there shall be no certificate, license, permit, authorization, written approval or consent or other document required to permit the occupancy, operation and use of the Facility as the Approved Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature, and (v) the Facility shall be ready for occupancy, use and operation for the Approved Project Operations in accordance with all applicable laws, regulations, ordinances and guidelines.

**Project Cost Budget** shall mean that certain budget for costs of the Project Work as set forth by the Institution in Exhibit E - "Project Cost Budget".

**Project Costs** shall mean:

- (i) all costs of engineering and architectural services with respect to the Project Work, including the cost of test borings, surveys, estimates, permits, plans and

20

acquisition, whether by title or lease, of the Facility Personalty and any work required to install same.

**Promissory Note** shall mean, (i) with respect to the Initial Bonds, that certain Promissory Note in substantially the form of Exhibit H to this Agreement, (ii) with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related Exhibit to an amendment to this Agreement, and (iii) with respect to the Bonds, collectively, those certain Promissory Notes described in clauses (i) and (ii) above, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with this Agreement and the Indenture.

**Qualified Investments** shall mean, to the extent permitted by applicable law, the following:

- (i) Government Obligations;
- (ii) Commercial paper, rated at least P-1 by Moody's or at least A-1 by S&P, issued by a corporation or banking institution organized under the laws of the United States of America or any state thereof;
- (iii) Direct and general long term obligations of any state of the United States of America to which the full faith and credit of the state is pledged and that are rated in either of the two highest rating categories by Moody's and S&P;
- (iv) Direct and general short term obligations of any state of the United States to which the full faith and credit of the state is pledged and that are rated in the highest rating category by Moody's and S&P;
- (v) Interest-bearing demand or time deposits with or certificates of deposit issued by a national banking association or a state bank or trust company that is a member of the Federal Deposit Insurance Corporation ("FDIC") and that are (a) continuously and fully insured by the FDIC, or (b) with a bank that has outstanding debt, or which is a subsidiary of a holding company which has outstanding debt, rated in either of the two highest rating categories by Moody's and S&P, or (c) continuously and fully secured by obligations of the type described in (i) and (ii) above that have a market value at all times at least equal to the principal amount of the deposit and are held by the Trustee or its agent or, in the case of uncertificated securities, are registered in the name of the Trustee as pledgee;
- (vi) Repurchase agreements, the maturity of which are less than thirty (30) days, entered into (a) with a bank or trust company rated at least P-1 by Moody's and A-1 by S&P and organized under the laws of the United States, (b) with a national banking association, insurance company, or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York and which is a member of the Security Investors Protection Corporation, in each case rated at least P-1 by Moody's and A-1 by S&P, or (c) with a dealer which is rated at least P-1 by Moody's and A-1 by S&P. The repurchase agreement must be continuously and fully

22

specifications and for supervising demolition, construction and renovation, as well as for the performance of all other duties required by or consequent upon the proper construction of, and the making of alterations, renovations, additions and improvements in connection with, the completion of the Project Work;

(ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the completion of the Project Work;

(iii) Reserved;

(iv) all costs of contract bonds and of insurance that may be required or necessary during the period of Project Work construction and renovation;

(v) the cost of acquisition of the Facility Realty;

(vi) all costs of title insurance as provided in Section 3.7;

(vii) the payment of the Costs of Issuance with respect to the Initial Bonds;

(viii) the payment of the fees and expenses of the Trustee and the Construction Monitor during the period of construction and renovation of the Project Work;

(ix) all costs which the Institution shall be required to pay, under the terms of any contract or contracts, for the completion of the Project Work, including any amounts required to reimburse the Institution for advances made for any item otherwise constituting a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Project Work; and

(x) all other costs and expenses relating to the completion of the Project Work or the issuance of a Series of Additional Bonds.

"Project Costs" shall not include (i) fees or commissions of real estate brokers, (ii) moving expenses, or (iii) operational costs.

**Project Documents** shall mean the Continuing Disclosure Undertaking, the Account Direction Agreement and the Security Documents.

**Project Fee** shall mean \$123,425, representing the \$128,425 Issuer's financing fee, less the application fee of \$5,000.

**Project Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Project Work** shall mean (i) the design, construction and/or renovation of the Improvements, including the acquisition of building materials and fixtures, and (ii) the

21

secured by obligations of the type described in (i), (ii), (iii), (iv) or (v) above which have a fair market value, exclusive of accrued interest, at least equal to the amount invested in the repurchase agreement and which are held by the Trustee or its agent or, in the case of uncertificated securities, are registered in the name of the Trustee as pledgee;

(vii) Money market mutual funds with assets in excess of \$2,000,000,000 investing in obligations of the type specified in (i), (ii), (iii), (iv), (v) or (vi) above, including funds for which the Trustee or an affiliate of the Trustee serves as investment advisor, administrator, shareholder, servicing agent and/or custodian or sub-custodian, notwithstanding that (a) the Trustee charges and collects fees and expenses from such funds for services rendered, (b) the Trustee charges and collects fees and expenses for services rendered pursuant to this Indenture and (c) services performed for such funds and pursuant to this Indenture may converge at any time; and

(viii) An investment agreement or other investment arrangement with any bank, trust company, national banking association or bank holding company in the United States, with any domestic branch of a foreign bank, or with any surety or insurance company, provided, that, (i) such investment agreement or other investment arrangement shall permit the full principal amount of the moneys so placed together with the investment income agreed to be paid to be available for use as and when required under the Indenture, and (ii) the Person with whom such investment agreement or other investment arrangement is made must be a Person whose unsecured or uncollateralized short term debt obligations are assigned a rating by S&P of SP 1+ or better or a Person assigned a financial strength rating of AAA by S&P, and whose domestic assets shall be in excess of \$10,000,000,000.

**Qualified Workforce Program** shall have the meaning specified in Section 8.30(b).

**Rebate Amount** shall have the meaning assigned to that term in the Tax Regulatory Agreement.

**Rebate Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Recapture Event** shall have the meaning set forth in Section 5.1(a).

**Recapture Period** shall have the meaning set forth in Section 5.1(a).

**Redemption Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

**Redemption Date** shall mean the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Indenture.

**Redemption Price** shall mean, with respect to any Bond or a portion thereof, the principal amount thereof to be redeemed in whole or in part, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or the Indenture.

23

**Renewal Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Repair and Replacement Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Requested Document Deliverables** shall have the meaning set forth in Section 9.9(a).

**Required Disclosure Statement** shall mean that certain Required Disclosure Statement in the form of Exhibit F — "Form of Required Disclosure Statement".

**Revenue Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Revenues** shall mean all revenues, rentals, fees, third-party payments, charges, receipts, unrestricted donations, unrestricted contributions or other income arising from or related to the Institution's operations located at the Facility, whether now or in the future, including all the rights to receive such revenues (each subject, to the extent applicable, to Permitted Encumbrances and to the Issuer's Reserved Rights), and all rights to the payment of money, receivables, accounts, contract rights, chancel paper and instruments and all proceeds of the foregoing, including, without limitation, all Education Aid, federal grants and aid, extended daycare payments, food services sales, proceeds derived from insurance, condemnation proceeds and other rights and assets, whether now or hereafter owned, held or possessed by the Institution, all gifts, grants, bequests and contributions (including income and profits therefrom), and regardless of the source, certain revenues, rentals, fees, third-party payments, charges, receipts, unrestricted donations, unrestricted contributions or other income of the Institution arising from or related to the Institution's operations located at the Facility. "Revenues" shall not include revenues arising from operations of the Institution at any Separate Facility.

**S&P** shall mean S&P Global Ratings, a division of Standard & Poor's Financial Services LLC, a Delaware limited liability company, its successors and assigns, and if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Sales Taxes** shall mean City and State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109 and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections).

**School District** shall mean any applicable school district, as referenced in Section 2856 of the Charter School Act, which is obligated to make payments to the Institution pursuant to the Charter School Act.

24

**Small Business Cap** shall have the meaning specified in Section 8.30(b).

**Specified Contract** shall have the meaning specified in Section 8.30(b).

**State** shall mean the State of New York.

**State Education Operating Aid** shall mean all New York State Education Department operating aid payments appropriated for the purpose of funding operating expenses of the Institution with respect to its operations at the Facility on a per-pupil basis.

**Successor Institution** shall have the meaning specified in Section 8.20(b)(ii).

**Supplemental Indenture** shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with Article XI of the Indenture.

**Tax-Exempt Organization** shall mean an Entity organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code and exempt from Federal income taxes under 501(a) of Code, or corresponding provisions of Federal income tax laws from time to time in effect.

**Tax Regulatory Agreement** shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Institution to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Termination Date** shall mean such date on which this Agreement may terminate pursuant to Article X.

**Transfer** shall have the meaning specified in Section 8.20(a)(iv).

**Trustee** shall mean The Bank of New York Mellon, New York, New York, in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

**Trust Estate** shall mean all property, interests, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

**U/E** shall have the meaning set forth in Section 8.1(a).

**Underwriter** shall mean B.C. Ziegler and Company, as underwriter of the Initial Bonds.

**Workers' Compensation** shall have the meaning set forth in Section 8.1(a).

**Section 1.2. Construction.** In this Agreement, unless the context otherwise requires:

26

**School District Payments** shall mean any and all payments made to or for the benefit of the Institution with respect to its operations at the Facility pursuant to the Charter School Act.

**Securities Act** shall mean the Securities Act of 1933, as amended, together with any rules and regulations promulgated thereunder.

**Securities Depository** shall mean any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book-entry system to record ownership of book-entry interests in the Bonds, and to effect transfers of book-entry interests in the Bonds in book-entry form, and includes and means initially DTC.

**Securities Exchange Act** shall mean the Securities Exchange Act of 1934, as amended, together with any rules and regulations promulgated thereunder.

**Security Documents** shall mean, collectively, this Agreement, the Promissory Note, the Indenture, the Tax Regulatory Agreement, the Assignment of Contracts, the Building Loan Agreement, the Mortgage and the Assignment of Mortgage.

**Separate Facility or Separate Facilities** shall mean any charter school facility or facilities operated by the Institution under a separate charter and at a different location than the Facility, including, but not limited to, the facilities to be operated by the Institution located in Queens, New York.

**Series** shall mean all of the Bonds designated as being of the same series authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter authenticated and delivered in lieu thereof or in substitution therefor pursuant to the Indenture.

**Sign** shall have the meaning specified in Section 8.5.

**Sinking Fund Installment** shall mean an amount so designated and which is established for mandatory redemption on a date certain of the Bonds of any Series of Bonds pursuant to the Indenture. The portion of any such Sinking Fund Installment of a Series of Bonds remaining after the deduction of any amounts credited pursuant to the Indenture toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments of such Series of Bonds due on a future date.

**Sinking Fund Installment Account** shall mean the special trust account of the Bond Fund so designated, which is established pursuant to Section 5.01 of the Indenture.

**SIR** shall have the meaning set forth in Section 8.1(a).

**Site Affiliates** shall have the meaning specified in Section 8.30(b).

**Site Employee** shall have the meaning specified in Section 8.30(b).

25

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless the context indicates otherwise, references to designated "Exhibits", "Articles", "Sections", "Subsections", "clauses" and other subdivisions are to the designated Exhibits, Articles, Sections, Subsections, clauses and other subdivisions of or to this Agreement.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein or herein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

27

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

**Section 2.1. Representations and Warranties by Issuer.** The Issuer makes the following representations and warranties:

(a) The Issuer is a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and is duly organized and validly existing under the laws of the State.

(b) Assuming the accuracy of representations made by the Institution, the Issuer is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Issuer is a party and to carry out its obligations hereunder and thereunder and to issue and sell the Initial Bonds.

(c) By proper action of its board of directors, the Issuer has duly authorized the execution and delivery of this Agreement and each of the other Project Documents to which the Issuer is a party.

(d) In order to finance a portion of the cost of the Project, the Issuer proposes to issue the Initial Bonds in the Authorized Principal Amount. The Initial Bonds will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Indenture.

(e) The Issuer is that not-for-profit local development corporation formed and existing on behalf of the City to act as a governmental issuer of tax-exempt and taxable bonds and notes for the purpose of providing financial assistance to not-for-profit institutions and manufacturing and industrial companies and other businesses.

(f) The Issuer has all requisite power, authority and legal right to execute and deliver the Project Documents to which it is a party and all other instruments and documents to be executed and delivered by the Issuer pursuant hereto and thereto and to perform its obligations under the Project Documents and all such other instruments and documents to which it is a party. All corporate action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Project Documents and all such other instruments and documents to which it is a party has been duly authorized and effectively taken, and such execution, delivery, performance and observance by the Issuer do not contravene the Issuer's Organizational Documents or any applicable Legal Requirements or any contractual restriction binding on or affecting the Issuer.

(g) There is no action or proceeding before any court, governmental agency or arbitrator pending or, to the knowledge of the Issuer, threatened against the Issuer, which seeks (i) to restrain or enjoin the issuance or delivery of the Initial Bonds, the pledge and grant of the Trust Estate or the collection of any revenues pledged under the Indenture, (ii) to contest or affect in any way the authority for the issuance of the Initial Bonds or the validity of any of the Project Documents, or (iii) to contest in any way the existence or powers of the Issuer.

28

(i) The Institution has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Closing Date in connection with the execution and delivery of this Agreement and each other Project Document to which it shall be a party or in connection with the performance of its obligations hereunder and under each of the Project Documents.

(j) The Project will be designed, and the operation of the Facility will be, in compliance with all applicable Legal Requirements.

(k) The Institution is in compliance, and will continue to comply, with all applicable Legal Requirements relating to the Project, the Project Work and the operation of the Facility.

(l) The Institution has delivered to the Issuer a true, correct and complete copy of the Environmental Audit.

(m) The Institution has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and except as set forth in the Environmental Audit, to the best of the Institution's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(n) The Project Cost Budget attached as Exhibit E — "Project Cost Budget" represents a true, correct and complete budget as of the Closing Date of the proposed costs of the Project; the Estimated Project Cost is a fair and accurate estimate of the Project Cost as of the Closing Date. Expenses for supervision by the officers or employees of the Institution and expenses for work done by such officers or employees in connection with the Project will be included as a Project Cost only to the extent that such Persons were specifically employed for such particular purpose, the expenses do not exceed the actual cost thereof and are to be treated on the books of the Institution as a capital expenditure in conformity with GAAP. Any costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Initial Bonds shall be treated on the books of the Institution as capital expenditures in conformity with GAAP.

(o) The total cost of the Project Work being funded with the Initial Bonds is not less than the Authorized Principal Amount. That portion of the Estimated Project Cost as shall not derive from the proceeds of the Initial Bonds shall be provided from equity on the part of the Institution. The amounts provided to the Institution from the proceeds of the Initial Bonds, together with other moneys available to the Institution, are sufficient to pay all costs in connection with the completion of the Project.

(p) All of the Land comprises one complete tax lot and no portion of any other tax lot.

30

**Section 2.2. Representations and Warranties by the Institution.** The Institution makes the following representations and warranties:

(a) The Institution is a not-for-profit corporation duly created under the laws of the State pursuant to Article 56 of the Education Law and in accordance the charter agreement between the Institution and the Board of Regents of the University of the State of New York, as renewed from time to time (the "Charter Agreement"), is validly existing and in good standing under the laws of the State, is duly qualified to act within the terms of the Charter Agreement, is not in violation of any provision of its Organizational Documents or the Charter Agreement, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

(b) This Agreement and the other Project Documents to which the Institution is a party (x) have been duly authorized by all necessary action on the part of the Institution, (y) have been duly executed and delivered by the Institution, and (z) constitute the legal, valid and binding obligations of the Institution, enforceable against the Institution in accordance with their respective terms.

(c) The execution, delivery and performance of this Agreement and each other Project Document to which the Institution is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Organizational Documents of the Institution, or any indenture, agreement or other instrument to which the Institution is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or, to the best of the Institution's knowledge, after diligent inquiry, threatened, by or against the Institution by or before any court or administrative agency that would adversely affect the ability of the Institution to perform its obligations under this Agreement or any other Project Document to which it is or shall be a party.

(e) The financial assistance provided by the Issuer to the Institution as contemplated by this Agreement is necessary to induce the Institution to proceed with the Project.

(f) Undertaking the Project is anticipated to serve the corporate public purposes of the Issuer by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

(g) The Facility will be the Approved Facility.

(h) Except as permitted by Section 8.9, no Person other than the Institution is or will be in use, occupancy or possession of any portion of the Facility.

29

(q) Subject to Section 3.5 and Article VI, no property constituting part of the Facility shall be located at any site other than at the Facility Realty.

(r) The Completed Improvements Square Footage and the Land Square Footage are true and correct.

(s) The Fiscal Year is true and correct.

(t) None of the Institution, the Principals of the Institution, or any Person that is an Affiliate of the Institution:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Issuer, the NYCIDA, the NYCEDC or the City, unless such default or breach has been waived in writing by the Issuer, the NYCIDA, the NYCEDC or the City, as the case may be;

(ii) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(iii) has been convicted of a felony in the past ten (10) years;

(iv) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(v) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

(u) The Project Application Information was true, correct and complete as of the date submitted to the Issuer, and no event has occurred or failed to occur since such date of submission which would cause any of the Project Application Information to include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make such statements not misleading.

(v) The Principals of the Institution, and their respective titles to the Institution, as set forth in Exhibit D — "Principals of Institution", are true, correct and complete.

(w) The representations, warranties, covenants and statements of expectation of the Institution set forth in the Tax Regulatory Agreement are by this reference incorporated in this Agreement as though fully set forth herein.

(x) The property included in the Project is either property of the character subject to the allowance for depreciation under Section 167 of the Code, or land.

31

(y) No part of the proceeds of the Initial Bonds will be used to finance or refinance inventory or will be used for working capital, or will be used for any other property not constituting part of the Facility.

(z) The Institution has fee title in the Facility and has no present intention to sell, directly or indirectly, in whole or in part, its interest in the Facility.

(aa) The Institution is in compliance with the provisions of the Code and any applicable regulations thereunder necessary to maintain its exempt status under Section 501(a) of the Code.

(bb) The Institution is exempt from Federal income taxes under Section 501(a) of the Code.

(cc) The Institution is an organization described in Section 501(c)(3) of the Code and has received the IRS Determination Letter. The facts and circumstances which form the basis of the IRS Determination Letter continue substantially to exist as represented to the Internal Revenue Service. The IRS Determination Letter has not been modified, limited or revoked, and the Institution is in compliance with all terms, conditions and limitations, if any, contained in or forming the basis of the IRS Determination Letter.

(dd) The Institution is not a "private foundation", as defined in Section 509 of the Code.

(ee) Reserved.

(ff) The Institution is formed under the Education Law of the State of New York and is chartered by the University of New York of the State of New York, Education Department (which expires on June 30, 2022).

(gg) The Institution has been duly established as a charter school under the Charter School Act, and its charter has been duly issued thereunder and has not been amended, revoked, surrendered or terminated, nor are there any pending or threatened proceedings to effect any such revocation, surrender or termination.

(hh) The Institution has not pledged or assigned moneys provided, or to be provided, pursuant to Section 2856(1) of the State Education Law, in connection with the purchase or construction, acquisition, reconstruction, rehabilitation or improvement of the Facility.

(ii) The Institution is in compliance with all of the terms and provisions of the Charter School Act, including, without limitation, all reporting requirements thereunder.

32

necessary to complete the Project in full, the Institution shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in the Project Fund and shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Institution be entitled to any diminution of the loan payments payable or other payments to be made under this Agreement, under the Promissory Note or under any other Project Document. All expenses incurred by the Institution or the Issuer in connection with the performance of its obligations under this Section 3.2(c) shall be considered a Project Cost. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Project, shall be deposited into the Project Fund and made available for payment of Project Costs, or if recovered after such date of completion, be deposited in the Redemption Account of the Bond Fund.

(d) The Institution shall pay all costs, charges, fees, expenses or claims incurred in connection with the Project Work.

(e) The Institution will perform or cause to be performed the Project Work in accordance with all applicable Legal Requirements and with the conditions and requirements of all policies of insurance with respect to the Facility and the Project Work. Promptly upon finishing of the Project Work and the completion of the Improvements, the Institution will obtain or cause to be obtained all required permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility as an Approved Facility and shall furnish copies of same to the Trustee immediately upon the receipt thereof and to the Issuer immediately upon demand therefor.

(f) Upon completion of the Project Work, the Institution shall (y) deliver to the Issuer the Final Project Cost Budget, which budget will include a comparison with the Project Cost Budget, and indicate the source of funds (i.e., Bond proceeds, equity, etc.) for each cost item, and (z) evidence the completion of the Project and the occurrence of the Project Completion Date by delivering to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution in substantially the form set forth in Exhibit G - "Form of Project Completion Certificate", together with all attachments required thereunder.

(g) Upon request by the Issuer or the Trustee, the Institution shall make available to the Issuer and the Trustee copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project Work.

(h) In the event that the aggregate costs of the Project Work upon the completion thereof shall be significantly different from the estimated costs thereof set forth in the Project Cost Budget (i.e., more than a ten percent (10%) difference in either total Project costs or in major categories of Project Work cost), on request of the Issuer, the Institution shall provide evidence to the reasonable satisfaction of the Issuer as to the reason for such discrepancy, and that the scope of the Project Work as originally approved by the Issuer has not been modified in a material manner without the prior written consent of the Issuer.

34

## ARTICLE III

### THE PROJECT; MAINTENANCE; REMOVAL OF PROPERTY AND TITLE INSURANCE

#### Section 3.1. Agreement to Undertake Project.

The Institution covenants and agrees to undertake and complete the Project Work in accordance with this Agreement, including, without limitation:

(i) effecting the Project Work,

(ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons, and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project Work,

(iii) paying all fees, costs and expenses incurred in the Project Work from funds made available therefor in accordance with or as contemplated by this Agreement and the Indenture, and

(iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever that may be due, owing and payable to the Institution under the terms of any contract, order, receipt or writing in connection with the Project Work and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project Work.

#### Section 3.2. Manner of Project Completion.

(a) The Institution will complete the Project Work, or cause the Project Work to be completed, by the Completion Deadline, in a first class workmanlike manner, free of defects in materials and workmanship (including latent defects); provided, however, the Institution may revise the scope of the Project Work, subject to the prior written consents of the Issuer and the Trustee (which consents shall not be unreasonably withheld, delayed or conditioned). The Institution will cause the Project Completion Date to occur by the Completion Deadline.

(b) In undertaking the Project Work, the Institution shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project Work in accordance with the terms of the contracts therefor including the correction of any defective work. Upon request, the Institution will extend to the Issuer or the Trustee all vendors' warranties received by the Institution in connection with the Project, including any warranties given by contractors, manufacturers or service organizations who perform the Project Work.

(c) Project Costs shall be paid from the Project Fund or other funds provided by the Institution. In the event that moneys in the Project Fund are not sufficient to pay the costs

33

**Section 3.3. Maintenance.** (a) During the term of this Agreement, the Institution will:

(i) keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted,

(ii) occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as the Approved Facility, and

(iii) make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that (x) the interest on the Bonds shall not cease to be excludable from gross income for federal income tax purposes, (y) the operations of the Institution at the Facility shall not be materially impaired or diminished in any way, and (z) the security for the Bonds shall not be materially impaired.

(b) All replacements, renewals and repairs shall be similar in quality, class and value to the original work and be made and installed in compliance with all applicable Legal Requirements.

(c) The Issuer shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility, and the Institution hereby agrees to assume full responsibility therefor.

#### Section 3.4. Alterations and Improvements.

(a) The Institution shall have the privilege of making such alterations of or additions to the Facility Realty ("Additional Improvements") or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that:

(i) as a result of the Additional Improvements, the fair market value of the Facility is not reduced below its fair market value immediately before the Additional Improvements are made and the usefulness, structural integrity or operating efficiency of the Facility is not materially impaired,

(ii) the Additional Improvements are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements,

(iii) the Additional Improvements are promptly and fully paid for by the Institution in accordance with the terms of the applicable contract(s) therefor, and

(iv) the Additional Improvements do not change the nature of the Facility so that it would not constitute the Approved Facility.

35

(b) All Additional Improvements shall constitute a part of the Facility, subject to this Agreement and the Mortgage.

(c) If at any time after the Operations Commencement Date, the Institution shall make any Additional Improvements, the Institution shall notify an Authorized Representative of the Issuer of such Additional Improvements by delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements.

(d) In addition to the Facility Personalty, the Institution shall have the right to install or permit to be installed at the Facility Realty, machinery, equipment and other personal property at the Institution's own cost and expense (the "Institution's Property"). Once so installed, the Institution's Property shall not constitute part of the Facility Personalty and shall not be subject to this Agreement nor constitute part of the Facility. The Institution's Property shall be subject to the lien and security interest of the Mortgage. To the extent that the same shall constitute a Permitted Encumbrance, the Institution shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Institution's Property.

### Section 3.5. Removal of Property of the Facility.

(a) The Institution shall have the right from time to time to remove from that property constituting part of the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other item of personal property constituting part of the Facility Personalty (in any such case, the "Existing Facility Property") and thereby removing such Existing Facility Property from that property constituting part of the Facility and the lien and security interest of the Mortgage, provided, however:

(i) such Existing Facility Property is substituted or replaced by property (y) having equal or greater fair market value, operating efficiency and utility and (z) free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances, or

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration, the Institution shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund and thereby cause a redemption of Bonds to be effected in an amount (to the nearest integral multiple of Authorized Denomination) equal to the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition; provided that no such redemption shall be required when such amount received in connection with any removal or series of removals does not exceed, in the aggregate, \$25,000.

No such removal set forth in paragraph (i) or (ii) above shall be effected if (v) such removal would cause the interest on the Bonds to cease to be excludable from gross income for federal income tax purposes, (w) such removal would change the nature of the Facility as the Approved Facility, (x) such removal would materially impair the usefulness, structural integrity or

operating efficiency of the Facility, (y) such removal would materially reduce the fair market value of the Facility below its fair market value immediately before such removal (except by the amount by which the Bonds are to be redeemed as provided in paragraph (ii) above), or (z) there shall exist and be continuing an Event of Default hereunder. Any amounts received pursuant to paragraph (ii) above in connection with any removal or series of removals, which are not in excess of \$25,000, shall be retained by the Institution.

(b) The removal from the Facility of any Existing Facility Property pursuant to the provisions of Section 3.5(a) shall not entitle the Institution to any abatement or reduction in the loan payments and other amounts payable by the Institution under this Agreement, under the Promissory Note or under any other Project Document.

### Section 3.6. Implementation of Additional Improvements and Removals.

(a) In the event of any Additional Improvements or substitution or replacement of property pursuant to Section 3.4 or 3.5, the Institution shall deliver or cause to be delivered to the Issuer and the Trustee any necessary documents in order to subject such Additional Improvements or substitute or replacement property to the lien and security interest of the Mortgage (in each case to the extent such Additional Improvements or substitute or replacement property relates to the Mortgaged Property) and to cause all of same to be made part of the Facility.

(b) The Institution agrees to pay all costs and expenses (including reasonable counsel fees) in subjecting, in accordance with Section 3.4, Additional Improvements to, or releasing, in accordance with Section 3.5, Existing Facility Property from the lien and security interest of the Mortgage.

(c) The Institution agrees, upon request of the Issuer or the Trustee, to furnish to the Issuer and the Trustee with a certificate of an Authorized Representative of the Institution indicating whether or not the Institution has taken any action to (i) effect Additional Improvements in compliance with Section 3.4 and (ii) effect the removal of Existing Facility Property in compliance with Section 3.5(a), pursuant to Sections 8.15(d) and (e), respectively.

**Section 3.7. Title Insurance.** On or prior to the Closing Date, the Institution will obtain and deliver (w) to the Issuer a title report (in form and substance acceptable to the Issuer) reflecting all matters of record with respect to the Land and existing Improvements, (x) to the Issuer a full set of municipal department search results showing only Permitted Encumbrances, (y) to the Trustee a mortgagee title insurance policy in an amount not less than the Authorized Principal Amount of the Initial Bonds, insuring the Trustee's interest under the Mortgage as a holder of a mortgage lien on the Mortgaged Property, subject only to Permitted Encumbrances, and (z) a current or updated survey of each of the Land and the Improvements constituting part of the Mortgaged Property, certified to the Trustee, the Issuer and the title company issuing such title insurance policy. The title insurance policy shall be subject only to Permitted Encumbrances and shall provide for, among other things, the following: (1) full coverage against mechanics' liens; (2) no exceptions other than those approved by the Trustee and the Underwriter; (3) an undertaking by the title insurer to provide the notice of title continuation or endorsement; and (4) such other matters as the Trustee or the Underwriter shall

request. Any proceeds of such mortgagee title insurance shall be paid to the Trustee for deposit in the Renewal Fund and applied to remedy the applicable defect in title in respect of which such proceeds shall be derived (including the reimbursement to the Institution for any costs incurred by the Institution in remedying such defect in title). If not so capable of being applied or if a balance remains after such application, the amounts in the Renewal Fund shall be transferred by the Trustee to the Redemption Account of the Bond Fund and used to redeem an equivalent principal amount of the Initial Bonds to the nearest integral multiple of Authorized Denominations.

**Section 3.8. No Warranty of Condition or Suitability.** THE ISSUER HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE INSTITUTION OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE INSTITUTION ACKNOWLEDGES THAT THE ISSUER IS NOT THE MANUFACTURER OF THE FACILITY PERSONALTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE INSTITUTION IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE INSTITUTION. THE ISSUER SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE INSTITUTION OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

## ARTICLE IV

### LOAN; PAYMENT PROVISIONS

**Section 4.1. Loan of Proceeds.** The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to loan the proceeds from the sale of the Initial Bonds to the Institution (the "Loan"). The Loan shall be made by depositing on the Closing Date the proceeds from the sale of the Initial Bonds in accordance with Section 4.01 of the Indenture. Any such proceeds deposited into the Project Fund shall be disbursed to or on behalf of the Institution as provided in Section 3.2(c) and Section 5.02 of the Indenture.

**Section 4.2. Promissory Note.** The Institution's obligation to repay the Loan shall be evidenced by this Agreement and the Promissory Note. On the Closing Date, the Institution shall execute and deliver the Promissory Note payable to the Issuer, and the Issuer will endorse the Promissory Note to the Trustee. The Institution acknowledges that the original principal amount payable under the Promissory Note may be more or less than the original principal amount of the Loan if the Initial Bonds are sold at a discount or at a premium, respectively, and agrees that repayment of the Loan and the Promissory Note will be made in accordance with Section 4.3.

### **Section 4.3. Loan Payments; Pledge of this Agreement and of the Promissory Note.**

(a) The Institution covenants to pay the Promissory Note and repay the Loan made pursuant to this Agreement by making loan payments which the Issuer agrees shall be paid in immediately available funds by the Institution directly to the Trustee for deposit into the Revenue Fund no later than each Loan Payment Date (except as provided in Section 4.3(a)(ii), (iv), and (vi) below which shall be paid on the respective due dates thereof) for deposit in the Bond Fund (except to the extent that amounts are on deposit in the Bond Fund and available therefor) in an amount equal to the sum of:

(i) with respect to interest due and payable on the Initial Bonds, an amount equal to the quotient obtained by dividing the amount of interest on the Initial Bonds Outstanding payable on the first Interest Payment Date (after taking into account any amount on deposit in the Interest Account of the Bond Fund, and as shall be available to pay interest on the Initial Bonds on the first Interest Payment Date) by the number of Loan Payment Dates between the Closing Date and the first Interest Payment Date, and thereafter in an amount equal to one-third (1/3) of the amount of interest which will become due and payable on the Initial Bonds on the next succeeding Interest Payment Date (after taking into account any amounts on deposit in the Interest Account of the Bond Fund, and as shall be available to pay interest on the Initial Bonds on such next succeeding Interest Payment Date); provided that in any event the aggregate amount so paid with respect to interest on the Initial Bonds on or before the Loan Payment Date immediately preceding an Interest Payment Date shall be an amount sufficient to pay the interest next becoming due on the Initial Bonds on such immediately succeeding Interest Payment Date;

(ii) with respect to principal due on the Initial Bonds (other than such principal amount as shall become due as a mandatory Sinking Fund Installment payment), commencing on that Loan Payment Date as shall precede the first principal payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-sixth (1/6) of the amount of the principal of the Bonds Outstanding becoming due (other than by reason of mandatory Sinking Fund Installments) within the next succeeding thirteen (13) month period (or, if the first principal payment date following the Closing Date shall be on a date sooner than thirteen (13) calendar months following the Closing Date, then, with respect to such first principal amount, an amount equal to the quotient obtained by dividing such principal amount by the number of Loan Payment Dates between the Closing Date and such first principal payment date), and thereafter for each principal payment date commencing on that Loan Payment Date as shall precede such principal payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-sixth (1/6) of the amount of the principal of the Bonds Outstanding becoming due (other than by reason of mandatory Sinking Fund Installments) within such next succeeding thirteen (13) month period; provided that in any event the aggregate amount so paid with respect to principal on the Initial Bonds on or before the Loan Payment Date immediately preceding a principal payment date of the Initial Bonds shall be an amount sufficient to pay the principal of the Initial Bonds Outstanding becoming due on such next succeeding principal payment date of the Initial Bonds; provided further that in the event of the acceleration of the principal of the Initial Bonds, a loan payment in the amount of the principal amount of the Initial Bonds Outstanding (together with all interest accrued thereon to the date of payment), shall be due and payable on such date of acceleration;

(iii) with respect to Sinking Fund Installment payments due on the Initial Bonds, commencing on that Loan Payment Date as shall precede the first Sinking Fund Installment payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-sixth (1/6) of the amount of the Sinking Fund Installment on the Initial Bonds first becoming due within the next succeeding thirteen (13) month period (or, if the first Sinking Fund Installment payment date following the Closing Date shall be on a date sooner than thirteen (13) calendar months following the Closing Date, then, with respect to such first Sinking Fund Installment, an amount equal to the quotient obtained by dividing such Sinking Fund Installment by the number of Loan Payment Dates between the Closing Date and such first Sinking Fund Installment payment date), and thereafter for each Sinking Fund Installment payment date commencing on that Loan Payment Date as shall precede such Sinking Fund Installment payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-sixth (1/6) of the amount of the Sinking Fund Installment of the Initial Bonds Outstanding becoming due within such next succeeding thirteen (13) month period; provided that in any event the aggregate amount so paid with respect to Sinking Fund Installments on the Initial Bonds on or before the Loan Payment Date immediately preceding a Sinking Fund Installment payment date of the Initial Bonds shall be an amount sufficient to pay the Sinking Fund Installment of the Initial Bonds Outstanding becoming due on such next succeeding Sinking Fund Installment payment date;

40

redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Institution shall further pay on or before such Redemption Date, in legal tender, to the Issuer, the Trustee, the Bond Registrar and the Paying Agent all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (x) all other amounts due and payable under this Agreement and the other Security Documents, and (y) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement.

(d) At its option, to be exercised on or before the forty-fifth (45th) day next preceding the date any Bonds of a Series are to be redeemed from mandatory Sinking Fund Installments, the Institution may deliver to the Trustee Bonds of such Series which are subject to mandatory Sinking Fund Installment redemption in an aggregate principal amount not in excess of the principal amount of Bonds of such Series to be so redeemed on such date. Each such Bond so delivered shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date and any excess over such Sinking Fund Installment shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by operation of the mandatory Sinking Fund Installments shall be accordingly reduced.

(e) In the event Defaulted Interest (as defined in Section 2.02(f) of the Indenture) shall become due on any Initial Bond, the Institution shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Initial Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with Section 2.02(f) of the Indenture), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment.

(f) No further loan payments need be made to the Issuer on account of the Bonds when and so long as the amount of cash and/or Defeasance Obligations on deposit in the Bond Fund is sufficient to satisfy and discharge the obligations of the Issuer under the Indenture and pay the Bonds as provided in Article X of the Indenture.

(g) Any amounts remaining in the Revenue Fund, the Repair and Replacement Fund, the Earnings Fund, the Rebate Fund, the Bond Fund, the Debt Service Reserve Fund, the Project Fund or the Renewal Fund after payment in full of (w) the Bonds (in accordance with Article X of the Indenture), (x) the fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in accordance with the Indenture, (y) all amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or the Indenture, and (z) all amounts required to be paid under any Project Document, shall have been so paid, shall belong to and be paid to the Institution by the Trustee as overpayment of the loan payments.

(h) In the event that the Institution fails to make any loan payment required in this Section 4.3, the installment so in default shall continue as an obligation of the Institution until the amount in default shall have been fully paid.

42

(iv) on each Redemption Date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Initial Bonds, whether as an optional or mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Initial Bonds being redeemed on such Redemption Date;

(v) Reserved;

(vi) upon receipt by the Institution of notice from the Trustee pursuant to Section 5.09(f) of the Indenture that the amount on deposit in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Fund Requirement, the Institution shall pay to the Trustee for deposit in the Debt Service Reserve Fund by the Loan Payment Date immediately following the receipt by the Institution of notice of such deficiency, and on the next five Loan Payment Dates, or over such longer time period as shall be consented to in writing by the Majority Holders, an amount equal to one-sixth (1/6) of such original deficiency in the Debt Service Reserve Fund.

(b) In the event the Institution should fail to make or cause to be made any of the payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Institution until the amount not so paid shall have been fully paid.

(c) The Institution has the option to make advance loan payments for deposit in the Revenue Fund for deposit in the Bond Fund to effect the retirement, defeasance or redemption of the Bonds in whole or in part, all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the Bonds may be effected through advance loan payments hereunder if there shall exist and be continuing an Event of Default. The Institution shall exercise its option to make such advance loan payments by delivering a written notice of an Authorized Representative of the Institution to the Trustee in accordance with the Indenture, with a copy to the Issuer, setting forth (u) the amount of the advance loan payment, (v) the principal amount of Bonds Outstanding requested to be redeemed with such advance loan payment (which principal amount shall be in such minimum amount or integral Authorized Denomination as shall be permitted in the Indenture), and (w) the date on which such principal amount of Bonds are to be redeemed (which date shall be not earlier than forty-five (45) days after the date of such notice). In the event the Institution shall exercise its option to make advance loan payments to effect the redemption in whole of the Bonds, and such redemption is expressly permitted under the Indenture as a result of the damage, destruction or condemnation of the Facility, or changes in law, or executive or judicial action, the Institution shall further deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution stating that, as a result of the occurrence of the event giving rise to such redemption, the Institution has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes. Such advance loan payment shall be paid to the Trustee in legal tender, for deposit in the Redemption Account of the Bond Fund on or before the Redemption Date and shall be an amount which, when added to the amounts on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in connection with such

41

(i) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Institution shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund.

(j) The Institution shall pay to the Trustee on each Loan Payment Date, following the Project Completion Date, for deposit into the Revenue Fund for deposit into the Repair and Replacement Fund the amount required for such Loan Payment Date pursuant to clause FOURTH of Section 5.15 of the Indenture. In addition, upon receipt by the Institution of notice from the Trustee pursuant to Section 5.09(g) of the Indenture that the amount on deposit in the Repair and Replacement Fund shall be less than the Repair and Replacement Fund Requirement, the Institution shall pay to the Trustee for deposit in the Repair and Replacement Fund on the Loan Payment Date immediately following the receipt by the Institution of notice of such deficiency, and on each of the five (5) succeeding Loan Payment Dates, or over such longer time period as shall be consented to in writing by the Majority Holders, an amount equal to one-sixth (1/6) of such original deficiency in the Repair and Replacement Fund.

#### Section 4.4. Loan Payments and Other Payments Payable Absolutely Net.

The obligation of the Institution to pay the loan payments and other payments under this Agreement and under the Promissory Note shall be absolutely net to the Issuer and to the Trustee without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement and the Promissory Note shall yield, net, to the Issuer and to the Trustee, the loan payments and other payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Facility, arising or becoming due and payable under this Agreement, shall be paid by the Institution and the Indemnified Parties shall be indemnified by the Institution for, and the Institution shall hold the Indemnified Parties harmless from, any such costs, expenses and charges.

#### Section 4.5. Nature of Institution's Obligation Unconditional.

The Institution's obligation under this Agreement and under the Promissory Note to pay the loan payments and all other payments provided for in this Agreement and in the Promissory Note shall be absolute, unconditional and a general obligation of the Institution, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Issuer, the Trustee or the Holder of any Bond and the obligation of the Institution shall arise whether or not the Project has been completed as provided in this Agreement and whether or not any provider of a credit facility or liquidity facility or swap arrangement with respect to the Bonds shall be honoring its obligations thereunder. The Institution will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder), or suspend the performance or observance of any covenant or agreement required on the part of the Institution hereunder, for any cause whatsoever, and the Institution waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Institution under this Agreement except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the loan payments or other payments hereunder or under the Promissory Note.

43



**Section 4.6. Advances by the Issuer or the Trustee.** In the event the Institution fails to make any payment or to perform or to observe any obligation required of it under this Agreement, under the Promissory Note or under any other Security Document, the Issuer or the Trustee, after first notifying the Institution in writing of any such failure on its part (except that no prior notification of the Institution shall be required in the event of an emergency condition that, in the reasonable judgment of the Issuer or the Trustee, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Issuer or the Trustee under this Agreement or any other Security Document to which the Issuer or the Trustee is a party, make such payment or otherwise cure any failure by the Institution to perform and to observe its other obligations hereunder or thereunder. All amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Institution to the Issuer or the Trustee, as the case may be, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, compounded daily, from the date advanced, the Institution will pay upon demand therefor by the Issuer or the Trustee, as applicable. Any remedy vested in the Issuer or the Trustee herein or in any other Security Document for the collection of the loan payments or other payments or other amounts due hereunder, under the Promissory Note or under any other Security Document shall also be available to the Issuer or the Trustee for the collection of all such amounts so advanced. No advance shall be made by the Trustee except as specified in the Indenture.

44

at the Facility Realty prior to the relocation, to another site within the City, (B) the Institution maintains, for the remaining balance of the Recapture Period, an employment level equal to at least 90% of the number of employees employed by the Institution at the Facility Realty prior to relocation, and (C) the Institution shall satisfy such other additional conditions as the Issuer may from time to time impose provided such additional conditions are reasonable and uniformly imposed, at the time, to other similar transactions under similar circumstances. There shall arise another Recapture Event upon the failure of the Institution to satisfy continuously the foregoing requirements for the remaining balance of the Recapture Period. Upon the occurrence of such subsequent Recapture Event, the Issuer shall have the right to demand payment of all amounts due under Section 5.1(b) or (c), and the calculation of interest pursuant to Section 5.1(c)(iii) shall assume that the subsequent Recapture Event replaces the original Recapture Event for purposes of that computation. The determination of the pre-relocation, 90%-employment level shall be done in a manner, and in respect of a date or period of time, that the Issuer deems appropriate in its sole discretion.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event:

(A) shall have arisen as a direct, immediate result of (x) force majeure as defined in Section 12.1, (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Institution to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Institution or any Affiliate, or

(B) is deemed, in the sole discretion of the Issuer, to be (x) as necessitated by law, (y) minor in nature, or (z) a cause of undue hardship to the Institution were the Issuer to recapture any Benefits.

**Recapture Period** shall mean the period of time commencing on the Closing Date, and expiring on the date which is the tenth anniversary of the Operations Commencement Date.

(b) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event is prior to the Operations Commencement Date, the Institution shall pay to the Issuer as a return of financial assistance conferred by the Issuer, the following amounts upon demand by the Issuer: (i) all Benefits; and (ii) interest described in Section 5.1(c)(iii).

(c) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event occurs after the Operations Commencement Date, the Institution shall pay to the Issuer as a return of financial assistance conferred by the Issuer, the following amounts (as applicable) upon demand by the Issuer:

(i) If the Recapture Event occurs within the first six (6) years after the Operations Commencement Date, one hundred percent (100%) of the Benefits.

46

## ARTICLE V

### RECAPTURE OF BENEFITS

**Section 5.1. Recapture of Benefits.** It is understood and agreed by the parties to this Agreement that the Issuer is entering into this Agreement in order to provide financial assistance to the Institution for the Project and to accomplish its corporate public purposes. In consideration therefor, the Institution hereby agrees as follows:

(a) The following capitalized terms shall have the respective meanings specified below:

**Benefits** shall mean the exemption from any applicable mortgage recording taxes, and filing and recording fees.

**Operations Commencement Date** shall mean the date by which the Issuer shall have received a signed certificate of an Authorized Representative of the Institution certifying that the Project Completion Date has occurred and that the Facility is in fact being occupied, used and operated for the Approved Project Operations.

**Recapture Event** shall mean any one of the following events:

(i) The Institution shall have failed to cause the Project Completion Date to occur by the Completion Deadline.

(ii) Except as permitted by written consent of the Issuer pursuant to and in accordance with Section 8.20, the Institution shall have liquidated all or substantially all of its operating assets or shall have ceased all or substantially all of its operations.

(iii) The Institution shall have transferred all or substantially all of its employees to a location outside of the City.

(iv) The Facility has ceased to be the Approved Facility and/or the Institution shall have substantially changed the scope and nature of its operations at the Facility Realty.

(v) Except as permitted by written consent of the Issuer pursuant to and in accordance with Section 8.20, the Institution shall have sold, leased or otherwise disposed of all or substantially all of the Facility Realty.

(vi) The Institution shall have subleased all or part of the Facility Realty in violation of Section 8.9.

(vii) The Institution shall have relocated all or substantially all of its operations at the Facility Realty to another site; provided, however, and notwithstanding the foregoing, such relocation shall not be a Recapture Event if (A) the Institution has relocated its operations at the Facility Realty and at least 90% of its employees employed

45

(ii) If the Recapture Event occurs within any month during any one of the seventh, eighth, ninth or tenth years after the Operations Commencement Date, X percent of the Benefits (where "X" is a percent equal to 100% less Y, and where "Y" equals the product of 1.666% and the number of months elapsed commencing with the first month of the seventh year through and including the month in which the Recapture Event occurs).

(iii) The principal of the Benefits to be recaptured, whether pursuant to clause (i) or (ii) above, shall bear interest at a rate equal to the lesser of (x) the maximum amount of interest permitted by law, and (y) the statutory judgment rate, compounded daily, commencing from the date that any amount of Benefit principal has accrued to the Institution, through and including the date such principal is repaid in full; such that Benefit principal comprising the dollar amount of the exemption from mortgage recording taxes, and filing and recording fees, shall be deemed to have accrued to the Institution on the Closing Date. The "statutory judgment rate" shall be the statutory judgment rate in effect on the date of the Issuer's demand.

For purposes of this Section 5.1, demand for payment by the Issuer shall be made in accordance with the notice requirements of this Agreement and the due date for payment shall be not less than seven (7) Business Days from the date of the notice.

(d) The Institution shall furnish the Issuer with written notification of any Recapture Event within ten (10) days of its occurrence and shall subsequently provide to the Issuer in writing any additional information that the Issuer may request.

(e) The provisions of this Section 5.1 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

47

## ARTICLE VI

### DAMAGE, DESTRUCTION AND CONDEMNATION

**Section 6.1. Damage, Destruction and Condemnation.** In the event that the whole or part of the Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement to which the Institution and those authorized to exercise such right are parties, or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event"):

(i) the Issuer shall have no obligation to rebuild, replace, repair or restore the Facility or to advance funds therefor,

(ii) there shall be no abatement, postponement or reduction in the loan payments or other amounts payable by the Institution under this Agreement or the Promissory Note or any other Security Document to which it is a party, and the Institution hereby waives, to the extent permitted by law, any provisions of law which would permit the Institution to terminate this Agreement, the Promissory Note or any other Security Document, or eliminate or reduce its payments hereunder, under the Promissory Note or under any other Security Document, and

(iii) the Institution will promptly give written notice of such Loss Event to the Issuer and the Trustee, generally describing the nature and extent thereof.

#### **Section 6.2. Loss Proceeds.**

(a) The Issuer, the Trustee and the Institution shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromise, arbitration or adjustment of any such claim or demand shall, as between the Issuer and the Institution, be subject to the written approval of the Institution and the Trustee (such approvals not to be unreasonably withheld).

(b) The Net Proceeds with respect to the Facility shall be paid to the Trustee and deposited in the Renewal Fund (except as provided in Section 3.11(d) of the Mortgage in respect of property insurance proceeds that are less than a threshold amount). Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied, and may be invested, as provided in the Indenture. The Institution shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award, compensation or damages attributable to the Institution's Property.

#### **Section 6.3. Election to Rebuild or Terminate.**

(a) In the event a Loss Event shall occur, the Institution shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds), within two (2) years of the Loss Event, promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to

48

(i) automatically be deemed a part of the Facility under this Agreement and, with respect to Mortgaged Property, shall be subject to the lien and security interest of the Mortgage,

(ii) be effected only if the Institution shall deliver to the Issuer and the Trustee a certificate from an Authorized Representative of the Institution acceptable to the Issuer and the Trustee to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Facility as the Approved Facility,

(iii) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for by the Institution in accordance with the terms of the applicable contract(s) therefor,

(iv) restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, and to a state and condition that will permit the Institution to use and operate the Facility as the Approved Facility,

(v) be effected only if the Institution shall have complied with Section 8.1(c),

(vi) be preceded by the furnishing by the Institution to the Trustee of a labor and materials payment bond, or other security, satisfactory to the Trustee, and

(vii) if the estimated cost of such rebuilding, replacement, repair or restoration is in excess of \$250,000, be effected under the supervision of an Independent Engineer.

(b) The date of completion of the rebuilding, replacement, repair or restoration of the Facility shall be evidenced to the Issuer and the Trustee by a certificate of an Authorized Representative of the Institution stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Trustee, has been made (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that all property constituting part of the Facility is subject to this Agreement and, if applicable, subject to the mortgage lien and security interest of the Mortgage, subject to Permitted Encumbrances, (v) the Rebate Amount applicable with respect to the Net Proceeds and the earnings thereon (with a statement as to the determination of the Rebate Amount and a direction to the Trustee of any required transfer to the Rebate Fund), and (vi) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Institution against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and Section 5.03 of the Indenture and (z) that no Person other than the Issuer or the Trustee may benefit therefrom.

50

the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Institution shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Issuer, the Trustee or any Bondholder, nor shall the loan payments or other amounts payable by the Institution under this Agreement or the Promissory Note or any other Security Document be abated, postponed or reduced, or

(ii) if, to the extent and upon the conditions permitted to do so under Sections 10.1 and 10.2 and under the Indenture, exercise its option to terminate this Agreement and cause the Bonds to be redeemed in whole,

provided that if all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Institution as contemplated hereby, the Institution shall exercise its option to terminate this Agreement pursuant to Sections 10.1 and 10.2.

Not later than ninety (90) days after the occurrence of a Loss Event, the Institution shall advise the Issuer and the Trustee in writing of the action to be taken by the Institution under this Section 6.3(a), a failure to so timely notify being deemed an election in favor of Section 6.3(a)(ii) to be exercised in accordance with the provisions of Section 6.3(a)(ii).

(b) If the Institution shall elect to or shall otherwise be required to rebuild, replace, repair or restore the Facility as set forth in Section 6.3(a)(i), the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Institution, at the election of the Institution, either as such work progresses or upon the completion thereof; provided, however, the amounts so disbursed by the Trustee to the Institution shall not exceed the actual cost of such work. If the Institution shall exercise its option in Section 6.3(a)(ii), the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Redemption Account of the Bond Fund, and the Institution shall thereupon pay to the Trustee for deposit in the Redemption Account of the Bond Fund an amount which, when added to any amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or Redemption Date and redemption premium, if any), and shall pay the expenses of redemption, the fees and expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents, together with all other amounts due under the Indenture, under this Agreement and under each other Security Document, as well as any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement and such amount so deposited shall be applied, together with such other available amounts in the Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or Maturity Date.

#### **Section 6.4. Effect of Election to Build.**

(a) All rebuilding, replacements, repairs or restorations of the Facility in respect of or occasioned by a Loss Event shall:

(c) The certificate delivered pursuant to Section 6.4(b) shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Institution will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Institution that all costs of rebuilding, repair, restoration and reconstruction of the Facility have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Trustee that such costs have been appropriately bonded or that the Institution shall have posted a surety or security at least equal to the amount of such costs); and (iii) a search prepared by a title company, or other evidence satisfactory to the Trustee, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exist no encumbrances other than Permitted Encumbrances and those encumbrances consented to by the Issuer and the Trustee.

49

51

## ARTICLE VII

### COVENANTS OF THE ISSUER

#### Section 7.1. Assignment of Promissory Note and Assignment of Mortgage.

On the Closing Date, the Issuer will endorse and assign the Promissory Note to the Trustee, and execute and deliver to the Trustee the Assignment of Mortgage.

**Section 7.2. Issuance of Initial Bonds.** On the Closing Date, subject to the satisfaction of the conditions to the issuance of the Initial Bonds, the Issuer will sell and deliver the Initial Bonds in the Authorized Principal Amount under and pursuant to the Authorizing and Bond Resolution and under and pursuant to the Indenture. The proceeds of sale of the Initial Bonds shall be deposited and applied in accordance with the provisions of the Indenture.

**Section 7.3. Issuance of Additional Bonds.** Under the provisions of and subject to the conditions set forth in the Indenture, the Issuer is authorized to enter into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Initial Bonds for the purpose of (w) completing the Project, (x) providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (y) providing extensions, additions or improvements to the Facility, or (z) refunding Outstanding Bonds. If the Institution is not in default hereunder or under any other Project Document, the Issuer will consider the issuance of a Series of Additional Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture.

**Section 7.4. Pledge and Assignment to Trustee.** As security for the payment of the Bonds and the obligations of the Institution under the Security Documents:

(a) the Institution shall, pursuant to the Mortgage, grant to the Issuer and the Trustee, for the benefit of the Bondholders, a mortgage lien on and security interest in its fee interest in the Mortgage Property;

(b) the Issuer shall assign its right, title and interest in the Mortgage to the Trustee pursuant to the Assignment of Mortgage; and

(c) the Issuer shall pledge and assign to the Trustee, for the benefit of the Bondholders, pursuant to the Indenture all of the Issuer's right, title and interest in the Promissory Note and all of the Issuer's right, title and interest in this Agreement (except for the Issuer's Reserved Rights), including all loan payments hereunder and under the Promissory Note, and in furtherance of such pledge, the Issuer will unconditionally assign such loan payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture.

52

(b) **Required Insurance.** Except during periods of Construction, the Insured shall obtain and maintain for itself as a primary insured the following insurance:

(i) CGL with \$1,000,000 minimum per occurrence; \$2,000,000 minimum in the aggregate; and per-location aggregate. This Policy shall contain coverage for contractual liability, premises operations, and products and completed operations.

(ii) U/E with \$4,000,000 minimum per occurrence on terms consistent with CGL. The excess coverage provided under U/E shall be incremental to the CGL to achieve minimum required coverage of \$5,000,000 per occurrence; such incremental coverage must also apply to auto liability (see Section 8.1(b)(iii)), whether auto liability coverage is provided by endorsement to the Insured's CGL or by a stand-alone policy.

(iii) Auto liability insurance with \$1,000,000 combined single limit and \$1,000,000 for uninsured or under-insured vehicles. If the Insured owns any vehicles, it shall obtain auto liability insurance in the foregoing amounts for hired and non-owned vehicles. Coverage should be at least as broad as ISO Form CA0001, ed. 10/01.

(iv) Workers Compensation satisfying State statutory limits. Coverage for employer liability shall be in respect of any work or operations in, on or about the Facility Realty.

(v) Property insurance in the amount required under the Mortgage.

(c) **Required Insurance During Periods of Construction.** In connection with any Construction and throughout any period of such Construction, the Institution shall cause the following insurance requirements to be satisfied:

(i) The Insured shall obtain and maintain for itself Policies in accordance with all requirements set forth in Section 8.1(b).

(ii) Any GC or CM shall obtain and maintain for itself as a primary insured the following Policies:

(A) CGL and U/E in accordance with the requirements in Section 8.1(b), subject to the following modifications: (x) coverage shall be in an aggregate minimum amount of \$10,000,000 per project aggregate, and (y) completed operations coverage shall extend (or be extended) for an additional five (5) years after completion of the Construction (which will be deemed to be the Project Completion Date unless the Institution shall have provided written notice and satisfactory evidence to the Issuer that the Construction was completed as of a specified earlier date);

(B) Auto liability insurance in accordance with the requirements in Section 8.1(b); and

54

## ARTICLE VIII

### COVENANTS OF THE INSTITUTION

#### Section 8.1. Insurance.

(a) **Definitions.** The following capitalized terms shall have the respective meanings specified below:

**Certificate** means an ACORD certificate evidencing insurance.

**CGL** means commercial general liability insurance.

**CM** means a construction manager providing construction management services in connection with any Construction.

**Construction** means any construction, reconstruction, restoration, renovation, alteration and/or repair on, in, at or about the Facility Realty, including the Project Work or any other construction, reconstruction, restoration, alteration and/or repair required under this Agreement in connection with the Facility.

**Contractor(s)** means, individually or collectively, a contractor or subcontractor providing materials and/or labor and/or other services in connection with any Construction, but not including a GC, CM or any architect or engineer providing professional services.

**GC** means any general contractor providing general contracting services in connection with any Construction.

**Insured** means the Institution.

**Insurer** means any entity writing or issuing a Policy.

**ISO** means the Insurance Services Office or its successor.

**ISO Form CG-0001** means the CGL form published by ISO at the Closing Date.

**Policy(ies)** means, collectively or individually, the policies required to be obtained and maintained pursuant to Section 8.1(b) and (c).

**SIR** means self-insured retention.

**U/E** means Umbrella or Excess Liability insurance.

**Workers' Compensation** means Workers' Compensation, disability and employer liability insurance.

53

(C) Workers' Compensation in accordance with the requirements in Section 8.1(b).

(iii) Notwithstanding preceding subsections "i" and "ii," during Construction aggregate minimum coverage in the amount of \$15,000,000 (combined CGL and U/E required by Sections 8.1(b) and 8.1(c)) may be achieved by any combination of coverage amounts between the Insured on the one hand and the GC or CM on the other.

(iv) Each Contractor shall obtain and maintain for itself as a primary insured the following insurance:

(A) CGL and U/E in accordance with the requirements in Section 8.1(b) except that, in addition, completed operations coverage shall extend (or be extended) for an additional five (5) years after completion of the Construction (which will be deemed to be the Project Completion Date unless the Institution shall have provided written notice and satisfactory evidence to the Issuer that the Construction was completed as of a specified earlier date);

(B) Auto Liability insurance in accordance with the requirements in Section 8.1(b); and

(C) Workers' Compensation in accordance with the requirements in Section 8.1(b).

(d) **Required Policy Attributes.** Except as the Issuer and the Trustee shall expressly otherwise agree in writing in their sole and absolute discretion:

(i) The Institution shall cause each Policy (other than Worker's Compensation and auto liability insurance) to name the Issuer and the Trustee as additional insureds on a primary and non-contributory basis as more particularly required in Section 8.1(f)(i). In addition, each Contractor must protect the Issuer and Trustee as additional insureds on a primary and non-contributory basis via ISO endorsements CG 20 26 and CG 20 37 or their equivalents and the endorsements must specifically identify the Issuer and Trustee as Additional Insureds.

(ii) No Policy shall have a deductible.

(iii) CGL shall not be subject to SIR.

(iv) CGL shall be written on either ISO Form CG-0001 or on such other form that the Institution may request provided that any requested substitute shall provide an additional insured with substantially equivalent coverage to that enjoyed by an additional insured in a policy written on ISO Form CG-0001 and provided further that the substitute is reasonably approved by the Issuer. If the Insured intends to renew its CGL on a form that is not ISO Form CG-0001, it shall provide the Issuer and the Trustee with a copy of the substitute form at least sixty (60) days prior to the intended date on which the renewal Policy is to be effective.

55

(v) The Institution acknowledges that the Issuer and the Trustee are materially relying upon the content of ISO Form CG-0001 to implement the Issuer's insurance requirements under this Section 8.1; accordingly, the Institution agrees that non-standard exclusions and other modifications to ISO Form CG-0001 are prohibited under the terms and conditions of this Section 8.1. In the event that ISO either ceases to exist or discontinues ISO Form CG-0001, the Issuer or the Trustee shall have the right to require, for all purposes hereunder, a different CGL form, provided that the replacement is substantially similar to ISO Form CG-0001.

(vi) Without limiting Section 8.1(d)(v) or the application of any other requirement under this Section 8.1, no Policy delivered hereunder shall limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

(A) contractual liability coverage insuring the contractual obligations of the Insured;

(B) employer's liability coverage;

(C) coverage for claims arising under New York Labor Law;

(D) the right of the Insured to name additional insureds including the Issuer and the Trustee; and

(E) the applicability of CGL coverage to the Issuer and the Trustee as additional insureds in respect of liability arising out of any of the following claims: (x) claims against the Issuer and/or the Trustee by employees of the Insured, or (y) claims against the Issuer and/or the Trustee by any GC, CM, Contractor, architect or engineer or by the employees of any of the foregoing, or (z) claims against the Issuer and/or the Trustee arising out of any work performed by a GC, CM, Contractor, architect or engineer.

(vii) U/E shall follow the form of CGL except that U/E may be broader.

(viii) Each Policy shall provide primary insurance and the issuing Insurer shall not have a right of contribution from any other insurance policy insuring the Issuer and/or the Trustee.

(ix) In each Policy, the Insurer shall waive, as against any Person insured under such Policy including any additional insured, the following: (x) any right of subrogation, (y) any right to set-off or counterclaim against liability incurred by a primary insured or any additional insured, and (z) any other deduction, whether by attachment or otherwise, in respect of any liability incurred by any primary insured or additional insured.

(x) Policies shall not be cancellable without at least thirty (30) days' prior written notice to the Issuer and the Trustee as additional insureds.

56

(A) The Insured shall endeavor to deliver to the Issuer and the Trustee the declarations page and the schedule of forms and endorsements prior to the Closing Date and shall, in any event, deliver such documents to the Issuer and the Trustee no later than the earlier to occur of (x) one hundred twenty (120) days following the Closing Date or (y) the commencement of the Project Work.

(B) Upon the expiration or sooner termination of any CGL, the Insured shall deliver to the Issuer and the Trustee a declarations page and a schedule of forms and endorsements pertinent to the new or replacement CGL.

(C) Prior to the commencement of any Construction, the Insured shall deliver to the Issuer and the Trustee a declarations page and a schedule of forms and endorsements pertinent to the CGL under which the Insured is to be the primary insured during the period of such Construction.

(iii) Insurance to be obtained by GCs and CMs. Prior to the commencement of any Construction that entails the services of a GC or CM, the Institution shall provide to the Issuer and the Trustee, in a form satisfactory to the Issuer and the Trustee, evidence that the GC or CM (as the case may be) has obtained the Policies that it is required to obtain and maintain in accordance with Section 8.1(c).

(iv) Insurance to be obtained by Contractors. In connection with any Construction, the Institution shall, upon the written request of the Issuer or the Trustee, cause any and all Contractors to provide evidence, satisfactory to the Issuer and the Trustee, that such Contractors have obtained and maintain the Policies that they are required to obtain and maintain in accordance with the requirements of Section 8.1(c).

(g) Notice. The Institution shall immediately give the Issuer and the Trustee notice of each occurrence that is reasonably probable to give rise to a claim under the insurance required to be maintained by this Section 8.1.

(h) Miscellaneous.

(i) If, in accordance with the terms and conditions of this Section 8.1, the Insured is required to obtain the consent of the Issuer and/or the Trustee, the Institution shall request such consent in a writing provided to the Issuer and/or the Trustee at least thirty (30) days in advance of the commencement of the effective period (or other event) to which the consent pertains.

(ii) The delivery by the Insured of a Certificate evidencing auto liability insurance for hired and non-owned vehicles shall, unless otherwise stated by the Institution to the contrary, constitute a representation and warranty from the Insured to the Issuer and the Trustee that the Insured does not own vehicles.

(iii) The Insured shall neither do nor omit to do any act, nor shall it suffer any act to be done, whereby any Policy would or might be terminated, suspended or impaired.

58

(xi) Each Policy under which the Issuer and the Trustee is an additional insured shall provide that the Issuer and the Trustee will not be liable for any insurance premium, commission or assessment under or in connection with any Policy.

(e) Required Insurer Attributes. All Policies must be issued by Insurers satisfying the following requirements:

(i) Insurers shall have a minimum AM Best rating of A minus.

(ii) Each Insurer must be an authorized insurer in accordance with Section 107(a) of the New York State Insurance Law.

(iii) Insurers must be admitted in the State; provided, however, that if the Insured requests the Issuer to accept a non-admitted Insurer, and if the Issuer reasonably determines that for the kind of operations performed by the Insured an admitted Insurer is commercially unavailable to issue a Policy or is non-existent, then the Issuer shall provide its written consent to a non-admitted Insurer. For purposes of this paragraph, an "admitted" Insurer means that the Insurer's rates and forms have been approved by the State Department of Financial Services and that the Insurer's obligations are entitled to be insured by the State's insurance guaranty fund.

(f) Required Evidence of Compliance. The Institution shall deliver or cause to be delivered evidence of all Policies required hereunder as set forth in this Section 8.1(f):

(i) All Policies. With respect to all Policies on which the Insured is to be a primary insured, the Insured shall deliver to the Issuer and the Trustee a Certificate or Certificates evidencing all Policies required by this Section 8.1 (w) at the Closing Date, (x) prior to the expiration or sooner termination of Policies, (y) prior to the commencement of any Construction, and (z) upon request by the Issuer or the Trustee. If the Certificate in question evidences CGL, such Certificate shall name the Issuer and the Trustee as additional insureds in the following manner:

*Build NYC Resource Corporation and The Bank of New York Mellon, as Trustee, are each additional insureds on a primary and non-contributory basis. The referenced CGL is written on ISO Form CG-0001, or its equivalent form, without modification to the contractual liability, employer's liability or waiver-of-subrogation provisions thereof, and contains no endorsement limiting or excluding coverage for claims arising under New York Labor Law, covering the following premises: 238-242 Hoyt Street, Brooklyn, New York.*

(ii) CGL. With respect to CGL on which the Insured is to be a primary insured, the Insured shall additionally deliver to the Issuer and the Trustee the following:

(iv) If insurance industry standards applicable to properties similar to the Facility Realty and/or operations similar to the operations of the Institution materially change; and if, as a consequence of such change, the requirements set forth in this Section 8.1 become inadequate in the reasonable judgment of the Issuer or the Trustee for the purpose of protecting the Issuer and the Trustee against third-party claims, then the Issuer or the Trustee shall have the right to supplement and/or otherwise modify such requirements, provided, however, that such supplements or modifications shall be commercially reasonable.

(v) THE ISSUER AND THE TRUSTEE DO NOT REPRESENT THAT THE INSURANCE REQUIRED IN THIS SECTION 8.1, WHETHER AS TO SCOPE OR COVERAGE OR LIMIT, IS ADEQUATE OR SUFFICIENT TO PROTECT THE INSURED AND ITS OPERATIONS AGAINST CLAIMS AND LIABILITY.

(vi) The Issuer, in its sole discretion and without obtaining the consent of the Trustee or any other party to the transactions contemplated by this Agreement, may make exceptions to the requirements under this Section 8.1 by a written instrument executed by the Issuer. In the event the Institution shall request the Issuer to make any exception to the requirements under this Section 8.1, the Issuer shall not unreasonably withhold its consent. The Institution acknowledges that the Issuer's decision in this respect will be deemed reasonable if made in furtherance of protecting the Issuer from liability.

## Section 8.2. Indemnity.

(a) The Institution shall at all times indemnify, defend, protect and hold the Issuer, the Trustee, the Bond Registrar and the Paying Agents, and any director, member, officer, employee, servant, agent (excluding for this purpose the Institution, which is not obligated hereby to indemnify its own employees, Affiliates or affiliated individuals) thereof and persons under the Issuer's control or supervision (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), taxes (of any kind and by whomsoever imposed), demands, penalties, fines, liabilities, lawsuits, actions, proceedings, settlements, costs and expenses, including documented attorney and consultant fees, documented investigation and laboratory fees, documented court costs, and documented litigation expenses (collectively, "Claims") of any kind for losses, damage, injury and liability (collectively, "Liability") of every kind and nature and however caused (except, with respect to any Indemnified Party, Liability arising from the gross negligence or willful misconduct of such Indemnified Party), arising during the period commencing on the Indemnification Commencement Date, and continuing until the termination of this Agreement, arising upon, about, or in any way connected with the Facility, the Project, or any of the transactions with respect thereto, including:

(i) the financing of the costs of the Facility or the Project and the marketing, offering, issuance, sale and remarketing of the Bonds for such purpose,

59

(ii) the planning, design, acquisition, site preparation, Project Work, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,

(iii) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,

(iv) the execution and delivery by an Indemnified Party, the Institution or any other Person of, or performance by an Indemnified Party, the Institution or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,

(v) any damage or injury to the person or property of any Person in or on the premises of the Facility,

(vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including failure to comply with the requirements of the City's zoning resolution and related regulations, or

(vii) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the Facility; any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or any violation of Legal Requirements, including demands of government authorities, or any policies or requirements of the Issuer, which are based upon or in any way related to such Hazardous Materials.

(b) The Institution releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the Institution or its Affiliates for, any Claim or Liability arising from or incurred as a result of action taken or not taken by such Indemnified Party with respect to any of the matters set forth in Section 8.2(a) including any Claim or Liability arising from or incurred as a result of the negligence or gross negligence of such Indemnified Party, or at the direction of the Institution with respect to any of such matters above referred to.

(c) An Indemnified Party shall promptly notify the Institution in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Institution pursuant to this Section 8.2; such notice shall be given in sufficient time to allow the Institution to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Institution under this Section 8.2.

60

**Section 8.4. Current Facility Personality Description.** The Institution covenants and agrees that, until the termination of this Agreement, including upon the completion of the Project or of any replacement, repair, restoration or reconstruction of the Facility pursuant to Article VI, it will cause Exhibit B — "Description of the Facility Personality", together with the "Description of the Facility Personality" attached as part of the appendices to the Indenture, this Agreement and the Mortgage, to be an accurate and complete description of all current items of Facility Personality. To this end, the Institution covenants and agrees that (x) no requisition shall be submitted to the Trustee for moneys from the Project Fund for the acquisition or installation of any item of Facility Personality, (y) no item of Facility Personality shall be substituted or replaced by a new item of machinery, equipment or other tangible personal property except pursuant to Section 3.5(a) or Article VI, and (z) no item of Facility Personality shall be delivered and installed at the Facility Realty as part of the property comprising the Facility, unless in each case such item of machinery, equipment or other item of tangible personal property shall be accurately and sufficiently described in Exhibit B — "Description of the Facility Personality", together with the "Description of the Facility Personality" in the appendices attached as part of the Indenture, this Agreement and the Mortgage, and the Institution shall from time to time prepare and deliver to the Issuer and the Trustee supplements to such Appendices in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties and, at the Trustee's request, duly recorded by the Institution, and, at the Trustee's request, additional financing statements with respect thereto shall be duly filed by the Institution.

**Section 8.5. Signage at Facility Site.** Upon commencement of the renovation and/or construction of the Improvements at the Facility in connection with the Project (including the commencement of any demolition and/or excavation), the Institution shall erect on the Facility site, at its own cost and expense, within easy view of passing pedestrians and motorists, a large and readable sign with the following information upon it (hereinafter, the "Sign"):

FINANCIAL ASSISTANCE PROVIDED  
THROUGH THE  
BUILD NYC RESOURCE CORPORATION  
Mayor Bill de Blasio

In addition, the Sign shall satisfy the following requirements: (x) format and appearance generally shall be stipulated by the Issuer in writing or electronically; (y) the minimum size of the Sign shall be four (4) feet by eight (8) feet; and (z) the Sign shall have no other imprint upon it other than that of the Issuer. The Sign shall remain in place at the Facility until completion of the renovations and/or construction. The Institution may erect other signs in addition to the Sign.

**Section 8.6. Environmental Matters.**

(a) On or before the Closing Date, the Institution shall provide to the Issuer and the Trustee a letter from the Environmental Auditor addressed to the Issuer and the Trustee, stating that the Issuer and the Trustee may rely upon the Environmental Audit as if it was prepared for the Issuer and the Trustee in the first instance.

62

(d) Anything to the contrary in this Agreement notwithstanding, the covenants of the Institution contained in this Section 8.2 shall be in addition to any and all other obligations and liabilities that the Institution may have to any Indemnified Party in any other agreement or at common law, and shall remain in full force and effect after the termination of this Agreement until the later of (x) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (y) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

**Section 8.3. Compensation and Expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents; Administrative and Project Fees.**

(a) The Institution shall pay the fees, costs and expenses of the Issuer together with any reasonable and documented fees and disbursements incurred by lawyers or other consultants in performing services for the Issuer in connection with this Agreement or any other Project Document, together with all fees and costs incurred in connection with complying with Section 8.12(b) (including reasonable and documented fees and disbursements of lawyers and other consultants).

(b) On the Closing Date, the Institution shall pay to the Issuer the Initial Annual Administrative Fee and the Project Fee.

(c) The Institution further agrees to pay the Annual Administrative Fee to the Issuer on each July 1 following the Closing Date until the Termination Date (the Annual Administrative Fee shall not be pro-rated for the final period ending on the Termination Date). In the event the Institution shall fail to pay the Annual Administrative Fee on the date due, the Issuer shall have no obligation to deliver notice of such failure to the Institution.

(d) The Institution shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following fees, charges and expenses and other amounts:

(i) the initial and annual fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including fees and expenses as Bond Registrar and in connection with preparation of new Bonds upon exchanges or transfers or making any investments in accordance with the Indenture and the reasonable fees of its counsel,

(ii) the reasonable and documented fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, including the reasonable fees of its counsel,

(iii) the reasonable and documented fees, charges, and expenses of the Trustee for extraordinary services rendered by it under the Indenture, including reasonable counsel fees, and

(iv) the reasonable and documented fees, costs and expenses of the Bond Registrar.

61

(b) The Institution shall not cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Institution cause or permit, as a result of any intentional or unintentional act or omission on the part of the Institution or any occupant or user of the Facility, a release of Hazardous Materials onto the Facility or onto any other property.

(c) The Institution shall comply with, and require and enforce compliance by, all occupants and users of the Facility with all applicable Legal Requirements pertaining to Hazardous Materials, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder.

(d) The Institution shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Facility in accordance with all applicable Legal Requirements.

(e) In the event the Mortgage is foreclosed, or a deed in lieu of foreclosure is tendered, or this Agreement is terminated as provided in Article IX, the Institution shall deliver the Mortgaged Property so that the conditions of the Mortgaged Property with respect to any and all Hazardous Materials shall conform with all applicable Legal Requirements affecting the Mortgaged Property.

(f) The parties hereto agree that the reference in Section 2.2(m) to the Environmental Audit is not intended, and should not be deemed to intend, to modify, qualify, reduce or diminish the Institution's obligations to carry out and perform all of the covenants stated throughout this Section 8.6 and in Section 8.2.

**Section 8.7. Employment Matters.**

(a) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor ("DOL") Community Services Division, and with the administrative entity of the service delivery area created by the Workforce Investment Act of 1998 (29 U.S.C. §2801) in which the Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Institution agrees, where practicable, to consider first, and cause each of its Affiliates at the Facility to consider first, persons eligible to participate in the Workforce Investment Act of 1998 (29 U.S.C. §2801) programs who shall be referred by administrative entities of service delivery areas created pursuant to such Act or by the Community Services Division of the DOL for such new employment opportunities.

(b) Upon the Issuer's written request, the Institution shall provide to the Issuer any employment information in the possession of the Institution which is pertinent to the Institution and the employees of the Institution to enable the Issuer and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations.

63

(c) The Institution hereby authorizes any private or governmental entity, including the DOL, to release to the Issuer and/or NYCEDC, and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Institution and the employees of the Institution to enable the Issuer and/or NYCEDC to comply with its reporting requirements required by City Charter §1301 and any other applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Institution, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Issuer, and/or NYCEDC, and/or the successors and assigns of either, and/or the City, and/or as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients pursuant to City Charter §1301, (y) other reports required of the Issuer, and (z) any other reports required by law. This authorization shall remain in effect until the termination of this Agreement.

(d) Upon the request of the Issuer, the Institution shall cooperate with the Issuer in the development of programs for the employment and/or training of members of minority groups in connection with performing work at the Facility.

(e) Nothing in this Section shall be construed to require the Institution to violate any existing collective bargaining agreement with respect to hiring new employees.

#### **Section 8.8. Non-Discrimination.**

(a) At all times during the maintenance and operation of the Facility, the Institution shall not discriminate nor permit any of its Affiliates to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Institution shall use its best efforts to ensure that employees and applicants for employment with any tenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Institution shall, in all solicitations or advertisements for employees placed by or on behalf of the Institution state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Institution shall furnish to the Issuer all information required by the Issuer pursuant to this Section and will cooperate with the Issuer for the purposes of investigation to ascertain compliance with this Section.

#### **Section 8.9. Assignment of this Agreement or Lease of Facility.**

(a) The Institution shall not at any time, except as permitted by Section 8.20, assign or transfer this Agreement without the prior written consents of the Issuer and the Trustee

64

(ix) an opinion of Nationally Recognized Bond Counsel shall have been delivered and addressed to the Issuer and the Trustee, to the effect that such assignment or transfer shall not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes.

The Institution shall furnish or cause to be furnished to the Issuer and the Trustee a copy of any such assignment or transfer in substantially final form at least thirty (30) days prior to the date of execution thereof.

(b) The Institution shall not at any time lease all or substantially all of the Facility, without the prior written consents of the Issuer and the Trustee (which consents may be withheld by the Issuer or the Trustee in their absolute discretion); nor shall the Institution lease part (*i.e.*, not constituting substantially all) of the Facility without the prior written consents of the Issuer and the Trustee (which consents shall, in such case, not be unreasonably withheld and, in the case of the Issuer, such consent to be requested by the Institution of the Issuer in the form prescribed by the Issuer, and such consent of the Issuer to take into consideration the Issuer's policies as in effect from time to time); provided further, that the following conditions must be satisfied on or prior to the date the Issuer and the Trustee consent to any such letting:

(i) the Institution shall have delivered to the Issuer and the Trustee a certificate of an Authorized Representative to the effect that the lease shall not cause the Facility to cease being the Approved Facility;

(ii) the Institution shall remain primarily liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of this Agreement and of the Promissory Note and of any other Project Document to which it shall be a party;

(iii) any lessee in whole or substantially in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Issuer and the Trustee such document) and have agreed to keep and perform all of the terms of this Agreement and each other Project Document on the part of the Institution to be kept and performed, shall be jointly and severally liable with the Institution for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) any lessee shall utilize the Facility as the Approved Facility and shall constitute a Tax-Exempt Organization;

(v) such lease shall not violate any provision of this Agreement or any other Project Document;

(vi) with respect to any letting in part of the Facility, no more than an aggregate of twenty percent (20%) of the Completed Improvements Square Footage shall be leased by the Institution;

(which consents may be withheld by the Issuer or the Trustee in their absolute discretion); provided further, that the following conditions must be satisfied on or prior to the date the Issuer and the Trustee consent to any such assignment or transfer:

(i) the Institution shall have delivered to the Issuer and the Trustee a certificate of an Authorized Representative to the effect that the transfer or assignment to the assignee or transferee (the "New Institution") shall not cause the Facility to cease being the Approved Facility;

(ii) the New Institution shall be liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party;

(iii) the New Institution shall have assumed in writing (and shall have executed and delivered to the Issuer and the Trustee such document and have agreed to keep and perform) all of the terms of this Agreement and each other Project Document on the part of the New Institution to be kept and performed, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) the New Institution shall be a not-for-profit corporation or a limited liability company constituting a Tax-Exempt Organization, and shall be duly established as a charter school under the Charter School Act, and its charter to operate the Facility shall be in full force and effect;

(v) such assignment or transfer shall not violate any Legal Requirement or any provision of this Agreement or any other Project Document;

(vi) an Opinion of Counsel shall have been delivered and addressed to the Issuer and the Trustee, to the effect that, (x) such assignment or transfer shall be permitted under the Charter School Act and shall constitute the legally valid, binding and enforceable obligation of the New Institution and shall not legally impair in any respect the obligations of the New Institution for the payment of all loan payments nor for the full performance of all of the terms, covenants and conditions of this Agreement, of the Promissory Note or of any other Project Document to which the New Institution shall be a party, nor impair or limit in any respect the obligations of any other obligor under any other Project Document, and (y) this Agreement and each of the other Project Documents to which the New Institution is a party constitute the legally valid, binding and enforceable obligation of the New Institution;

(vii) the New Institution shall have delivered to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer;

(viii) each such assignment shall contain such other provisions as the Issuer or the Trustee may reasonably require; and

65

(vii) an Opinion of Counsel shall have been delivered and addressed to the Issuer and the Trustee, to the effect that such lease shall be permitted under the Charter School Act and shall constitute the legally valid, binding and enforceable obligation of the lessee and shall not legally impair in any respect the obligations of the Institution for the payment of all loan or other payments nor for the full performance of all of the terms, covenants and conditions of this Agreement, of the Promissory Note or of any other Project Document to which the Institution shall be a party, nor impair or limit in any respect the obligations of any other obligor under any other Project Document;

(viii) such lease shall in no way diminish or impair the obligation of the Institution to carry the insurance required under Section 3.11 of the Mortgage or Section 8.1 and the Institution shall furnish written evidence satisfactory to the Issuer and the Trustee that such insurance coverage shall in no manner be diminished or impaired by reason of such assignment, transfer or lease;

(ix) any such lessee shall have delivered to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer;

(x) each such lease shall contain such other provisions as the Issuer or the Trustee may reasonably require; and

(xi) an opinion of Nationally Recognized Bond Counsel shall have been delivered and addressed to the Issuer and the Trustee, to the effect that such lease shall not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes.

The Institution shall furnish or cause to be furnished to the Issuer and the Trustee a copy of any such lease in substantially final form at least thirty (30) days prior to the date of execution thereof.

(c) Any consent by the Issuer or the Trustee to any act of assignment, transfer or lease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Institution, or the successors or assigns of the Institution, to obtain from the Issuer and the Trustee consent to any other or subsequent assignment, transfer or lease, or as modifying or limiting the rights of the Issuer or the Trustee under the foregoing covenant by the Institution.

(d) For purposes of this Section 8.9, any license or other right of possession or occupancy granted by the Institution with respect to the Facility shall be deemed a lease subject to the provisions of this Section 8.9.

#### **Section 8.10. Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of Facility.**

(a) The Institution shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its fee title to or interest in the Facility,

66

67

including the Improvements, or any part of the Facility or interest therein, except as set forth in Sections 3.3, 3.4, 3.5, 3.6, Article VI, 8.9 and 9.2 or in this Section, without (i) the prior written consents of the Issuer and of the Trustee, (ii) the Institution delivering to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that such action pursuant to this Section will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income taxes, and (iii) the Institution delivering to the Trustee and the Issuer an Opinion of Counsel to the effect that such action is authorized and permitted under the Charter School Act. Any purported disposition without such consents and opinions shall be void.

(b) The Institution may, with the prior written consents of the Issuer and the Trustee (such consents not to be unreasonably withheld or delayed), so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the lien and security interest of the Mortgage, as shall be necessary or convenient in the opinion of the Institution for the operation or use of the Facility, or required by any utility company for its utility business, provided that, in each case, such rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility as the Approved Facility, and provided, further, that any consideration received by the Institution from the granting of said rights-of-way, easements, permits or licenses shall be paid to the Trustee and deposited in the Redemption Account of the Bond Fund. The Issuer agrees, at the sole cost and expense of the Institution, to execute and deliver, and to cause and direct the Trustee to execute and deliver, any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the lien and security interest of the Mortgage.

(c) So long as there exists no Event of Default hereunder, and the Institution delivers to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that the following action will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes, the Institution may from time to time request in writing to the Issuer and the Trustee the release of and removal from the property comprising the Facility under this Agreement and the lien and security interest of the Mortgage, of any unimproved part of the Land (on which none of the Improvements, including the buildings, structures, major appurtenances, fixtures or other property comprising the Facility Realty, is situated); provided that such release and removal will not adversely affect the use or operation of the Facility as the Approved Facility. Upon any such request by the Institution, the Issuer shall, at the sole cost and expense of the Institution, cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to so release and remove such unimproved Land from the property comprising the Facility under this Agreement and the lien and security interest of the Mortgage, subject to the following:

- (i) any liens, easements, encumbrances and reservations to which title to said property was subject on the Closing Date;
- (ii) any liens, easements and encumbrances created at the request of the Institution or to the creation or suffering of which the Institution consented;

68

Document, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 8.11(b), the Institution forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Issuer and the Trustee and take all action (including the payment of money and/or the securing of a bond with respect to any such Lien) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full of such Lien and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Issuer for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien not permitted under this Section 8.11(a).

(b) The Institution may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if:

- (i) such proceeding shall suspend the execution or enforcement of such Lien against the Trust Estate, the Facility or any part thereof or interest therein, or against any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents or the interest of the Issuer or the Institution in any Project Document,
- (ii) neither the Facility nor any part thereof or interest therein, the Trust Estate or any portion thereof, the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Security Documents or the interest of the Issuer or the Institution in any Security Document would be in any danger of being sold, forfeited or lost.
- (iii) none of the Institution, the Issuer or the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and
- (iv) the Institution shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents.

#### Section 8.12. Filing.

(a) The security interest granted by the Issuer to the Trustee pursuant to the Indenture in the rights and other intangible interests described therein, shall be perfected by the filing of financing statements at the direction of the Issuer (at the sole cost and expense of the Institution) in the office of the Secretary of State of the State in the City of Albany, New York, which financing statements shall be in accordance with Article 9 (Secured Transactions) of the New York State Uniform Commercial Code.

70

(iii) any liens and encumbrances or reservations resulting from the failure of the Institution to perform or observe any of the agreements on its respective part contained in this Agreement or any other Project Document;

- (iv) Permitted Encumbrances (other than the lien of the Mortgage); and
- (v) any liens for taxes or assessments not then delinquent;

provided, however, that no such release shall be effected unless the following conditions have been satisfied:

(1) the Trustee shall have received a certificate of an Independent Engineer, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the person signing such certificate, the unimproved Land and the release thereof so proposed to be made is not needed for the operation of the remaining Facility, will not adversely affect the use or operation of the Facility as the Approved Facility and will not destroy the means of ingress thereto and egress therefrom;

(2) the Trustee shall have received an amount of cash for deposit in the Redemption Account of the Bond Fund equal to the greatest of (A) the original cost of the unimproved Land so released, such allocable cost to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, (B) the fair market value of such unimproved Land, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within the City, and (C) if such unimproved Land is released in connection with its sale, the amount received by the Institution upon such sale; and

(3) the Facility Realty as shall remain subject to the Mortgage shall not constitute a portion of a tax lot.

(d) No conveyance or release effected under the provisions of this Section 8.10 shall entitle the Institution to any abatement or diminution of the loan payments or other amounts payable under Section 4.3 or any other payments required to be made by the Institution under this Agreement or any other Project Document to which it shall be a party.

#### Section 8.11. Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Trust Estate, the Facility or any part thereof or the interest therein of the Institution or against any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Security Documents, or the interest of the Issuer or the Institution in any Security

69

(b) As of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code provides that an initial financing statement filed in connection with a "public-finance transaction" is effective for a period of thirty (30) years after the date of filing if such initial financing statement indicates that it is filed in connection with a public-finance transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code defines a "public-finance transaction" as a secured transaction in connection with which (x) debt securities are issued, (y) all or a portion of the debt securities issued have an initial stated maturity of at least twenty (20) years, and (z) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a security interest is a state or a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

(c) The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Initial Bonds, and because the Initial Bonds are municipal debt securities with a term that is at least twenty (20) years in duration, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statements in order to preserve the liens and security interests that they create for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

Subsequent to the initial filings, if it is necessary to re-file financing statements and/or file continuation statements and/or take any other actions to preserve the lien and security interest of the Indenture (individually or collectively, the "Continuation Action(s)"), then the Institution in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Trustee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Trustee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Trustee written certification (upon which the Trustee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause "(i)" and the others in the manner described in clause "(ii)"; and (B) if requested by the Trustee (acting at the direction of the Majority Holders) or the Issuer, deliver or cause to be delivered to the Issuer and the Trustee the Opinion of Counsel to the Institution as described below. The Trustee may conclusively rely upon (y) when applicable, the certification referred to in clause "(A)(ii)," and (z) in all instances, the Opinion of Counsel to the Institution. In the event the Institution chooses to have the Trustee perform all or some of the Continuation Actions, as provided in clause "(A)(i)", the Trustee shall reasonably promptly perform such Continuation Actions at the Institution's sole expense. The Institution shall perform the obligations described hereinabove in clauses "(A)" (in every case) and "(B)" (if so requested) no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing

71

Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause "(i)") on which a Continuation Action is to be taken to preserve the lien and security interest of the Indenture.

If an Opinion of Counsel to the Institution is requested pursuant to clause "(B)", then the Opinion of Counsel to the Institution shall be addressed to the Institution, the Issuer and the Trustee. If so requested, the Institution shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year anniversary thereafter through the term of the Initial Bonds, and/or (ii) the date of any required Continuation Action not covered by clause "(i)," in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Institution, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Trustee with instruments and papers prepared by the Institution, or (ii) the Institution through electronic filing, or (iii) the Trustee as to some Continuation Actions, and the Institution as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Institution, the Issuer and the Trustee then requisite to the maintenance of the perfection of the security interest of the Trustee in and to all property and interests which by the terms of the Indenture are to be subjected to the lien and security interest of the Indenture.

(d) Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Issuer shall have the right to designate a company (which shall be reasonably acceptable to the Trustee) to facilitate the filing of the Uniform Commercial Code financing statements.

(e) The Institution acknowledges and agrees that neither the Issuer nor the Trustee, nor any of their respective directors, members, officers, employees, servants, agents, persons under its control or supervision, or attorneys (including Bond Counsel to the Issuer), shall have any responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section, or the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

(f) The Institution agrees to perform all other acts (including the payment of all fees and expenses) necessary in order to enable the Issuer and the Trustee to comply with this Section and with Section 7.07 of the Indenture, including but not limited to, providing prompt notice to the Trustee of any change in either of the name or address of the Institution. The Institution agrees that the Issuer and the Trustee, if permitted by applicable law, may provide for the re-recording of the Indenture or any other Security Document or the filing or re-filing of continuation statements without the cooperation of the Institution as necessary at the sole cost and expense of the Institution.

72

(h) If the Institution shall request the consent of the Issuer under Section 8.9 to any sublease in whole or in part of the Facility, or to any assignment or transfer of this Agreement, the Institution shall submit such request to the Issuer in the form prescribed by the Issuer.

**Section 8.15. Requested Documents.** Upon request of the Issuer, the Institution shall deliver or cause to be delivered to the Issuer within five (5) Business Days of the date so requested:

(a) a copy of the most recent annual audited financial statements of the Institution and of its subsidiaries, if any (including balance sheets as of the end of the Fiscal Year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such Fiscal Year, prepared in accordance with GAAP and certified by an Independent Accountant;

(b) a certificate of an Authorized Representative of the Institution that the insurance the Institution maintains complies with the provisions of Section 8.1, that such insurance has been in full force and effect at all times during the preceding Fiscal Year, and that duplicate copies of all policies or certificates thereof have been filed with the Issuer and are in full force and effect and the evidence required by Section 8.1(f);

(c) copies of any (x) bills, invoices or other evidences of cost as shall have been incurred in connection with the Project Work, and (y) permits, authorizations and licenses from appropriate authorities relative to the occupancy, operation and use of the Facility;

(d) a certificate of an Authorized Representative of the Institution certifying either (x) the Institution did not take any action described in Section 3.4 resulting in Additional Improvements to the Facility Realty during the preceding Fiscal Year or (y) the Institution did take action or actions described in Section 3.4 resulting in Additional Improvements to the Facility Realty during the preceding Fiscal Year and the Institution complied with the provisions of Section 3.4;

(e) a certificate of an Authorized Representative of the Institution certifying either (x) the Institution did not take any action described in Section 3.5(a) resulting in the removal of Existing Facility Property having a value in the aggregate exceeding \$25,000 during the preceding Fiscal Year or (y) the Institution did take action or actions described in Section 3.5(a) resulting in the removal of Existing Facility Property having a value in the aggregate exceeding \$25,000 during the preceding Fiscal Year and the Institution complied with the provisions of Section 3.5(a);

(f) a certificate of an Authorized Representative of the Institution as to whether or not, as of the close of the immediately preceding Fiscal Year, and at all times during such Fiscal Year, the Institution was in compliance with all the provisions that relate to the Institution in this Agreement and in any other Project Document to which it shall be a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults

74

**Section 8.13. No Further Encumbrances Permitted.** The Institution shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against (i) the Facility or any part thereof, or the interest of the Institution in the Facility, except for Permitted Encumbrances, (ii) the Revenues, or (iii) the Trust Estate or any portion thereof, the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Security Documents or the interest of the Issuer or the Institution in any Security Document. The Institution covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that there are no mortgage liens on, or security interests in, the Facility (other than Permitted Encumbrances) prior to the mortgage liens thereon, and security interests therein, granted by the Mortgage.

**Section 8.14. Documents Automatically Deliverable to the Issuer.**

(a) The Institution shall immediately notify the Issuer of the occurrence of any Event of Default, or any event that with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Institution and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Institution shall state this fact on the notice.

(b) The Institution shall promptly provide written notice to the Issuer if any Conduct Representation made by the Institution would, if made on any date during the term of the Agreement and deemed made as of such date, be false, misleading or incorrect in any material respect.

(c) Within five (5) Business Days after receipt from the Issuer of any subtenant survey and questionnaire pertaining to the Facility, the Institution shall complete and execute such survey and questionnaire and return the same to the Issuer.

(d) The Institution shall deliver all insurance-related documents required by Sections 8.1(f) and 8.1(g).

(e) Within 120 days after the close of each Fiscal Year during which action was taken by the Institution pursuant to Section 3.4, the Institution shall deliver written notice of the Additional Improvement(s) to the Issuer.

(f) If a removal involving Existing Facility Property having a value in the aggregate exceeding \$25,000 was taken by the Institution pursuant to Section 3.5(a), the Institution shall deliver written notice of such removal to the Issuer within five (5) Business Days following such removal.

(g) Promptly following completion of the Project, but no later than five (5) Business Days following the receipt of any one of a certificate of occupancy, temporary certificate of occupancy, an amended certificate of occupancy or a letter of no objection, the Institution shall deliver to the Issuer the certificate as to Project completion in substantially the form set forth in Exhibit G - "Form of Project Completion Certificate", together with all attachments required thereunder.

73

or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Institution with respect thereto;

(g) upon twenty (20) days prior request by the Issuer, a certificate of an Authorized Representative of the Institution either stating that to the knowledge of such Authorized Representative after due inquiry there is no default under or breach of any of the terms hereof that exists or, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder, or specifying each such default or breach of which such Authorized Representative has knowledge;

(h) employment information requested by the Issuer pursuant to Section 8.7(b);

(i) information regarding non-discrimination requested by the Issuer pursuant to Section 8.8; and

(j) information regarding the continuity in effect of the Institution's charter under the Charter School Act.

**Section 8.16. Periodic Reporting Information for the Issuer.**

(a) The Institution shall not assert as a defense to any failure of the Institution to deliver to the Issuer any reports specified in this Section 8.16 that the Institution shall not have timely received any of the forms from or on behalf of the Issuer unless, (x) the Institution shall have requested in writing such form from the Issuer not more than thirty (30) days nor less than fifteen (15) days prior to the date due, and (y) the Institution shall not have received such form from the Issuer at least one (1) Business Day prior to the due date. For purposes of this Section 8.16, the Institution shall be deemed to have "received" any such form if it shall have been directed by the Issuer to a website at which such form shall be available. In the event the Issuer, in its sole discretion, elects to replace one or more of the reports required by this Agreement with an electronic or digital reporting system, the Institution shall make its reports pursuant to such system.

(b) Annually, by August 1 of each year, commencing on the August 1 immediately following the Closing Date, until the termination of this Agreement, the Institution shall submit to the Issuer the Annual Employment and Benefits Report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report, in the form prescribed by the Issuer, certified as to accuracy by an officer of the Institution. Upon termination of this Agreement, the Institution shall submit to the Issuer the Annual Employment and Benefits Report relating to the period commencing the date of the last such Report submitted to the Issuer and ending on the last payroll date of the preceding month in the form prescribed by the Issuer, certified as to accuracy by the Institution. Nothing herein shall be construed as requiring the Institution to maintain a minimum number of employees on its respective payroll.

(c) If there shall have been a tenant, other than the Institution, with respect to all or part of the Facility, at any time during the immediately preceding calendar year, the

75



Institution shall file with the Issuer by the next following February 1, a certificate of an Authorized Representative of the Institution with respect to all tenancies in effect at the Facility, in the form prescribed by the Issuer.

(d) If there shall have been a subtenant, other than the Institution, with respect to all or part of the Facility, at any time during the twelve-month period terminating on the immediately preceding June 30, the Institution shall deliver to the Issuer by the next following August 1, a completed Subtenant's Employment and Benefits Report with respect to such twelve-month period, in the form prescribed by the Issuer.

(e) If the Institution shall have had the benefit of a Business Incentive Rate at any time during the twelve-month period terminating on the immediately preceding June 30, the Institution shall deliver to the Issuer by the next following August 1, a completed report required by the Issuer in connection with the Business Incentive Rate with respect to such twelve-month period, in the form prescribed by the Issuer.

(f) The Institution shall deliver to the Issuer on August 1 of each year, commencing on the August 1 immediately following the Closing Date, a completed location and contact information report in the form prescribed by the Issuer.

(g) The Institution shall deliver to the Issuer a copy of any notice given to the MSRB, or posted to the MSRB's Electronic Municipal Market access system or the Securities and Exchange Commission pursuant to Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission or to the Trustee, promptly after the same is so given.

(h) The Institution shall promptly deliver to the Issuer written notice if its charter for the Facility under the Charter School Act shall have expired or been amended, revoked, surrendered or terminated, or if there are any pending or threatened proceedings to effect same.

#### **Section 8.17. Taxes, Assessments and Charges.**

(a) The Institution shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Trust Estate, the Facility Realty or any part thereof, or interest of the Institution in the Facility, or against any of the loan payments or other payments or other amounts payable hereunder, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Facility Realty, all of which are herein called "Impositions". The Institution may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

(b) In the event the Facility Realty is exempt from Impositions solely due to the Issuer's involvement with the Project and the Facility Realty, the Institution shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have

76

zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of the Facility or any part thereof.

(c) The Institution may at its sole cost and expense contest in good faith the validity, existence or applicability of any of the matters described in Section 8.18(b) if (i) such contest shall not result in the Trust Estate, the Facility or any part thereof or interest of the Institution in the Facility, or any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Institution, the Issuer or the Trustee being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Institution shall have furnished such security, if any, as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents for failure to comply therewith.

#### **Section 8.19. Operation as Approved Facility.**

(a) The Institution will not take any action, or suffer or permit any action, if such action would cause the Facility not to be the Approved Facility.

(b) The Institution will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be the Approved Facility.

(c) The Institution will permit the Trustee and its duly authorized agents, at all reasonable times upon written notice to enter upon the Facility and to examine and inspect the Facility and exercise its rights hereunder, under the Indenture and under the other Security Documents with respect to the Facility. The Institution will further permit the Issuer, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facility, but solely for the purpose of assuring that the Institution is operating the Facility, or is causing the Facility to be operated, as the Approved Facility consistent with the Approved Project Operations and with the corporate purposes of the Issuer.

#### **Section 8.20. Restrictions on Dissolution and Merger.**

(a) The Institution covenants and agrees that at all times during the term of this Agreement, it will

(i) maintain its existence as a not-for-profit education corporation constituting a Tax-Exempt Organization and a validly existing charter school under the Charter School Act,

(ii) continue to be subject to service of process in the State,

(iii) continue to be organized under the laws of, or qualified to do business in, the State,

78

been imposed on the Facility Realty as if the Issuer had no involvement with the Project and the Facility Realty.

(c) The Institution may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition, if:

(i) such proceeding shall suspend the execution or enforcement of such Imposition against the Trust Estate, the Facility or any part thereof, or interest of the Institution in the Facility, or against any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document,

(ii) none of the Trust Estate, the Facility nor any part thereof or interest of the Institution in the Facility, or any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, would be in any danger of being sold, forfeited or lost,

(iii) none of the Institution, the Issuer or the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and

(iv) the Institution shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents.

#### **Section 8.18. Compliance with Legal Requirements.**

(a) The Institution shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

(b) At its sole cost and expense, the Institution shall promptly observe and comply with all applicable Legal Requirements (including, without limitation, as applicable, the Charter School Act, the LW Law, the Prevailing Wage Law, and the Earned Sick Time Act, constituting Chapter 8 of Title 20 of the New York City Administrative Code), whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Institution, the Facility, any occupant, user or operator of the Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Institution will not, without the prior written consent of the Issuer and the Trustee (which consents shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant,

77

(iv) not liquidate, wind up or dissolve or otherwise dispose of all or substantially all of its property, business or assets ("Transfer") remaining after the Closing Date, except as provided in Section 8.20(b),

(v) not consolidate with or merge into another Entity or permit one or more Entities to consolidate with or merge into it ("Merge" or "Merger"), except as provided in Section 8.20(b), and

(vi) not change or permit the change of any Principal of the Institution, or a change in the relative Control of the Institution of any of the existing Principals, except in each case as provided in Section 8.20(c).

(b) Notwithstanding Section 8.20(a), the Institution may Merge or participate in a Transfer with the prior written consent of the Trustee (upon the written direction of the Majority Holders) if the following conditions are satisfied on or prior to the Merger or Transfer, as applicable:

(i) when the Institution is the surviving, resulting or transferee Entity,

(1) the Institution shall have a net worth (as determined by an Independent Accountant in accordance with GAAP) at least equal to that of the Institution immediately prior to such Merger or Transfer,

(2) the Institution shall continue to be a Tax-Exempt Organization and a validly existing charter school under the Charter School Act,

(3) the Institution shall deliver to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such action will not cause the interest on the Bonds to become includable in gross income for federal income tax purposes, and

(4) the Institution shall deliver to the Issuer a Required Disclosure Statement with respect to itself as surviving Entity in form and substance satisfactory to the Issuer; or

(ii) when the Institution is not the surviving, resulting or transferee Entity (the "Successor Institution"),

(1) the predecessor Institution (the "Predecessor Institution") shall not have been in default under this Agreement or under any other Project Document,

(2) the Successor Institution shall be a Tax-Exempt Organization and shall be solvent and subject to service of process in the State and organized under the laws of the State, or under the laws of any other state of the United States and duly qualified to do business in the State, and shall be a validly existing charter school under the Charter School Act,

79

(3) the Successor Institution shall have assumed in writing all of the obligations of the Predecessor Institution contained in this Agreement and in all other Project Documents to which the Predecessor Institution shall have been a party.

(4) the Successor Institution shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion.

(5) each Principal of the Successor Institution shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion.

(6) the Successor Institution shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an Opinion of Counsel to the effect that (y) this Agreement and all other Project Documents to which the Predecessor Institution shall be a party constitute the legal, valid and binding obligations of the Successor Institution and each is enforceable in accordance with their respective terms to the same extent as it was enforceable against the Predecessor Institution, and (z) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents.

(7) the Successor Institution shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an opinion of an Independent Accountant to the effect that the Successor Institution has a net worth (as determined in accordance with GAAP) after the Merger or Transfer at least equal to that of the Predecessor Institution immediately prior to such Merger or Transfer.

(8) the Successor Institution delivers to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such action will not cause the interest on the Bonds to become includable in gross income for federal income tax purposes, and

(9) the Successor Institution shall provide evidence to the Trustee that the entity can continue to operate the Facility as a charter school in accordance with the Charter School Act and that such entity is (or shall be upon the Merger or Transfer) entitled to receive Education Aid.

(c) If there is a change in Principals of the Institution, or a change in the Control of the Institution, the Institution shall deliver to the Issuer prompt written notice thereof (including all details that would result in a change to Exhibit D — "Principals of Institution") to the Issuer together with a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion.

80

#### **Section 8.24. Tax Regulatory Agreement.**

(a) The Institution shall comply with all of the terms, provisions and conditions set forth in the Tax Regulatory Agreement, including, without limitation, the making of any payments and filings required thereunder.

(b) Promptly following receipt of notice from the Trustee as provided in Section 5.07 of the Indenture that the amount on deposit in the Rebate Fund is less than the Rebate Amount, the Institution shall deliver the amount necessary to make up such deficiency to the Trustee for deposit in the Rebate Fund.

(c) The Institution agrees to pay all costs of compliance with the Tax Regulatory Agreement and costs of the Issuer relating to any examination or audit of the Bonds by the Internal Revenue Service (including fees and disbursements of lawyers and other consultants).

**Section 8.25. Compliance with the Indenture.** The Institution will comply with the provisions of the Indenture with respect to the Institution. The Trustee shall have the power, authority, rights and protections provided in the Indenture. The Institution will use its best efforts to cause there to be obtained for the Issuer any documents or opinions of counsel required of the Issuer under the Indenture.

#### **Section 8.26. Reserved.**

**Section 8.27. Continuing Disclosure.** The Institution shall enter into and comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this Agreement, failure of the Institution to comply with the Continuing Disclosure Undertaking shall not be considered an Event of Default; however, the Trustee may (and, at the request of any participating underwriter or the Holders of at least twenty-five percent (25%) aggregate principal amount in Outstanding Bonds, shall, upon receipt of reasonable indemnification for its fees and costs acceptable to it), and any Holder or Beneficial Owner may, take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Institution to comply with its obligations under this Section 8.27. The Institution agrees that the Issuer shall have no continuing disclosure obligations.

#### **Section 8.28. Special Charter School Covenants and Account Direction Agreement.**

(a) The Institution covenants that, for so long as any Bonds shall be Outstanding, it will be chartered by the State University of New York or the New York Board of Regents as a charter school. The Institution shall provide the Issuer and the Trustee immediate notice if the Institution's charter or the Charter Agreement is not renewed, or is otherwise terminated, revoked, amended or cancelled or expires.

82

**Section 8.21. Preservation of Exempt Status.** The Institution agrees that it shall:

(a) not perform any acts, enter into any agreements, carry on or permit to be carried on at the Facility, or permit the Facility to be used in or for any trade or business, which shall adversely affect the basis for its exemption under Section 501 of the Code;

(b) not use more than three percent (3%) of the proceeds of the Bonds or permit the same to be used, directly or indirectly, in any trade or business that constitutes an unrelated trade or business as defined in Section 513(a) of the Code or in any trade or business carried on by any Person or Persons who are not governmental units or Tax-Exempt Organizations;

(c) not directly or indirectly use the proceeds of the Bonds to make or finance loans to Persons other than governmental units or Tax-Exempt Organizations, provided that no loan shall be made to another Tax-Exempt Organization unless such organization is using the funds for a purpose that is not an unrelated trade or business for either the Institution or the borrower;

(d) not take any action or permit any circumstances within its control to arise or continue, if such action or circumstances, or its expectation on the Closing Date, would cause the Bonds to be "arbitrage bonds" under the Code or cause the interest paid by the Issuer on the Bonds to be subject to Federal income tax in the hands of the Holders thereof; and

(e) use its best efforts to maintain the tax-exempt status of the Bonds.

#### **Section 8.22. Securities Law Status.** The Institution covenants that:

(a) the Facility shall be operated (y) exclusively for civic or charitable purposes and (z) not for pecuniary profit, all within the meaning, respectively, of the Securities Act and of the Securities Exchange Act,

(b) no part of the net earnings of the Institution shall inure to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act and of the Securities Exchange Act, and

(c) it shall not perform any act nor enter into any agreement which shall change such status as set forth in this Section.

**Section 8.23. Further Assurances.** The Institution will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Institution, as the Issuer or the Trustee deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Issuer or the Trustee hereunder, under the Indenture or under any other Security Document.

81

(b) The Institution covenants that it shall not discriminate in admissions, hiring, the granting of scholarships or loans, if applicable, or the administration of educational policies generally.

(c) The Institution covenants to comply fully in all material respects with the provisions of the Charter School Act so long as any Bonds remain Outstanding. The Institution will do, or cause to be done, all things necessary to obtain, renew and secure all permits, licenses and other governmental approvals and to comply with such permits, licenses and other governmental approvals necessary for operation of the Facility as a public charter school in accordance with the Charter School Act.

(d) On or about the Closing Date, the Institution will execute a payment direction letter to the School District and each other applicable Entity directing each such Entity to forward all Education Aid due to the Institution with respect to its operations at the Facility to the Depository Bank to be deposited in the account (the "Deposit Account") governed by the Account Direction Agreement. The Institution agrees not to revoke such direction so long as any obligations of the Institution under this Agreement or any other Security Document remain outstanding or unsatisfied. In the event the Institution receives any Education Aid with respect to its operations at the Facility contrary to such direction, the Institution shall immediately deposit the same in the Deposit Account.

Pursuant to the terms of the Account Direction Agreement, the Institution shall instruct the Depository Bank to transfer amounts deposited in the Deposit Account to the Trustee the next following Loan Payment Date in the amount necessary to satisfy the Institution's debt service payment obligations under this Loan Agreement and the Promissory Note on such Loan Payment Date. The Institution may at any time make withdrawals from the Deposit Account for any of its corporate purposes, but in no event will the Institution withdraw amounts of Education Aid received by the Depository Bank to the extent such withdrawal would cause there to be insufficient amounts in the Deposit Account to transfer to the Trustee the full amount owed by the Institution to the Trustee on the next succeeding Loan Payment Date. In the event that Education Aid is not received by the Depository Bank in an amount sufficient, or in a timely manner, to permit the Depository Bank to transfer to the Trustee the amount required above by any Loan Payment Date, the Institution is nevertheless obligated to cause the full amount required to be paid to the Trustee hereunder in a timely manner on or prior the Loan Payment Date from whatever sources are available to the Institution.

The Institution shall not change its Depository Bank unless the Institution executes a new payment direction letter to the School District and each other applicable Entity directing each such Entity to forward all Education Aid due to the Institution with respect to its operations at the Facility to the new Depository Bank and enters into an Account Direction Agreement with such successor Depository Bank and the Trustee upon similar terms and conditions.

#### **Section 8.29. Financial Records; Financial Covenants.**

(a) **Maintenance of Books and Accounts.** The Institution agrees that it will maintain proper books of records and accounts with full, true and correct entries of all of its

83

dealings substantially in accordance with GAAP, and will make available such other data and information as may reasonably be requested by the Issuer and the Trustee from time to time. Notwithstanding the foregoing, the Institution may conduct its audit in any manner consistent with the Charter School Act.

(b) Annual Financial Statements and Compliance Certificates. The Institution shall furnish or cause to be furnished to the Trustee:

(i) as soon as available and in any event within one hundred thirty (130) days after the close of each Fiscal Year, a copy of the annual financial statements of the Institution, including balance sheets as at the end of each such Fiscal Year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for each such Fiscal Year, and containing supplemental schedules showing such financial information separately for the Institution's operations at the Facility and each Separate Facility, as audited by the Institution's Independent Accountant and prepared in accordance with GAAP, together with a copy of any management letter delivered by the auditors in connection with such financial statements,

(ii) a certificate of an Authorized Representative of the Institution:

(1) as to whether or not, as of the close of such preceding Fiscal Year, and at all times during such Fiscal Year, the Institution was in compliance with all the provisions which relate to the Institution in this Agreement and in any other Project Document to which it shall be a party, and

(2) as to whether or not a Determination of Taxability has occurred, and

(3) if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default or Determination of Taxability, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Institution with respect thereto, and

(iii) a certificate of an Authorized Representative of the Institution that the insurance it maintains complies with the provisions of Section 8.1 of this Agreement and Section 3.11 of the Mortgage, that such insurance has been in full force and effect at all times during the preceding Fiscal Year, and that duplicate copies of all policies or certificates thereof have been filed with the Issuer and the Trustee and are in full force and effect.

84

(A) governance and charter status matters of the Institution, such as the charter renewal process (if a renewal is pending within the twelve months of the date on which the call is held); significant details relating to any form of revocation review or supervision plan of its charter by the School District and/or the State; and any changes in key management, third-party managers (if any), or key personnel of the Institution or within the leadership of the governing body of the Institution since the date of the last investor call;

(B) the use of any short-term Indebtedness (such as cash flow financing, state aid notes or bank lines of credit) or new Long-Term Indebtedness incurred since the date of the immediately preceding investor call;

(C) capital spending plans for which the governing body of the Institution has taken official action;

(D) actual enrollment or mid-year budget cuts which required revisions to the current annual budget;

(E) if the Institution is subject to mid-year cuts in federal, State and/or local sources of funding, the impact on the Institution's financial position and management's responses to the cuts;

(F) litigation (including any matters of criminal misconduct) against the Institution, its governing body, or employees of the Institution, to the extent such action is expected to materially affect operations and/or finances of the Institution; and

(G) casualty losses, to the extent daily operations of the Institution were disrupted for more than seven (7) days, including information regarding the insurance coverage for such casualty losses.

(e) Events of Default. The Institution shall immediately notify the Trustee of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Institution and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Institution shall state this fact on the notice.

(f) Charter Notifications. The Institution shall promptly deliver to the Trustee written notice if its charter under the Charter School Act shall have expired or been amended, revoked, surrendered or terminated, or if there are any pending or threatened proceedings to effect same.

(g) Insurance. The Institution shall deliver to the Trustee all insurance-related documents required by Sections 8.1(f)(i), 8.1(f)(ii), 8.1(f)(iii) and 8.1(g).

(h) Continuing Disclosure Undertaking. Nothing herein shall be deemed to constitute a requirement of the Institution under the Continuing Disclosure Undertaking, and no

86

(c) Quarterly Reports. The Institution shall provide the Trustee, for posting to the Electronic Municipal Market Access ("EMMA") system of the MSRB, on or before forty-five (45) days after the end of each fiscal quarter, commencing with the quarter which ends on March 31, 2019, a "Quarterly Officer's Report" containing the following information:

(i) The actual enrollment for the Institution and the actual full-time equivalent student count as last reported to the Department of Education of the State,

(ii) A copy of the unaudited financial statements of the Institution, including balance sheets as at the end of such quarter, and the related statements of income, balances, retained earnings and changes in financial position for each such quarter and containing supplemental schedules showing such financial information separately for the Institution's operations at the Facility and each Separate Facility prepared in accordance with GAAP, certified by an Authorized Representative of the Institution,

(iii) For the final quarter for each Fiscal Year, commencing with the final quarter which ends on June 30, 2019, (a) a year-to-date income statement, a balance sheet, a statement of cash flows and a comparison of such to the budget of the Institution, (b) a copy of the Institution's annual budget, as amended or supplemented as of the reporting date, for the then current Fiscal Year, and (c) a summary, prepared and certified by the Executive Director of the Institution, of the activities of the Institution during the prior Fiscal Year, and

(iv) The following information to the extent occurring during such quarter (a) the individual and consolidated annual budgets of the Institution within 30 days of their adoption, (b) the results of any federal or State testing, (c) notification or any report of any potential or alleged violation of the charter by the Institution, (d) any notice or allegation of a violation of governmental approvals in connection with the operation of the Facility, and (e) until the completion of the Project, a copy of any and all monthly construction reports/updates provided to the Institution by the Institution's contractors regarding the status of the Institution's construction schedule and cost, as well as any and all monthly construction reports/updates provided to the Institution's governing board in the prior quarter.

(d) Investor Calls. The Institution covenants to hold an investor conference call with Beneficial Owners (i) to be held semiannually in July 2019, January 2020 and every six months thereafter until the Project is complete and (ii) at least annually in every January thereafter following the release of its audited financial statements for the immediately preceding Fiscal Year for the purpose of reviewing financial results of such Fiscal Year. Notice of each such call shall be filed with the MSRB's EMMA website not less than seven (7) days prior to the date of the investor call. In addition to reviewing the financial results for the immediately preceding Fiscal Year, matters to be addressed by the Institution on the investor conference call, if material as determined in the sole but reasonable discretion of the Institution, shall include the following:

default in compliance by the Institution with any requirement under this subsection shall be deemed a default under the Continuing Disclosure Undertaking. Conversely, nothing in the Continuing Disclosure Undertaking shall be deemed to constitute a requirement of the Institution under this subsection, and no default in compliance by the Institution with any requirement under the Continuing Disclosure Undertaking shall be deemed a default hereunder.

(i) Documents to Issuer. The Institution will provide the Issuer with any of the documents specified in this Section 8.29 upon request by the Issuer in a timely manner.

(j) Accounting. Upon any Event of Default or any event which, with the giving of notice or lapse of time or both, would constitute any Event of Default, based upon the failure of the Institution to comply with any State or federal reporting requirements relating to the Institution that is not cured within forty-five (45) days of the date on which the Institution has received notice thereof, the Trustee shall have the right to direct an interim audit by an Independent Accountant at the Institution's expense, and the Institution's failure to comply with such direction within forty-five (45) days after written notice of the direction from the Trustee shall be deemed an Event of Default hereunder.

(k) Compliance Certificate. With the delivery of its annual audit, the Institution will deliver to the Trustee a certificate executed by the Institution's Executive Director stating that: (i) a review of the activities of the Institution during such Fiscal Year and of performance hereunder has been made under such officer's supervision; and (ii) such officer is familiar with the provisions of this Agreement and the other Project Documents and, to the best of such officer's knowledge, based on such review and familiarity, the Institution has fulfilled all of its obligations hereunder and thereunder throughout the Fiscal Year, and there have been no defaults under this Agreement or any other Project Document or, if there has been a default in the fulfillment of any such obligation in such Fiscal Year, specifying each such default known to such officer and the nature and status thereof and the actions taken or being taken to correct such default.

(l) Debt Service Coverage Ratio.

(i) The Institution covenants and agrees that it will achieve a Debt Service Coverage Ratio with respect to its operations at the Facility of at least 1.10 for each Fiscal Year, commencing with the Fiscal Year ending June 30, 2019, compliance herewith to be tested at the end of each Fiscal Year utilizing information from the Institution's audited financial statements for such Fiscal Year.

(ii) If the Debt Service Coverage Ratio calculated under subsection (e)(i) above is below 1.10 but greater than or equal to 1.0, then the Institution shall, within 30 days of the date of calculation, provide the Trustee with a detailed written explanation signed by an Authorized Representative stating the reason for the Institution's failure to achieve the required Debt Service Coverage Ratio and its plan for compliance. In the event the Institution is unable to comply with the Debt Service Coverage Ratio requirement within 12 months of the initial non-compliance, then the Majority Holders shall have the right to direct the Trustee to require the Institution to engage a Management Consultant as provided in subsection (e)(iii) below.

87

(iii) If a Management Consultant is required pursuant to subsection (e)(ii) above, the Institution (at the Institution's sole expense) shall engage a Management Consultant which shall deliver a written report to the Institution and the Trustee containing recommendations concerning the Institution's: (i) operation of the Facility; (ii) investment management practices; (iii) fundraising activities; and (iv) other factors relevant to meeting such financial covenants for the next ending Fiscal Year:

(1) within forty-five (45) days after its engagement, the Management Consultant will submit its consultant report, together with a certificate of the Institution indicating the Institution's substantial acceptance or rejection of all or any material portion of the recommendations of the Management Consultant, to the Trustee; and

(2) so long as the Institution engages a Management Consultant as required above and accepts and continuously and substantially complies with the recommendations of the Management Consultant, failure to meet the financial covenant set forth in subsection (e)(i) above will not in and of itself constitute an Event of Default; provided that, it shall constitute an Event of Default if the Debt Service Coverage Ratio for any Fiscal Year (after the engagement of such Management Consultant) is less than 1.00.

(m) Days Cash on Hand.

(i) The Institution covenants and agrees that it will maintain at least 45 Days Cash on Hand tested on each June 30, commencing June 30, 2019, utilizing information from the Institution's audited financial statements for such Fiscal Year.

(ii) If the Days Cash on Hand calculated in subsection (f)(i) above is less than 45 Days Cash on Hand, then the Institution shall, within 30 days of the date of calculation, provide the Trustee with a detailed written explanation stating the reason for the Institution's failure to achieve the required Days Cash on Hand and its plan for compliance. In the event the Institution is unable to comply with the Days Cash on Hand requirement within 12 months of the initial non-compliance, then the Majority Holders shall have the right to direct the Trustee to require the Institution to engage a Management Consultant as described below.

(iii) If a Management Consultant is required, the Institution (at the Institution's sole expense) shall engage a Management Consultant which shall deliver a written report to the Institution and the Trustee containing recommendations concerning the Institution's: (i) operation of the Facility; (ii) investment management practices; (iii) fundraising activities; and (iv) other factors relevant to meeting such financial covenants for the next ending Fiscal Year:

(1) within forty-five (45) days after its engagement, the Management Consultant will submit its consultant report, together with a certificate of the Institution indicating the Institution's substantial acceptance or

88

Employer described in clauses (a), (b), (c) or (d) above to perform work for a period of more than ninety days on any portion of the Facility Realty, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term "Covered Employer" shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each case calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Facility Realty if residential units comprise more than 75% of the total Facility Realty area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Issuer has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) if the Institution is a "covered developer" under and as defined in the Prevailing Wage Law, a Person that is a "building services contractor" (as defined in the LW Law) so long as such Person is paying its "building service employees" (as defined in the Prevailing Wage Law) no less than the applicable "prevailing wage" (as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor's Executive Order No. 7 dated September 30, 2014.

**DCA** means the Department of Consumer Affairs of The City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

**LW** has the same meaning as the term "living wage" as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the "living wage rate" component of the LW shall be eleven dollars and sixty-five cents per hour (\$11.65/hour) and the "health benefits supplement rate" component of the LW shall be one dollar and sixty-five cents per hour (\$1.65/hour). The annual adjustments to the "living wage rate" and "health benefits supplement rate" will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

**LW Agreement** means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Exhibit J (except only with such changes as are necessary to make such Covered Counterparty the obligor thereunder).

rejection of all or any material portion of the recommendations of the Management Consultant, to the Trustee; and

(2) so long as the Institution engages a Management Consultant as required above and accepts and continuously and substantially complies with the recommendations of the Management Consultant, failure to meet the Days Cash on Hand requirement will not in and of itself constitute an Event of Default.

(n) No Duty on Part of the Trustee. The Trustee shall have no duty to review the reports or other matters required by this Section 8.29 or to inquire as to the Institution's compliance with this Section 8.29.

**Section 8.30. Living Wage.**

(a) The Institution acknowledges and agrees that it has received "financial assistance" as defined in the LW Law. The Institution agrees to comply with all applicable requirements of the LW Law. The Institution acknowledges that the terms and conditions set forth in this Section 8.30 are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.

(b) The following capitalized terms shall have the respective meanings specified below for purposes hereof.

**Asserted Cure** has the meaning specified in Section 8.30(k)(i).

**Asserted LW Violation** has the meaning specified in Section 8.30(k)(i).

**Comptroller** means the Comptroller of The City of New York or his or her designee.

**Concessionaire** means a Person that has been granted the right by the Institution, an Affiliate of the Institution or any tenant, subtenant, leaseholder or subleaseholder of the Institution or of an Affiliate of the Institution to operate at the Facility Realty for the primary purpose of selling goods or services to natural persons at the Facility Realty.

**Covered Counterparty** means a Covered Employer whose Specified Contract is directly with the Institution or one of its Affiliates to lease, occupy, operate or perform work at the Facility Realty.

**Covered Employer** means any of the following Persons: (a) the Institution, (b) a Site Affiliate, (c) a tenant, subtenant, leaseholder or subleaseholder of the Institution or of an Affiliate of the Institution that leases any portion of the Facility Realty (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (d) a Concessionaire that operates on any portion of the Facility Realty, and (e) a Person that contracts or subcontracts with any Covered

89

**LW Agreement Delivery Date** means, with respect to any Covered Counterparty, the latest of (a) the effective date of such Covered Counterparty's Specified Contract, (b) the date that such Covered Counterparty becomes a Covered Employer at the Facility Realty and (c) the Closing Date.

**LW Event of Default** means the satisfaction of the following two conditions: (a) two or more LW Violation Final Determinations shall have been imposed against the Institution or its Site Affiliates in respect of the direct Site Employees of the Institution or its Site Affiliates in any consecutive six year period during the LW Term and (b) the aggregate amount of Owed Monies and Owed Interest paid or payable by the Institution in respect of such LW Violation Final Determinations is in excess of the LW Violation Threshold in effect as of the date of the second LW Violation Final Determination. For the avoidance of doubt, the Owed Monies and Owed Interest paid or payable by the Institution in respect of the Site Employees of a Covered Counterparty that is not an Affiliate of the Institution (pursuant to Section 8.30(k)(v)) shall not count for purposes of determining whether the conditions in clauses (a) and (b) of the preceding sentence have been satisfied.

**LW Law** means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

**LW Term** means the period commencing on the Closing Date and ending on the later to occur of (a) the date on which the Institution is no longer receiving financial assistance under this Agreement or (b) the date that is ten years after the Project Completion Date.

**LW Violation Final Determination** has the meaning specified in Section 8.30(k)(i)(1), Section 8.30(k)(i)(2)(A) or Section 8.30(k)(i)(2)(B), as applicable.

**LW Violation Initial Determination** has the meaning specified in Section 8.30(k)(i)(2).

**LW Violation Notice** has the meaning specified in Section 8.30(k)(i).

**LW Violation Threshold** means \$100,000 multiplied by 1.03<sup>n</sup>, where "n" is the number of full years that have elapsed since January 1, 2015.

**Owed Interest** means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the superintendent of banks pursuant to Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.

90

91

**Owed Monies** means, as the context shall require, either (a) the total deficiency of LW required to be paid by the Institution or a Site Affiliate in accordance with this Section 8.30 to the Institution's or its Site Affiliate's (as applicable) direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if the Institution or its Site Affiliate failed to obtain a LW Agreement from a Covered Counterparty as required under Section 8.30(f) below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty's LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

**Prevailing Wage Law** means Section 6-130 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

**Qualified Workforce Program** means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor's Office of Workforce Development.

**Site Affiliates** means, collectively, all Affiliates of the Institution that lease, occupy, operate or perform work at the Facility Realty and that have one or more direct Site Employees.

**Site Employee** means, with respect to any Covered Employer, any natural person who works at the Facility Realty and who is employed by, or contracted or subcontracted to work for, such Covered Employer, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term "Site Employee" shall not include any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the Facility Realty unless the primary work location or home base of such person is at the Facility Realty (for the avoidance of doubt, a natural person who works at least seventeen

and a half (17.5) hours in any consecutive seven day period at the Facility Realty shall thereafter constitute a Site Employee).

**Small Business Cap** means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the "living wage rate" component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

**Specified Contract** means, with respect to any Person, the principal written contract that makes such Person a Covered Employer hereunder.

(c) During the LW Term, if and for so long as the Institution is a Covered Employer, the Institution shall pay each of its direct Site Employees no less than an LW. During the LW Term, the Institution shall cause each of its Site Affiliates that is a Covered Employer to pay their respective Site Employees no less than an LW.

(d) During the LW Term, if and for so long as the Institution is a Covered Employer (or if and for so long as a Site Affiliate is a Covered Employer, as applicable), the Institution shall (or shall cause the applicable Site Affiliate to, as applicable), on or prior to the day on which each direct Site Employee of the Institution or of a Site Affiliate begins work at the Facility Realty, (i) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 8.30 in a conspicuous place at the Facility Realty that is readily observable by such direct Site Employee and (ii) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Section 8.30. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.

(e) During the LW Term, if and for so long as the Institution is a Covered Employer (or if and for so long as a Site Affiliate is a Covered Employer, as applicable), the Institution shall not (or the applicable Site Affiliate shall not, as applicable) take any adverse employment action against any Site Employee for reporting or asserting a violation of this Section 8.30.

(f) During the LW Term, regardless of whether the Institution is a Covered Employer, the Institution shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty. The Institution shall deliver a copy of each Covered Counterparty's LW Agreement to the Issuer, the DCA and the Comptroller at the notice address specified in Section 12.5 and promptly upon written request. The Institution shall retain copies of each Covered Counterparty's LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.

(g) During the LW Term, in the event that an individual with managerial authority at the Institution or at a Site Affiliate receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has

92

93

been paid less than an LW, the Institution shall deliver written notice to the Issuer, the DCA and the Comptroller within 30 days thereof.

(h) The Institution hereby acknowledges and agrees that the City, the DCA and the Comptroller are each intended to be third party beneficiaries of the terms and provisions of this Section 8.30. The Institution hereby acknowledges and agrees that the DCA, the Comptroller and the Issuer shall each have the authority and power to enforce any and all provisions and remedies under this Section 8.30 in accordance with paragraph (k) below. The Institution hereby agrees that the DCA, the Comptroller and the Issuer may bring an action for damages (but not in excess of the amounts set forth in paragraph (k) below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph (k) below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of the Institution (or of any Site Affiliate) under this Section 8.30. Notwithstanding anything herein to the contrary, no default or Event of Default under this Agreement shall occur by reason of the Institution's failure to perform or observe any obligation, covenant or agreement contained in this Section 8.30 unless and until an LW Event of Default shall have occurred. The agreements and acknowledgements of the Institution set forth in this Section 8.30 may not be amended, modified or rescinded by the Institution without the prior written consent of the Issuer or the DCA.

(i) No later than 30 days after the Institution's receipt of a written request from the Issuer, the DCA and/or the Comptroller, the Institution shall provide to the Issuer, the DCA and the Comptroller (i) a certification stating that all of the direct Site Employees of the Institution and its Site Affiliates are paid no less than an LW (if such obligation is applicable hereunder) and stating that the Institution and its Site Affiliates are in compliance with this Section 8.30 in all material respects, (ii) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties, (iii) certified payroll records in respect of the direct Site Employees of the Institution or of any Site Affiliate (if applicable), and/or (iv) any other documents or information reasonably related to the determination of whether the Institution or any Site Affiliate is in compliance with their obligations under this Section 8.30.

(j) Annually, by August 1 of each year during the LW Term, the Institution shall (i) submit to the Issuer a written report in respect of employment, jobs and wages at the Facility Realty as of June 30 of such year, in a form provided by the Issuer to all projects generally, and (ii) submit to the Issuer and the Comptroller the annual certification required under Section 6-134(f) of the LW Law (if applicable).

(k) Violations and Remedies.

(i) If a violation of this Section 8.30 shall have been alleged by the Issuer, the DCA and/or the Comptroller, then written notice will be provided to the Institution for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Issuer, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under Section 8.30(k)(ii), (iii), (iv), (v) and/or (vi) (as applicable) to cure the Asserted LW

Violation (the "Asserted Cure"). Upon the Institution's receipt of the LW Violation Notice, the Institution may either:

(1) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist), or

(2) Provide written notice to the Issuer, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. The Institution shall bear the burdens of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Issuer and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by the Institution and deliver to the Institution a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon the Institution's receipt of the LW Violation Initial Determination, the Institution may either:

(A) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (B) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or

(B) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, the Institution's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after the Institution's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination". If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. The Institution shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.

(ii) For the first LW Violation Final Determination imposed on the Institution or any Site Affiliate in respect of any direct Site Employees of the Institution or of a Site Affiliate, at the direction of the Issuer or the DCA (but not both), (A) the Institution shall pay the Owed Monies and Owed Interest in respect of such direct Site

94

95

Employees of the Institution or of a Site Affiliate to such direct Site Employees; and/or (B) in the case of a violation that does not result in monetary damages owed by the Institution, the Institution shall cure, or cause the cure of, such non-monetary violation.

(iii) For the second and any subsequent LW Violation Final Determinations imposed on the Institution or any Site Affiliate in respect of any direct Site Employees of the Institution or of a Site Affiliate, at the direction of the Issuer or the DCA (but not both), (A) the Institution shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of the Institution or of a Site Affiliate to such direct Site Employees, and the Institution shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee; and/or (B) in the case of a violation that does not result in monetary damages owed by the Institution, the Institution shall cure, or cause the cure of, such non-monetary violation.

(iv) For the second and any subsequent LW Violation Final Determinations imposed on the Institution or any Site Affiliate in respect of any direct Site Employees of the Institution or of a Site Affiliate, if the aggregate amount of Owed Monies and Owed Interest paid or payable by the Institution in respect of the direct Site Employees of the Institution or of a Site Affiliate is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on the Institution or any Site Affiliate, then in lieu of the remedies specified in subparagraph (iii) above and at the direction of the Issuer or the DCA (but not both), the Institution shall pay (A) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of the Institution or of a Site Affiliate, and (B) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.

(v) If the Institution fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph (f) above, then at the discretion of the Issuer or the DCA (but not both), the Institution shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (ii), (iii) and (iv) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of the Institution.

(vi) The Institution shall not renew the Specified Contract of any specific Covered Counterparty or enter into a new Specified Contract with any specific Covered Counterparty if both (A) the aggregate amount of Owed Monies and Owed Interest paid or payable by such Covered Counterparty in respect of its direct Site Employees for all past and present LW Violation Final Determinations (or that would have been payable had such Covered Counterparty entered into an LW Agreement) is in excess of the LW Violation Threshold and (B) two or more LW Violation Final Determinations against such Covered Counterparty (or in respect of the direct Site Employees of such Covered Counterparty) occurred within the last 6 years of the term of the applicable Specified Contract (or if the term thereof is less than 6 years, then during the term thereof); provided that the foregoing shall not preclude the Institution from extending or renewing a Specified Contract pursuant to any renewal or extension options

96

If any additional parity Indebtedness involves the issuance of Additional Bonds, the Institution also shall be subject to and shall satisfy any additional requirements of Section 2.07 of the Indenture.

**Section 8.32. Separate Facilities.** (a) The Institution may commence operation of a Separate Facility; provided that on or prior to the commencement of operation of the Separate Facility, the Trustee and the Issuer shall be provided an Opinion of Counsel (which as to factual matters may be based upon a certificate of the Institution) to the effect that nothing in the charter for the Separate Facility, the Institution's bylaws or, to the best of such counsel's knowledge after due inquiry, any resolutions of the Board of Trustees of the Institution or any agreements, mortgages or instruments of the Institution then in effect or any court or administrative order or consent decree to which the Institution is subject (i) adversely affects the Institution's right or ability to operate the Facility under the Charter Agreement, (ii) pledges to or requires that any Revenues derived from the Institution's operation of the Facility be used for the payment of any indebtedness or other obligations related to or derived with respect to the Separate Facility, or (iii) provides for the transfer or use of the Revenues for any purpose related to the Separate Facility except only to the extent of any shared costs or services which are by contract provided by employees of the Institution with respect to the Facility and the Separate Facility.

(b) The Institution covenants with respect to each Separate Facility as follows:

(i) The Institution will not pledge any Revenues derived from the Institution's operation of the Facility to the payment of any indebtedness or other obligations related to or derived with respect to the Separate Facility.

(ii) The Institution will not transfer or use any Revenues or any assets (including, without limitation, any Cash and Investments) of or derived from the Facility for any purpose related to the Separate Facility, except only to the extent of any shared costs or services which are by contract provided by employees of the Institution with respect to the Facility and the Separate Facility.

(iii) The Institution will maintain separate bank and other accounts to hold all Cash and Investments and other funds derived from its operations of the Facility and of each Separate Facility and shall in no event co-mingle any of such accounts or funds.

(iv) The Institution shall not make any loans of any Cash and Investments or other funds of the Institution derived from or related to the Facility to any funds or accounts derived from or related to any Separate Facility.

(v) The Institution shall cause there to be provided supplemental schedules within its audited financial statements breaking out results with respect to the Facility and each Separate Facility and shall follow the reporting requirements with respect to each Separate Facility as provided in Section 8.29(b).

98

granted to the Covered Counterparty in the Specified Contract as in effect as of the LW Agreement Delivery Date applicable to such Covered Counterparty.

(vii) It is acknowledged and agreed that (A) other than as set forth in Section 8.2, the sole monetary damages that the Institution may be subject to for a violation of this Section 8.30 are as set forth in this paragraph (k), and (B) in no event will the Specified Contract between the Institution and a given Covered Counterparty be permitted to be terminated or rescinded by the Issuer, the DCA or the Comptroller by virtue of violations by the Institution or another Covered Counterparty.

(l) The terms and conditions set forth in this Section 8.30 shall survive the expiration or earlier termination of this Agreement.

**Section 8.31. Limitations on Incurrence of Additional Indebtedness.** The Institution will not incur any Indebtedness, except for:

(a) Indebtedness (including capital leases) to fund the purchase of furniture, fixtures and equipment in an aggregate outstanding principal amount of not to exceed \$500,000 at any one time (which may be secured by purchase money security interests permitted by clause (x) of the definition of Permitted Encumbrances);

(b) Indebtedness incurred with the written consent of the Majority Holders;

(c) So long as there is no Event of Default then in effect and the Institution is in compliance with current financial covenants, Indebtedness for which (i) (A) the Debt Service Coverage Ratio for the previous two Fiscal Years for which audited financial statements were prepared was at least 1.20 for each such Fiscal Year (excluding the proposed Indebtedness), and (B) a Management Consultant reports that Net Income Available for Debt Service will equal not less than 125% of the combined annual debt service payments for the outstanding Long-Term Indebtedness and the Long-Term Indebtedness proposed to be incurred for three (3) consecutive Fiscal Years after the earlier of: (1) the date the new facility for which additional Indebtedness is being undertaken to finance is placed into service; or (2) the year in which provision for payment of debt service by capitalized interest has been made, or (ii) a Management Consultant reports that the Institution's Maximum Annual Debt Service (taking into account the proposed additional Indebtedness) does not exceed 10% of the Institution's Revenues shown on the most recent Fiscal Year's audited financial statements; or

(d) So long as there is no Event of Default then in effect and the Institution is in compliance with current financial covenants, Indebtedness to finance or refinance any Separate Facility or any assets related to a Separate Facility, provided that such Indebtedness would otherwise meet the requirements set forth in subsections (a), (b) or (c) above and that, in determining compliance with such requirements, all definitions contained therein shall be interpreted to refer solely to such Separate Facility (e.g., the reference to "Net Income Available for Debt Service" and all definitions referred to in such definition shall be interpreted by considering the assets and operations of such Separate Facility only as a separate entity).

97

(vi) The Institution shall not incur any Indebtedness financing or refinancing any Separate Facility or assets related thereto except as permitted by Section 8.31(d).

(vii) The insurance required by Section 8.1 shall cover activities of the Institution at each Separate Facility.

(viii) With respect to any Separate Facility that the Institution leases from an unaffiliated third party (the "Landlord"), the Institution shall maintain such property insurance coverages as are reasonably required by the Landlord. With respect to any Separate Facility that is owned by the Institution, the Institution shall maintain property insurance coverages which meet the requirements of Section 3.11 of the Mortgage (provided that the Institution and/or any related lender shall be required to be a loss payee or additional insured under such coverage).

**Section 8.33. Waiver of Financial Covenants.** Notwithstanding any other provision herein to the contrary, any covenant of the Institution referenced in Sections 8.09, 8.10, 8.13, 8.20, 8.29, 8.31 or 8.32 may be waived or modified by the Institution and the Issuer with the written consents of the Majority Holders.

99

## ARTICLE IX

### REMEDIES AND EVENTS OF DEFAULT

**Section 9.1. Events of Default.** Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Institution to pay any loan payment that has become due and payable by the terms of Section 4.3(a) or (e) which results in an Event of Default under the Indenture;

(b) Failure of the Institution to observe and perform any covenant, condition or agreement on its part to be performed under Sections 8.32(b)(i) and 8.32(b)(vi), and the deemed occurrence of an "Event of Default" hereunder as expressly stated in this Agreement;

(c) Failure of the Institution to pay any amount (except as set forth in Section 9.1(a) or (b)) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 5.1, 8.1, 8.2, 8.3, 8.9, 8.11, 8.13, 8.17, 8.18, 8.20, 8.21, 8.22, 8.28, 8.29, 8.31, 8.32, 9.7, 11.2 or 11.3 or Article VI and continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Institution specifying the nature of such failure by the Issuer or the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding;

(d) Failure of the Institution to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 9.1(a), (b) or (c)) and (i) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Institution specifying the nature of same by the Issuer or the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Institution fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice;

(e) The Institution shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(ii) The Issuer or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the loan payments then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Institution under this Agreement; and

(iii) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder.

(b) Upon the occurrence of a default with respect to any of the Issuer's Reserved Rights, the Issuer, without the consent of the Trustee or any other Person, may proceed to enforce the Issuer's Reserved Rights by

(i) bringing an action for damages, injunction or specific performance, and/or

(ii) taking whatever action at law or in equity as may appear necessary or desirable to collect payment of amounts due by the Institution under the Issuer's Reserved Rights or to enforce the performance or observance of any obligations, covenants or agreements of the Institution under the Issuer's Reserved Rights.

(c) No action taken pursuant to this Section 9.2 or by operation of law or otherwise shall, except as expressly provided herein, relieve the Institution from the Institution's obligations hereunder, all of which shall survive any such action.

**Section 9.3. Bankruptcy Proceedings.** In case proceedings shall be pending for the bankruptcy or for the reorganization of the Institution under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee (other than the Trustee under the Indenture) shall have been appointed for the property of the Institution or in the case of any other similar judicial proceedings relative to the Institution or the creditors or property of the Institution, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Agreement and the Promissory Note, irrespective of whether the principal of the Bonds (and the loan payments payable pursuant to the Promissory Note and Section 4.3(a)) shall have been accelerated by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand for payment hereunder or thereunder, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Institution, the creditors or property of the Institution, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution.

**Section 9.4. Remedies Cumulative.** The rights and remedies of the Issuer or the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and

(f) A proceeding or case shall be commenced, without the application or consent of the Institution, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Institution or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Institution shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Institution as used above shall not be construed to prohibit any action otherwise permitted by Section 8.20;

(g) Any representation or warranty made by the Institution (i) in the application and related materials submitted to the Issuer or the initial purchaser(s) of the Bonds for approval of the Project or its financing, or (ii) herein or in any other Project Document, or (iii) in the Tax Regulatory Agreement, or (iv) by or on behalf of the Institution or any other Person in any Required Disclosure Statement, or (v) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(h) The commencement of proceedings to appoint a receiver or to foreclose any mortgage lien on or security interest in the Facility including the Mortgage;

(i) An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing;

(j) The occurrence of an LW Event of Default; or

(k) Failure of the Institution to pay the amount required of it under Section 4.3(a)(vi) when required thereunder.

**Section 9.2. Remedies on Default.** (a) Whenever any Event of Default referred to in Section 9.1 shall have occurred and be continuing, the Issuer, or the Trustee where so provided, may, take any one or more of the following remedial steps:

(i) The Trustee, as and to the extent provided in Article VIII of the Indenture, may cause all principal installments of loan payments payable under Section 4.3(a) until the Bonds are no longer Outstanding to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due and payable; provided, however, that upon the occurrence of an Event of Default under Section 9.1(e) or (f), all principal installments of loan payments payable under Section 4.3(a) until the Bonds are no longer Outstanding, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Issuer, the Trustee, the Holders of the Bonds or any other Person being a condition to such acceleration;

remedies of the Issuer or the Trustee allowed by law with respect to any default under this Agreement. Failure by the Issuer or the Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Institution hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy the strict compliance by the Institution with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Institution be continued or repeated.

**Section 9.5. No Additional Waiver Implied by One Waiver.** In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Issuer and/or the Trustee and the Institution or any delay or omission on the part of the Issuer and/or the Trustee in exercising any rights hereunder or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Institution hereby waives the benefit and advantage of, and covenants not to assert against the Issuer or the Trustee, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist.

**Section 9.6. Effect on Discontinuance of Proceedings.** In case any proceeding taken by the Issuer or the Trustee under the Indenture or this Agreement or under any other Security Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuer or the Trustee, then, and in every such case, the Issuer, the Trustee and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Issuer and the Trustee shall continue as in effect prior to the commencement of such proceedings.

**Section 9.7. Agreement to Pay Fees and Expenses of Attorneys and Other Consultants.** In the event the Institution should default under any of the provisions of this Agreement, and the Issuer or the Trustee should employ outside attorneys or other consultants or incur other expenses for the collection of loan payments or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Institution herein contained or contained in any other Security Document, the Institution agrees that it will on demand therefor pay to the Issuer or the Trustee, as the case may be, the reasonable and documented fees and disbursements of such attorneys or other consultants and such other expenses so incurred.

**Section 9.8. Certain Continuing Representations.** If at any time during the term of this Agreement, any Conduct Representation made by the Institution would, if made on any date while Bonds are Outstanding and deemed made as of such date, be false, misleading or incorrect in any material respect, then, the Institution shall be deemed to be in default under this Agreement unless the Issuer shall, upon written request by the Institution, either waive such default in writing or consent in writing to an exception to such representation or warranty so that such representation or warranty shall no longer be false, misleading or incorrect in a material

respect. Upon the occurrence of any such default, the Issuer shall have the right to require the redemption of the Bonds in accordance with Section 11.3(a).

#### Section 9.9. Late Delivery Fees.

- (a) In the event the Institution shall fail:
- (i) to pay the Annual Administrative Fee on the date required under Section 8.3,
- (ii) to file and/or deliver any of the documents required of the Institution under Section 8.14 or Section 8.16 by the date therein stated (collectively, the "Fixed Date Deliverables"), or
- (iii) to deliver to the Issuer any of the documents as shall have been requested by the Issuer of the Institution under Section 8.15 within five (5) Business Days of the date so requested (collectively, the "Requested Document Deliverables").

then the Issuer may charge the Institution on a daily calendar basis commencing with the day immediately following the date on which the payment, filing or delivery was due (the "Due Date"), the Per Diem Late Fee.

(b) If the Issuer shall deliver written notice (a "Notification of Failure to Deliver") to the Institution of such failure to deliver on the Due Date the Annual Administrative Fee, a Fixed Date Deliverable and/or a Requested Document Deliverable, and such payment or document shall not be delivered to the Issuer within ten (10) Business Days following delivery by the Issuer to the Institution of the Notification of Failure to Deliver, then, commencing from and including the eleventh (11<sup>th</sup>) Business Day following the delivery by the Issuer to the Institution of the Notification of Failure to Deliver, the Issuer may charge the Institution on a daily calendar basis the Per Diem Supplemental Late Fee in respect of each noticed failure which shall be in addition to, and be imposed concurrently with, the applicable Per Diem Late Fee.

(c) The Per Diem Late Fee and the Per Diem Supplemental Late Fee shall each, if charged by the Issuer, (i) accrue until the Institution delivers to the Issuer the Annual Administrative Fee, the Fixed Date Deliverable(s) and/or the Requested Document Deliverable(s), as the case may be, and (ii) be incurred on a daily basis for each such Annual Administrative Fee, Fixed Date Deliverable and/or Requested Document Deliverable as shall not have been delivered to the Issuer on the Due Date.

(d) No default on the part of the Institution under Section 8.3, 8.14, 8.15 or 8.16 of this Agreement to deliver to the Issuer an Annual Administrative Fee, a Fixed Date Deliverable or a Requested Document Deliverable shall be deemed cured unless the Institution shall have delivered same to the Issuer and paid to the Issuer all accrued and unpaid Per Diem Fees in connection with the default.

104

(b) Upon the termination of this Agreement in accordance with Section 10.1, the Issuer will deliver or cause to be delivered, at the sole cost and expense of the Institution, to the Institution (i) a termination of this Agreement, and (ii) all necessary documents releasing all of the Issuer's rights and interests in and to any rights of action under this Agreement (other than as against the Institution or any insurer of the insurance policies under Section 8.1), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Issuer) or condemnation awards, with respect to the Facility or any portion thereof. Concurrently with the delivery of such instruments, there shall be delivered by the Issuer (at the sole cost and expense of the Institution) to the Trustee any instructions or other instruments required by Article X of the Indenture to defease and pay the Outstanding Bonds, together with a direction to the Trustee that the Trustee deliver to the Issuer and the Institution a release, satisfaction or termination of the Indenture and of the mortgage lien and security interest of the Mortgage on the Mortgaged Property.

**Section 10.3. Survival of Institution Obligations.** Upon compliance with Section 10.2, this Agreement and all obligations of the Institution hereunder shall be terminated except the obligations of the Institution under Sections 5.1, 8.2, 8.24, 8.30, 9.2, 9.3, 9.7, 9.9, 12.4, 12.5, 12.6, 12.11, 12.13 and 12.14 shall survive such termination.

106

## ARTICLE X

### TERMINATION OF THIS AGREEMENT

#### Section 10.1. Termination of this Agreement.

- (a) The Institution shall have the option to cause the redemption or defeasance in whole of all Outstanding Bonds in accordance with the terms set forth in the Indenture.
- (b) After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Article X of the Indenture, but not later than the receipt by the Institution of ten (10) days prior written notice from the Issuer directing termination of this Agreement, the Institution shall terminate this Agreement by giving the Issuer notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to (x) the delivery of those documents referred to in Section 10.2, and (y) the survival of those obligations of the Institution set forth in Section 10.3.

**Section 10.2. Actions on Termination.** (a) As a condition precedent to the termination of this Agreement, the Institution shall:

- (i) pay to the Trustee
- (A) the expenses of redemption, the fees and expenses of the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents, and
- (B) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement; and
- (ii) pay to the Issuer
- (A) the fees and expenses of the Issuer payable under this Agreement and the other Security Documents, and
- (B) all other amounts due and payable under this Agreement and the other Security Documents,
- (iii) pay and perform all accrued obligations hereunder or under any other Project Document,
- (iv) deliver or cause to be delivered to the Issuer with respect to any mortgage exempt from the payment of mortgage recording tax by reason of the Issuer being a party thereto, an executed satisfaction of such mortgage in recordable form, executed by the mortgagee, and
- (v) effect at its own cost and expense the proper recording and filing of all instruments terminating, satisfying and discharging the Security Documents.

105

## ARTICLE XI

### CERTAIN PROVISIONS RELATING TO THE BONDS

**Section 11.1. Issuance of Additional Bonds.** If a Series of Additional Bonds is to be issued pursuant to the Indenture, the Issuer and the Institution shall enter into an amendment to this Agreement, and the Institution shall execute and deliver a new Promissory Note, in each case providing, among other things, for the payment by the Institution of such additional loan payments as are necessary in order to amortize in full the principal of and interest on such Series of Additional Bonds and any other costs in connection therewith.

Any such completion, repair, relocation, replacement, rebuilding, restoration, additions, extensions or improvements shall become a part of the Facility and shall be included under this Agreement to the same extent as if originally included hereunder.

**Section 11.2. Determination of Taxability.** (a) If any Holder of Bonds receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Bond, an appeal may be taken by such Holder at the option of either such Holder or the Institution. If such appeal is taken at the option of the Institution (exercised in accordance with the procedures set forth in the definition of "Determination of Taxability"), all expenses of the appeal including reasonable counsel fees shall be paid by the Institution, and the Institution shall control the procedures and terms relating to such appeal, and such Holder and the Institution shall cooperate and consult with each other in all matters pertaining to any such appeal which the Institution has elected to take, except that no Holder of Bonds shall be required to disclose or furnish any non-publicly disclosed information, including without limitation, financial information and tax returns. Before the taking of any appeal which the Institution has elected to take, however, the Bondholder shall have the right to require the Institution to pay the tax assessed and conduct the appeal as a contest for reimbursement.

(b) The obligations of the Institution to make the payments provided for in this Section shall be absolute and unconditional, and the failure of the Issuer, the Trustee or any other Person to execute or deliver or cause to be delivered any documents or to take any action required under this Agreement or otherwise shall not relieve the Institution of its obligation under this Section.

(c) Not later than one hundred twenty (120) days following a Determination of Taxability, at a Redemption Price equal to one hundred three percent (103%) of the principal amount thereof, together with accrued interest to the Redemption Date, the Institution shall pay to the Trustee an amount sufficient, when added to the amounts then in the Bond Fund and in the other funds established under the Indenture and available for such purpose, to retire and redeem all Bonds then Outstanding, in accordance with the Indenture. The Bonds shall be redeemed in whole unless redemption of a portion of the Bonds Outstanding would have the result that interest payable on the Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of a Bond. In such event, the Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

107



### **Section 11.3. Mandatory Redemption of Bonds as Directed by the Issuer.**

(a) Upon the determination by the Issuer that (i) the Institution is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, not for the Approved Project Operations in accordance with this Agreement and the failure of the Institution within thirty (30) days of the receipt by the Institution of written notice of such noncompliance from the Issuer to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), (ii) the Institution, any Principal of the Institution or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Institution has committed a material violation of a material Legal Requirement and the failure of the Institution within thirty (30) days of the receipt by the Institution of written notice of such determination from the Issuer to cure such material violation (which cure, in the case of a Principal who shall have committed the material violation of a material Legal Requirement, may be effected by the removal of such Principal), (iii) as set forth in Section 9.8, any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (iv) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, the Institution covenants and agrees that it shall, no later than ten (10) days following the termination of such thirty (30) day period, pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of 100% of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to the Redemption Date. The Issuer shall give prior written notice of the meeting at which the Board of Directors of the Issuer are to consider such resolution to the Institution and the Trustee, which notice shall be no less than fifteen (15) days prior to such meeting.

(b) In the event the Institution fails to obtain or maintain the liability insurance with respect to the Facility required under Section 8.1, and the Institution shall fail to cure such circumstance within ten (10) days of the receipt by the Institution of written notice of such noncompliance from the Issuer and a demand by the Issuer on the Institution to cure such noncompliance, upon notice or waiver of notice as provided in the Indenture, the Institution shall pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of one hundred percent (100%) of the unpaid principal amount of the Bonds, together with interest accrued thereon to the date of redemption.

### **Section 11.4. Mandatory Redemption As a Result of Project Gifts or Grants.**

(a) If, prior to completion of the construction of a component of the Project, the Institution receives any gift or grant required by the terms thereof to be used to pay any item which is a cost of such component of the Project, the Institution shall apply such gift or grant to completion of the construction of such component of the Project. In the event that the amount of such gift or grant is in excess of the amount necessary to complete such component of the Project, and if proceeds of the Bonds (i) have been expended on such component of the Project more than eighteen (18) months prior to the receipt of such gift or grant, or (ii) (A) have been expended on such component of the Project not more than eighteen (18) months prior to the receipt of such gift or grant and (B) the aggregate amount of Project Costs not otherwise provided for is less than the amount of Bond proceeds expended on such component of the Project, the Institution

shall cause the Trustee to effect a redemption of Bonds in a principal amount equal to such excess only to the extent to which proceeds of the Bonds were expended for such component.

(b) If, after completion of the construction of a component of the Project, the Institution receives any gift or grant which prior to such completion it reasonably expected to receive and which is required by the terms thereof to be used to pay any item which is a cost of such component of the Project, and if proceeds of the Bonds (i) have been expended on such component of the Project more than eighteen (18) months prior to the earlier of the date on which Bond proceeds were expended thereon or the placed in service date of such component, or (ii) (A) have been expended on such component of the Project not more than eighteen (18) months prior to the earlier of the date on which Bond proceeds were expended thereon or the placed in service date of such component and (B) the aggregate amount of Project Costs not otherwise provided for is less than the amount of Bond proceeds expended on such component of the Project, the Institution shall, to the extent not inconsistent with the terms of such gift or grant, deposit an amount equal to such gift or grant with the Trustee for deposit into the Redemption Account of the Bond Fund and cause the Trustee to effect a redemption of the Bonds in a principal amount equal to such gift or grant, but only to the extent to which proceeds of Bonds were expended for such component.

(c) The Institution shall, prior to directing the redemption of any Bonds in accordance with this Section 11.4, consult with Nationally Recognized Bond Counsel for advice as to a manner of selection of Bonds for redemption that will not affect the exclusion of interest on any Bonds then Outstanding from gross income for federal income tax purposes.

**Section 11.5. Right to Cure Issuer Defaults.** The Issuer hereby grants the Institution full authority for the account of the Issuer to perform any covenant or obligation the non-performance of which is alleged to constitute a default in any notice received by the Institution, in the name and stead of the Issuer, with full power of substitution.

**Section 11.6. Prohibition on the Purchase of Bonds.** Neither the Institution nor any related person thereto shall purchase any Bonds for its own account during the term of this Agreement, whether by direct negotiation through a broker or dealer, or by making a tender offer to the Holders thereof, or otherwise.

**Section 11.7. Investment of Funds.** Any moneys held as part of the Rebate Fund, the Earnings Fund, the Project Fund, the Bond Fund, the Debt Service Reserve Fund, the Repair and Replacement Fund or the Renewal Fund or in any special fund provided for in this Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Institution, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Regulatory Agreement). Neither the Issuer nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged.

108

## **ARTICLE XII**

### **MISCELLANEOUS**

**Section 12.1. Force Majeure.** In case by reason of *force majeure* either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than (i) the obligations of the Institution to make the loan payments or other payments required under the terms hereof, or (ii) the obligations of the Institution to comply with Section 5.1, 8.1 or 8.2), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, war, terrorism, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other act or event so long as such act or event is not reasonably foreseeable and is not reasonably within the control of the party claiming such inability. Notwithstanding anything to the contrary herein, in no event shall the Institution's financial condition or inability to obtain financing constitute a *force majeure*. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

The Institution shall promptly notify the Issuer and the Trustee upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Institution shall also promptly notify the Issuer and the Trustee upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Issuer or the Trustee, and the Issuer or the Trustee shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Institution.

**Section 12.2. Assignment of Mortgage and Pledge under Indenture.** Pursuant to (i) the Mortgage, the Institution will mortgage its fee interest in the Mortgaged Property to the Issuer and the Trustee as security for the Bonds and the obligations of the Institution under the Security Documents, (ii) the Assignment of Mortgage, the Issuer will assign all of its right, title and interest in the Mortgage to the Trustee, and (iii) the Indenture, the Issuer will pledge and assign the Promissory Note and the loan payments and certain other moneys receivable under this Agreement to the Trustee as security for payment of the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on the Bonds. The Institution hereby consents to the Issuer's pledge and assignment to the Trustee of all its

right, title and interest in the Mortgage, the Promissory Note and this Agreement (except for the Issuer's Reserved Rights).

**Section 12.3. Amendments.** This Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture, except in connection with any amendment relating to Section 5.1, and only by a written instrument executed by the parties hereto.

**Section 12.4. Service of Process.** The Institution represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Institution under this Agreement shall be satisfied and met. If for any reason the Institution should cease to be so subject to service of process in the State, the Institution hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing the Executive Director of the Institution at 238-242 Hoyt Street, Brooklyn, New York 11217, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Institution as a result of any of its obligations under this Agreement. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Institution hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Institution as a result of any of its obligations under this Agreement; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Institution's obligations hereunder.

For such time as any of the obligations, covenants and agreements of the Institution under this Agreement remain unsatisfied, the Institution's agent(s) designated in this Section 12.4 shall accept and acknowledge on the Institution's behalf each service of process in any such suit, action or proceeding brought in any such court. The Institution agrees and consents that each such service of process upon such agents and written notice of such service to the Institution in the manner set forth in Section 12.5 shall be taken and held to be valid personal service upon the Institution whether or not the Institution shall then be doing, or at any time shall have done, business within the State and that each such service of process shall be of the same force and validity as if service were made upon the Institution according to the laws governing the validity and requirements of such service in the State, and waives all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Institution or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Institution.

**Section 12.5. Notices.** Any notice, demand, direction, certificate, Opinion of Counsel, request, instrument or other communication authorized or required by this Agreement to be given to or filed with the Issuer, the Institution, the Trustee, the DCA or the Comptroller shall be sufficient if sent (i) by return receipt requested or registered or certified United States mail, postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

110

111

- (1) if to the Issuer, to

Build NYC Resource Corporation  
110 William Street  
New York, New York 10038  
Attention: General Counsel

with a copy to

Build NYC Resource Corporation  
110 William Street  
New York, New York 10038  
Attention: Deputy Executive Director

- (2) if to the Institution, to

New Dawn Charter Schools  
238-242 Hoyt Street  
Brooklyn, New York 11217  
Attention: Executive Director

with a copy to

Davidoff Hatcher & Citron LLP  
605 Third Avenue  
New York, New York 10158  
Attention: Maria Groeneveld, Esq.

- (3) if to the Trustee, to

The Bank of New York Mellon  
240 Greenwich Street, Floor 7W  
New York, New York 10286  
Attention: Corporate Trust Administration

- (4) if to the DCA, to

Department of Consumer Affairs of The City of New York  
42 Broadway  
New York, New York 10004  
Attention: Living Wage Division

- (5) if to the Comptroller, to

Office of the Comptroller of The City of New York  
One Centre Street  
New York, New York 10007  
Attention: Chief, Bureau of Labor Law

The Issuer, the Institution, the Trustee, the DCA and the Comptroller may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

**Section 12.6. Consent to Jurisdiction.** The Institution irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Agreement or any other Project Document, the Facility, the Project, the relationship between the Issuer and the Institution, the Institution's ownership, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (A) to move to dismiss on grounds of *forum non conveniens*, (B) to remove to any federal court other than the United States District Court for the Southern District of New York, and (C) to move for a change of venue to a New York State Court outside New York County.

If the Institution commences any action against the Issuer or the Trustee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Institution shall, upon request from the Issuer or the Trustee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Institution shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

**Section 12.7. Prior Agreements Superseded.** This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Issuer and the Institution relating to the Facility, other than any other Project Document.

**Section 12.8. Severability.** If any one or more of the provisions of this Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this

112

113

Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

**Section 12.9. Effective Date; Counterparts.** The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was delivered on the Closing Date. This Agreement shall become effective upon its delivery on the Closing Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.10. Binding Effect.** This Agreement shall inure to the benefit of the Issuer, the Trustee, the Bond Registrar, the Paying Agents, the Indemnified Parties and the Holders of the Bonds, and shall be binding upon the Issuer and the Institution and their respective successors and assigns.

**Section 12.11. Third Party Beneficiaries.** (a) The Issuer and the Institution agree that this Agreement is executed in part to induce the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Issuer and the Institution as set forth in this Agreement are hereby declared to be for the benefit of the Holders from time to time of the Bonds and may be enforced as provided in Article VIII of the Indenture on behalf of the Bondholders by the Trustee.

(b) Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Issuer, the Trustee, the Bond Registrar, the Institution, the Paying Agents and the Holders of the Bonds any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof. All the covenants, stipulations, promises and agreements herein contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Trustee, the Bond Registrar, the Institution, the Paying Agents and the Holders of the Bonds.

**Section 12.12. Law Governing.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

**Section 12.13. Waiver of Trial by Jury.** The Institution does hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement, the Institution's obligations hereunder, the Facility, the Project, the relationship between the Issuer and the Institution, the Institution's ownership, use or occupancy of the Facility and/or any claim for injury or damages.

The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

**Section 12.14. Recourse Under This Agreement.** All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer, and not of

any member, director, officer, employee or agent of the Issuer or any natural person executing this Agreement on behalf of the Issuer in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Issuer or any natural person executing this Agreement on behalf of the Issuer. No recourse shall be had for the payment of the principal of, redemption premium, if any, Sinking Fund Installments for, purchase price, if any, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. In addition, in the performance of the agreements of the Issuer herein contained, any obligation the Issuer may incur for the payment of money shall not subject the Issuer to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Issuer by the Institution hereunder and under the Promissory Note.

**Section 12.15. Legal Counsel; Mutual Drafting.** Each party acknowledges that this Agreement is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Agreement. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Agreement and agrees that this Agreement and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the *contra proferentem doctrine*, that would require interpretation of any ambiguities in this Agreement against the party that has drafted it.

[Remainder of Page Intentionally Left Blank]

114

115

IN WITNESS WHEREOF, the Issuer has caused its corporate name to be subscribed unto this Loan Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, and the Institution has caused its name to be hereunto subscribed by its duly Authorized Representative, all being done as of the year and day first above written.

**BUILD NYC RESOURCE CORPORATION**

By: \_\_\_\_\_  
Krishna Omolade  
Deputy Executive Director

**NEW DAWN CHARTER SCHOOLS**

By: \_\_\_\_\_  
Sara Asmussen  
Executive Director

STATE OF NEW YORK            )  
                                      : ss.:  
COUNTY OF NEW YORK        )

On the \_\_\_\_ day of February, in the year two thousand nineteen, before me, the undersigned, personally appeared Krishna Omolade, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public/Commissioner of Deeds

[Signature Page to Loan Agreement]

STATE OF NEW YORK            )  
                                      : ss.:  
COUNTY OF NEW YORK        )

On the \_\_\_\_ day of February, in the year two thousand nineteen, before me, the undersigned, personally appeared Sara Asmussen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**APPENDICES**

**EXHIBIT A****DESCRIPTION OF THE LAND**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northwesterly side of Hoyt Street, distant 25 feet northeasterly from the corner formed by the intersection of the northwesterly side of Hoyt Street with the northeasterly side of Douglass Street;

THENCE northwesterly parallel with Douglass Street and part of the distance through a party wall, 100 feet;

THENCE northeasterly parallel with Hoyt Street, 75 feet;

THENCE southeasterly parallel with Douglass Street, 100 feet to the northwesterly side of Hoyt Street;

THENCE southwesterly along the said northwesterly side of Hoyt Street, 75 feet to the point or place of BEGINNING.

**EXHIBIT B****DESCRIPTION OF THE FACILITY PERSONALTY**

(72) Evaporator Units (84 Tons) and associated ductwork.

(7) Condensers (84 Tons) and associated piping

(1) 3,200 CFM Make Up Air Unit With Associated Ductwork

(1) 4,000 CFM Kitchen Exhaust Fan With Associated Ductwork

(1) 5,000 CFM ERV with Associated Ductwork

(1) Dedicated 3 Ton Split Elevator Machine Room A/C System

(1) Dedicated 1.5 Ton Split IDF Room A/C System

(1) 250 MBH Gas Fired Hot Water Boilers

(1) 1600 Amp CT Cabinet

(4) Electrical Service Switches

Lighting Fixtures

Fire Alarm System

4" Sprinkler Service with Associated Piping and Valves

(1) 100 Gallon 199 MBTU/Hr. Gas Fired Water Heater

(1) 2,500 lb Five Stop Traction Elevator

Cold Applied Roof Membrane

Thermal Windows

Food Service Equipment

**EXHIBIT C****AUTHORIZED REPRESENTATIVE**

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Ronald Tabano	Chair	_____
Sara Asmussen	Executive Director	_____

**EXHIBIT D****PRINCIPALS OF INSTITUTION**

<u>Name</u>	<u>Title</u>
Ronald Tabano	Chair
Leslie Winter	Vice Chair
Katharine Urbati	Treasurer

## EXHIBIT E

## PROJECT COST BUDGET

	Bond Proceeds	Funds of Institution	Total
Land and Building Acquisition	\$9,064,496.13	\$4,935,503.87	\$14,000,000.00
Renovation/Building Improvements	8,904,475.00		8,904,475.00
Project Soft Costs	536,718.41	301,831.59	838,550.00
Equipment/Furnishing	720,000.00		720,000.00
Debt Service Reserve Fund	1,444,356.26		1,444,356.26
Net Original Issue Discount	14,954.20		14,954.20
Fees/Other Soft Costs		762,664.54	762,664.54
Total	\$20,685,000.00	\$6,000,000.00	\$26,685,000.00

## EXHIBIT F

## FORM OF REQUIRED DISCLOSURE STATEMENT

The undersigned, an authorized representative of \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, DOES HEREBY CERTIFY, REPRESENT AND WARRANT to Build NYC Resource Corporation (the "Issuer") pursuant to [Section 8.20] [Section 8.9] of that certain Loan Agreement, dated as of February 1, 2019, between the Issuer and New Dawn Charter Schools, a not-for-profit education corporation organized and existing under the laws of the State of New York (the "Loan Agreement"), THAT:

[if being delivered pursuant to 8.20 of the Loan Agreement] None of the surviving, resulting or transferee Entity, any of the Principals of such Entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Entity;

[if being delivered pursuant to 8.9 of the Loan Agreement] None of the assignee, transferee or lessee Entity, any of the Principals of such Entity, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with such Entity;

(1) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Issuer, the NYCIDA, the NYCEDC or the City, unless such default or breach has been waived in writing by the Issuer, the NYCIDA, the NYCEDC or the City, as the case may be;

(2) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(3) has been convicted of a felony in the past ten (10) years;

(4) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(5) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

"City" shall mean The City of New York.

"Control" or "Controls" shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting

F-1

securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

"Entity" shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

"Governing Body" shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

"NYCEDC" shall mean New York City Economic Development Corporation, a New York not-for-profit corporation, and any successor thereof.

"NYCIDA" shall mean the New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

"Person" shall mean an individual or any Entity.

"Principal(s)" shall mean, with respect to any Entity, the most senior three officers of such Entity, any Person with a ten percent (10%) or greater ownership interest in such Entity, and any Person as shall have the power to Control such Entity, and "principal" shall mean any of such Persons.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[NAME OF CERTIFYING ENTITY]

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

F-2

## EXHIBIT G

FORM OF  
PROJECT COMPLETION CERTIFICATE OF INSTITUTION  
AS REQUIRED BY SECTIONS 3.2(f) AND 8.14(g)  
OF THE LOAN AGREEMENT

The undersigned, an Authorized Representative (as defined in the Loan Agreement referred to below) of New Dawn Charter Schools, a not-for-profit education corporation organized and existing under the laws of the State of New York (the "Institution"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.2(f) and 8.14(g) of that certain Loan Agreement, dated as of February 1, 2019 (the "Loan Agreement"), between Build NYC Resource Corporation (the "Issuer") and the Institution, and FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Loan Agreement):

(i) the Project Work is finished and has been completed substantially in accordance with the plans and specifications therefor;

(ii) attached hereto is a copy of one of the following (check only one and attach a copy of the indicated document):

☐ certificate of occupancy, or

☐ temporary certificate of occupancy;

(iii) there is no certificate, license, permit, written approval or consent or other document required to permit the occupancy, operation and use of the Facility as the Approved Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature;

(iv) the Facility is ready for occupancy, use and operation for the Approved Project Operations in accordance with all applicable laws, regulations, ordinances and guidelines;

(v) check as applicable:

☐ all costs for Project Work have been paid, or

☐ all costs for Project Work have been paid except for

☐ amounts not yet due and payable (attach itemized list) and/or

☐ amounts the payments for which are being contested in good faith (attach itemized list with explanations); and

G-1

(vi) releases of mechanics' liens have been obtained from the general contractor and from all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project Work, except for releases-of-liens pertinent to (y) amounts not yet due and payable, or (z) any amount the payment of which is being contested in good faith; copies of all such releases of mechanics' liens are attached hereto.

[ATTACH to this Certificate copies of all such releases of liens.]

*Notwithstanding anything herein or elsewhere that may be inferred to the contrary, the undersigned hereby understands and agrees on behalf of the Institution as follows:* (a) the Issuer does not waive its right to require delivery of releases-of-liens in connection with the costs of Project Work; (b) the Issuer does not waive its right under the Loan Agreement to demand the discharge of mechanics' and materialmen's liens encumbering the Facility Realty, whether by bond or otherwise; and (c) the Certificate shall be deemed incomplete if, in the Issuer's sole discretion, the Institution has unreasonably failed to bond or otherwise discharge any liens in respect of the costs of Project Work when payment for the same is due.

This Certificate is given without prejudice to any rights of the Institution against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Issuer may benefit from this Certificate.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NEW DAWN CHARTER SCHOOLS

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

G-2

principal amount of Revenue Bonds (New Dawn Charter Schools Project), Series 2019 (the "Initial Bonds"), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture, the Loan Agreement and the Initial Bonds are hereby incorporated as a part of this Promissory Note.

The Borrower may at its option, and may under certain circumstances be required to, prepay together with accrued interest, all or any part of the amounts due under this Promissory Note, as provided in the Loan Agreement and the Indenture.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay costs of collection and attorneys' fees in case of default on this Promissory Note.

This Promissory Note shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflicts of law principles thereof.

NEW DAWN CHARTER SCHOOLS

By: \_\_\_\_\_  
Sara Asmussen  
Executive Director

H-2

FORM OF PROMISSORY NOTE

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS PROMISSORY NOTE, THIS PROMISSORY NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH OF WHICH ARE REFERRED TO HEREIN.

\$20,685,000

February 28, 2019

PROMISSORY NOTE

FOR VALUE RECEIVED, NEW DAWN CHARTER SCHOOLS, a not-for-profit education corporation organized and existing under the laws of the State of New York (the "Borrower"), by this promissory note hereby promises to pay to the order of BUILD NYC RESOURCE CORPORATION (the "Issuer") the principal sum of Twenty Million Six Hundred Eighty-Five Thousand Dollars (\$20,685,000), together with interest on the unpaid principal amount hereof, from the date of the issuance and delivery of the Initial Bonds (as such term is hereinafter defined) until paid in full, at a rate per annum equal to the respective rates of interest borne from time to time by the Initial Bonds, together with all Sinking Fund Installments and Redemption Price payments as and when due. All capitalized terms used but not defined in this Promissory Note shall have the respective meanings assigned such terms by the Indenture (as hereinafter defined) or by the Loan Agreement (as hereinafter defined). All such payments shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America and shall be paid at the designated corporate trust office of The Bank of New York Mellon, as trustee, or its successor under the Indenture (the "Trustee").

The principal amount, interest, Sinking Fund Installments and Redemption Price shall be payable on the dates and in the amounts that principal of, interest, Sinking Fund Installments and Redemption Price on the Initial Bonds are payable under the Loan Agreement (as defined below), subject to prepayments and credits to the extent provided in the Indenture and the Loan Agreement.

This promissory note is the "Promissory Note" referred to in the Loan Agreement, dated as of February 1, 2019 (as the same may be amended or supplemented, the "Loan Agreement"), between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Promissory Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture of Trust, dated as of February 1, 2019 (as the same may be amended or supplemented, the "Indenture"), by and between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer's \$20,685,000 in aggregate

H-1

ENDORSEMENT

Pay to the order of The Bank of New York Mellon, without recourse, as Trustee under the Indenture referred to in the within mentioned Loan Agreement, as security for the Initial Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Promissory Note.

BUILD NYC RESOURCE CORPORATION

By: \_\_\_\_\_  
Krishna Omolade  
Deputy Executive Director

Dated: February 28, 2019

H-3

RESERVED

## FORM OF LW AGREEMENT

## LIVING WAGE AGREEMENT

This LIVING WAGE AGREEMENT (this "Agreement") is made as of [\_\_\_\_], by [\_\_\_\_] ("Obligor") in favor of Institution, the Issuer, the City, the DCA and the Comptroller (each as defined below) (each, an "Obligee"). In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligor hereby covenants and agrees as follows:

1. Definitions. As used herein the following capitalized terms shall have the respective meanings specified below.

"Affiliate" means, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

"Asserted Cure" has the meaning specified in paragraph 10(a).

"Asserted LW Violation" has the meaning specified in paragraph 10(a).

"City" means The City of New York.

"Comptroller" means the Comptroller of The City of New York or his or her designee.

"Concessionaire" means a Person that has been granted the right by Institution, an Affiliate of Institution or any tenant, subtenant, leaseholder or subleaseholder of Institution or of an Affiliate of Institution to operate at the Facility for the primary purpose of selling goods or services to natural persons at the Facility.

"Control" or "Controls", including the related terms "Controlled by" and "under common Control with", means the power to direct the management and policies of a Person (a) through the ownership, directly or indirectly, of not less than a majority of its voting equity, (b) through the right to designate or elect not less than a majority of the members of its board of directors, board of managers, board of trustees or other governing body, or (c) by contract or otherwise.

"Covered Counterparty" means a Covered Employer whose Specified Contract is directly with Obligor or an Affiliate of Obligor to lease, occupy, operate or perform work at the Obligor Facility.

"Covered Employer" means any of the following Persons: (a) Obligor, (b) a tenant, subtenant, leaseholder or subleaseholder of Obligor that leases any portion of the Obligor Facility (or an Affiliate of any such tenant, subtenant, leaseholder or subleaseholder if such Affiliate has one or more direct Site Employees), (c) a

I-1

J-1

Concessionaire that operates on any portion of the Obligor Facility, and (d) a Person that contracts or subcontracts with any Covered Employer described in clauses (a), (b) or (c) above to perform work for a period of more than ninety days on any portion of the Obligor Facility, including temporary services or staffing agencies, food service contractors, and other on-site service contractors; provided, however, that the term "Covered Employer" shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each case calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Facility if residential units comprise more than 75% of the total Facility area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Issuer has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) if Institution is a "covered developer" under and as defined in the Prevailing Wage Law, a Person that is a "building services contractor" (as defined in the LW Law) so long as such Person is paying its "building service employees" (as defined in the Prevailing Wage Law) no less than the applicable "prevailing wage" (as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor's Executive Order No. 7 dated September 30, 2014.

"DCA" means the Department of Consumer Affairs of The City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

"Facility" means the land and real property improvements located in the Borough of Brooklyn, Block 409 and Lot 38, generally known by the street address 238-242 Hoyt Street, Brooklyn, New York.

"Institution" means New Dawn Charter Schools, a not-for-profit education corporation organized and existing under the laws of the State of New York, having its principal office at 238-242 Hoyt Street, Brooklyn, New York 11217, or its permitted successors or assigns as Institution under the Project Agreement.

"Issuer" means Build NYC Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038.

"LW" has the same meaning as the term "living wage" as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the "living wage rate" component

J-2

of the LW shall be eleven dollars and sixty-five cents per hour (\$11.65/hour) and the "health benefits supplement rate" component of the LW shall be one dollar and sixty-five cents per hour (\$1.65/hour). The annual adjustments to the "living wage rate" and "health benefits supplement rate" will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

"LW Agreement" means, with respect to any Covered Counterparty, an enforceable agreement in the form attached hereto as Attachment 1 (except only with such changes as are necessary to make such Covered Counterparty the obligor thereunder).

"LW Agreement Delivery Date" means, with respect to any Covered Counterparty, the latest of (a) the effective date of such Covered Counterparty's Specified Contract, (b) the date that such Covered Counterparty becomes a Covered Employer at the Obligor Facility and (c) the date of this Agreement.

"LW Law" means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"LW Term" means the period commencing on the date of this Agreement and ending on the date that is the earlier to occur of: (a) the later to occur of (i) the date on which Institution is no longer receiving financial assistance under the Project Agreement or (ii) the date that is ten years after the Project Completion Date (as defined in the Project Agreement); or (b) the end of the term of Obligor's Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

"LW Violation Final Determination" has the meaning specified in paragraph 10(a)(i), paragraph 10(a)(ii)(1) or paragraph 10(a)(ii)(2), as applicable.

"LW Violation Initial Determination" has the meaning specified in paragraph 10(a)(ii).

"LW Violation Notice" has the meaning specified in paragraph 10(a).

"LW Violation Threshold" means \$100,000 multiplied by 1.03<sup>n</sup>, where "n" is the number of full years that have elapsed since January 1, 2015.

"Obligor Facility" means the applicable portion of the Facility covered by the Specified Contract of Obligor.

"Operational Date" means the date that Obligor commences occupancy, operations or work at the Obligor Facility.

"Owed Interest" means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the

J-3

superintendent of banks pursuant to Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.

"Owed Monies" means, as the context shall require, either (a) the total deficiency of LW required to be paid by Obligor in accordance with this Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis; or (b) if Obligor failed to obtain a LW Agreement from a Covered Counterparty as required under paragraph 5 below, the total deficiency of LW that would have been required to be paid under such Covered Counterparty's LW Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis, during the period commencing on the LW Agreement Delivery Date applicable to such Covered Counterparty and ending immediately prior to the execution and delivery by such Covered Counterparty of its LW Agreement (if applicable).

"Person" means any natural person, sole proprietorship, partnership, association, joint venture, limited liability company, corporation, governmental authority, governmental agency, governmental instrumentality or any form of doing business.

"Pre-Existing Covered Counterparty" has the meaning specified in paragraph 5.

"Pre-Existing Specified Contract" has the meaning specified in paragraph 5.

"Prevailing Wage Law" means Section 6-130 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"Project Agreement" means that certain Loan Agreement, dated as of February 1, 2019, between the Issuer and the Institution (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which Institution has or will receive financial assistance from the Issuer.

"Qualified Workforce Program" means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor's Office of Workforce Development.

"Site Employee" means, with respect to any Covered Employer, any natural person who works at the Obligor Facility and who is employed by, or contracted or subcontracted to work for, such Covered Employer, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or

J-4

Counterparty to execute an LW Agreement, provided that the foregoing shall not preclude Obligor from renewing or extending a Pre-Existing Specified Contract pursuant to any renewal or extension options granted to the Pre-Existing Covered Counterparty in the Pre-Existing Specified Contract as such option exists as of the date hereof. Obligor shall deliver a copy of each Covered Counterparty's LW Agreement to the Issuer, the DCA and the Comptroller at the notice address specified in paragraph 12 below and promptly upon written request. Obligor shall retain copies of each Covered Counterparty's LW Agreement until six (6) years after the expiration or earlier termination of such Covered Counterparty's Specified Contract.

6. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Issuer, the DCA and the Comptroller within 30 days thereof.
7. Obligor hereby acknowledges and agrees that the Issuer, the City, the DCA and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCA, the Comptroller and the Issuer shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 10 below. Obligor hereby agrees that the DCA, the Comptroller and the Issuer may, as their sole and exclusive remedy for any violation of Obligor's obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 10 below), injunctive relief or specific performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 10 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Issuer or the DCA.
8. No later than 30 days after Obligor's receipt of a written request from the Issuer, the DCA and/or the Comptroller, Obligor shall provide to the Issuer, the DCA and the Comptroller (a) a written list of all Covered Counterparties, together with the LW Agreements of such Covered Counterparties. From and after the Operational Date, no later than 30 days after Obligor's receipt of a written request from the Issuer, the DCA and/or the Comptroller, Obligor shall provide to the Issuer, the DCA and the Comptroller (b) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (c) certified payroll records in respect of the direct Site Employees of Obligor, and/or (d) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.
9. From and after the Operational Date, Obligor shall, annually by August 1 of each year during the LW Term, submit to Institution such data in respect of employment, jobs and wages at the Obligor Facility as of June 30 of such year that is needed by Institution for it to comply with its reporting obligations under the Project Agreement.

J-6

similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term "Site Employee" shall not include any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Facility unless the primary work location or home base of such person is at the Obligor Facility (for the avoidance of doubt, a natural person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Facility shall thereafter constitute a Site Employee).

"Small Business Cap" means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the "living wage rate" component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

"Specified Contract" means (a) in the case of Obligor, the [\_\_\_\_], dated as of [\_\_\_\_], by and between Obligor and [\_\_\_\_], or (b) in the case of any other Person, the principal written contract that makes such Person a Covered Employer hereunder.

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.
3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Facility, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Facility that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.
4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.
5. During the LW Term, Obligor shall cause each Covered Counterparty to execute an LW Agreement on or prior to the LW Agreement Delivery Date applicable to such Covered Counterparty; provided that Obligor shall only be required to use commercially reasonable efforts (without any obligation to commence any action or proceedings) to obtain an LW Agreement from a Covered Counterparty whose Specified Contract with Obligor was entered into prior to the date hereof (a "Pre-Existing Covered Counterparty" and a "Pre-Existing Specified Contract"). Prior to the renewal or extension of any Pre-Existing Specified Contract (or prior to entering into a new Specified Contract with a Pre-Existing Covered Counterparty), Obligor shall cause or otherwise require the Pre-Existing Covered

J-5

#### 10. Violations and Remedies.

(a) If a violation of this Agreement shall have been alleged by the Issuer, the DCA and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Issuer, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under paragraph 10(b), (c), (d), (e) and/or (f) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Obligor's receipt of the LW Violation Notice, Obligor may either:

- (i) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist), or
- (ii) Provide written notice to the Issuer, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Issuer and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Obligor's receipt of the LW Violation Initial Determination, Obligor may either:

- (1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or
- (2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a

J-7



"LW Violation Final Determination". If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.

- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Issuer or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation
- (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Issuer or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the Issuer or the DCA (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.
- (e) If Obligor fails to obtain an LW Agreement from its Covered Counterparty in violation of paragraph 5 above, then at the discretion of the Issuer or the DCA (but not both), Obligor shall be responsible for payment of the Owed Monies, Owed Interest and other payments described in subparagraphs (b), (c) and (d) above (as applicable) as if the direct Site Employees of such Covered Counterparty were the direct Site Employees of Obligor.
- (f) Obligor shall not renew the Specified Contract of any specific Covered Counterparty or enter into a new Specified Contract with any specific Covered Counterparty if both (i) the aggregate amount of Owed Monies and Owed Interest paid or payable by such Covered Counterparty in respect of its direct Site Employees for all past and present LW Violation Final Determinations (or that

J-8

suit, action or proceeding in such courts; and (d) waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to any federal court other than the United States District Court for the Southern District of New York, and (iii) to move for a change of venue to a New York State Court outside New York County.

15. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

IN WITNESS WHEREOF, Obligor has executed and delivered this Agreement as of the date first written above.

[\_\_\_\_\_]

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

J-10

would have been payable had such Covered Counterparty entered into an LW Agreement) is in excess of the LW Violation Threshold and (ii) two or more LW Violation Final Determinations against such Covered Counterparty (or in respect of the direct Site Employees of such Covered Counterparty) occurred within the last 6 years of the term of the applicable Specified Contract (or if the term thereof is less than 6 years, then during the term thereof); provided that the foregoing shall not preclude Obligor from extending or renewing a Specified Contract pursuant to any renewal or extension options granted to the Covered Counterparty in the Specified Contract as in effect as of the LW Agreement Delivery Date applicable to such Covered Counterparty.

- (g) It is acknowledged and agreed that (i) the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 10, and (ii) in no event will the Specified Contract between Obligor and a given Covered Counterparty be permitted to be terminated or rescinded by the Issuer, the DCA or the Comptroller by virtue of violations by Obligor or a Covered Counterparty.

11. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.

12. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:

- (a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].
- (b) If to the Issuer, to Build NYC Resource Corporation, 110 William Street, New York, NY, 10038, Attention: General Counsel, with a copy to Build NYC Resource Corporation, 110 William Street, New York, NY, 10038, Attention: Executive Director.
- (c) If to the DCA, to Department of Consumer Affairs of The City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.
- (d) If to the Comptroller, to Office of the Comptroller of The City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.

13. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.

14. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the venue of any such

J-9

#### ATTACHMENT 1 to EXHIBIT J FORM OF LW AGREEMENT

##### LIVING WAGE AGREEMENT

This LIVING WAGE AGREEMENT (this "Agreement") is made as of [\_\_\_\_\_] by [\_\_\_\_\_] ("Obligor") in favor of the Institution, the Issuer, the City, the DCA and the Comptroller (each as defined below) (each, an "Obligee"). In consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Obligor hereby covenants and agrees as follows:

- I. Definitions. As used herein the following capitalized terms shall have the respective meanings specified below.

"Asserted Cure" has the meaning specified in paragraph 9(a).

"Asserted LW Violation" has the meaning specified in paragraph 9(a).

"City" means The City of New York.

"Comptroller" means the Comptroller of The City of New York or his or her designee.

"Covered Employer" means Obligor; provided, however, that the term "Covered Employer" shall not include (i) a Person of the type described in Section 6-134(d)(2), (3), (4) or (5) of the New York City Administrative Code, (ii) a Person that has annual consolidated gross revenues that are less than the Small Business Cap unless the revenues of the Person are included in the consolidated gross revenues of a Person having annual consolidated gross revenues that are more than the Small Business Cap, in each case calculated based on the fiscal year preceding the fiscal year in which the determination is being made, and in each case calculated in accordance with generally accepted accounting principles, (iii) any otherwise covered Person operating on any portion of the Obligor Facility if residential units comprise more than 75% of the total Facility area and all of the residential units are subject to rent regulation, (iv) any otherwise covered Person that the Issuer has determined (in its sole and absolute discretion) in writing to be exempt on the basis that it works significantly with a Qualified Workforce Program, (v) a Person whose Site Employees all are paid wages determined pursuant to a collective bargaining or labor agreement, (vi) if Institution is a "covered developer" under and as defined in the Prevailing Wage Law, a Person that is a "building services contractor" (as defined in the LW Law) so long as such Person is paying its "building service employees" (as defined in the Prevailing Wage Law) no less than the applicable "prevailing wage" (as defined in the Prevailing Wage Law), or (vii) a Person exempted by a Deputy Mayor of The City of New York in accordance with the Mayor's Executive Order No. 7 dated September 30, 2014.

J-11

"DCA" means the Department of Consumer Affairs of The City of New York, acting as the designee of the Mayor of The City of New York, or such other agency or designee that the Mayor of The City of New York may designate from time to time.

"Facility" means the land and real property improvements located in the Borough of Brooklyn, Block 409 and Lot 38, generally known by the street address 238-242 Hoyt Street, Brooklyn, New York.

"Institution" means New Dawn Charter Schools, a not-for-profit education corporation organized and existing under the laws of the State of New York, having its principal office at 238-242 Hoyt Street, Brooklyn, New York 11217, or its permitted successors or assigns as Institution under the Project Agreement.

"Issuer" means Build NYC Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York at the direction of the Mayor of The City of New York, having its principal office at 110 William Street, New York, New York 10038.

"LW" has the same meaning as the term "living wage" as defined in Section 6-134(b)(9) of the New York City Administrative Code and shall be adjusted annually in accordance therewith, except that as of April 1, 2015, the "living wage rate" component of the LW shall be eleven dollars and sixty-five cents per hour (\$11.65/hour) and the "health benefits supplement rate" component of the LW shall be one dollar and sixty-five cents per hour (\$1.65/hour). The annual adjustments to the "living wage rate" and "health benefits supplement rate" will be announced on or around January 1 of each year by the DCA and will go into effect on April 1 of such year.

"LW Law" means the Fair Wages for New Yorkers Act, constituting Section 6-134 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"LW Term" means the period commencing on the date of this Agreement and ending on the date that is the earlier to occur of: (a) the later to occur of (i) the date on which Institution is no longer receiving financial assistance under the Project Agreement or (ii) the date that is ten years after the Project Completion Date (as defined in the Project Agreement); or (b) the end of the term of Obligor's Specified Contract (including any renewal or option terms pursuant to any exercised options), whether by early termination or otherwise.

"LW Violation Final Determination" has the meaning specified in paragraph 9(a)(i), paragraph 9(a)(ii)(1) or paragraph 9(a)(ii)(2), as applicable.

"LW Violation Initial Determination" has the meaning specified in paragraph 9(a)(ii).

"LW Violation Notice" has the meaning specified in paragraph 9(a).

"LW Violation Threshold" means \$100,000 multiplied by 1.03<sup>n</sup>, where "n" is the

J-12

person who works at least seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Facility shall thereafter constitute a Site Employee).

"Small Business Cap" means three million dollars; provided that, beginning in 2015 and each year thereafter, the Small Business Cap shall be adjusted contemporaneously with the adjustment to the "living wage rate" component of the LW using the methodology set forth in Section 6-134(b)(9) of the New York City Administrative Code.

"Specified Contract" means (a) in the case of Obligor, the [\_\_\_\_], dated as of [\_\_\_\_], by and between Obligor and [\_\_\_\_], or (b) in the case of any other Person, the principal written contract that makes such Person a Covered Employer hereunder.

2. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall pay each of its direct Site Employees no less than an LW.
3. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall, on or prior to the day on which each direct Site Employee of Obligor begins work at the Obligor Facility, (a) post a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement in a conspicuous place at the Obligor Facility that is readily observable by such direct Site Employee and (b) provide such direct Site Employee with a written notice detailing the wages and benefits required to be paid to Site Employees under this Agreement. Such written notice shall also provide a statement advising Site Employees that if they have been paid less than the LW they may notify the Comptroller and request an investigation. Such written notice shall be in English and Spanish.
4. Commencing on the Operational Date and thereafter during the remainder of the LW Term, if and for so long as Obligor is a Covered Employer, Obligor shall not take any adverse employment action against any Site Employee for reporting or asserting a violation of this Agreement.
5. Commencing on the Operational Date and thereafter during the remainder of the LW Term, in the event that an individual with managerial authority at Obligor receives a written complaint from any Site Employee (or such individual otherwise obtains actual knowledge) that any Site Employee has been paid less than an LW, Obligor shall deliver written notice to the Issuer, the DCA and the Comptroller within 30 days thereof.
6. Obligor hereby acknowledges and agrees that the Issuer, the City, the DCA and the Comptroller are each intended to be direct beneficiaries of the terms and provisions of this Agreement. Obligor hereby acknowledges and agrees that the DCA, the Comptroller and the Issuer shall each have the authority and power to enforce any and all provisions and remedies under this Agreement in accordance with paragraph 9 below. Obligor hereby agrees that the DCA, the Comptroller and the Issuer may, as their sole and exclusive remedy for any violation of Obligor's obligations under this Agreement, bring an action for damages (but not in excess of the amounts set forth in paragraph 9 below), injunctive relief or specific

J-14

number of full years that have elapsed since January 1, 2015.

"Obligor Facility" means the applicable portion of the Facility covered by the Specified Contract of Obligor.

"Operational Date" means the date that Obligor commences occupancy, operations or work at the Obligor Facility.

"Owed Interest" means the interest accruing on Owed Monies, which interest shall accrue from the relevant date(s) of underpayment to the date that the Owed Monies are paid, at a rate equal to the interest rate then in effect as prescribed by the superintendent of banks pursuant to Section 14-a of the New York State Banking Law, but in any event at a rate no less than six percent per year.

"Owed Monies" means the total deficiency of LW required to be paid by Obligor in accordance with this Agreement to its direct Site Employee(s) after taking into account the wages actually paid (which shall be credited towards the "living wage rate" component of the LW), and the monetary value of health benefits actually provided (which shall be credited towards the "health benefits supplement rate" component of the LW), to such direct Site Employee(s), all as calculated on a per pay period basis.

"Person" means any natural person, sole proprietorship, partnership, association, joint venture, limited liability company, corporation, governmental authority, governmental agency, governmental instrumentality or any form of doing business.

"Prevailing Wage Law" means Section 6-130 of the New York City Administrative Code, as amended, supplemented or otherwise modified from time to time, and all rules and regulations promulgated thereunder.

"Project Agreement" means that certain Loan Agreement, dated as of February 1, 2019, between the Issuer and the Institution (as amended, restated, supplemented or otherwise modified from time to time), pursuant to which Institution has or will receive financial assistance from the Issuer.

"Qualified Workforce Program" means a training or workforce development program that serves youth, disadvantaged populations or traditionally hard-to-employ populations and that has been determined to be a Qualified Workforce Program by the Director of the Mayor's Office of Workforce Development.

"Site Employee" means any natural person who works at the Obligor Facility and who is employed by, or contracted or subcontracted to work for, Obligor, including all employees, independent contractors, contingent workers or contracted workers (including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity) that are performing work on a full-time, part-time, temporary or seasonal basis; provided that the term "Site Employee" shall not include any natural person who works less than seventeen and a half (17.5) hours in any consecutive seven day period at the Obligor Facility unless the primary work location or home base of such person is at the Obligor Facility (for the avoidance of doubt, a natural

J-13

performance or any other non-monetary action at law or in equity, in each case subject to the provisions of paragraph 9 below, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Obligor under this Agreement. The agreements and acknowledgements of Obligor set forth in this Agreement may not be amended, modified or rescinded by Obligor without the prior written consent of the Issuer or the DCA.

7. From and after the Operational Date, no later than 30 days after Obligor's receipt of a written request from the Issuer, the DCA and/or the Comptroller, Obligor shall provide to the Issuer, the DCA and the Comptroller (a) a certification stating that all of the direct Site Employees of Obligor are paid no less than an LW and stating that Obligor is in compliance with this Agreement in all material respects, (b) certified payroll records in respect of the direct Site Employees of Obligor, and/or (c) any other documents or information reasonably related to the determination of whether Obligor is in compliance with its obligations under this Agreement.
8. From and after the Operational Date, Obligor shall, annually by August 1 of each year during the LW Term, submit to its counterpart to its Specified Contract such data in respect of employment, jobs and wages at the Obligor Facility as of June 30 of such year that is needed by Institution for it to comply with its reporting obligations under the Project Agreement.
9. Violations and Remedies.
  - (a) If a violation of this Agreement shall have been alleged by the Issuer, the DCA and/or the Comptroller, then written notice will be provided to Obligor for such alleged violation (an "LW Violation Notice"), specifying the nature of the alleged violation in such reasonable detail as is known to the Issuer, the DCA and the Comptroller (the "Asserted LW Violation") and specifying the remedy required under paragraph 9(b), (c) and/or (d) (as applicable) to cure the Asserted LW Violation (the "Asserted Cure"). Upon Obligor's receipt of the LW Violation Notice, Obligor may either:
    - (i) Perform the Asserted Cure no later than 30 days after its receipt of the LW Violation Notice (in which case a "LW Violation Final Determination" shall be deemed to exist); or
    - (ii) Provide written notice to the Issuer, the DCA and the Comptroller indicating that it is electing to contest the Asserted LW Violation and/or the Asserted Cure, which notice shall be delivered no later than 30 days after its receipt of the LW Violation Notice. Obligor shall bear the burdens of proof and persuasion and shall provide evidence to the DCA no later than 45 days after its receipt of the LW Violation Notice. The DCA shall then, on behalf of the City, the Issuer and the Comptroller, make a good faith determination of whether the Asserted LW Violation exists based on the evidence provided by Obligor and deliver to Obligor a written statement of such determination in reasonable detail, which shall include a confirmation or modification of the Asserted LW Violation and

J-15

Asserted Cure (such statement, a "LW Violation Initial Determination"). Upon Obligor's receipt of the LW Violation Initial Determination, Obligor may either:

- (1) Accept the LW Violation Initial Determination and shall perform the Asserted Cure specified in the LW Violation Initial Determination no later than 30 days after its receipt of the LW Violation Initial Determination (after such 30 day period has lapsed, but subject to clause (2) below, the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination"), or
  - (2) Contest the LW Violation Initial Determination by filing in a court of competent jurisdiction or for an administrative hearing no later than 30 days after its receipt of the LW Violation Initial Determination, in which case, Obligor's obligation to perform the Asserted Cure shall be stayed pending resolution of the action. If no filing in a court of competent jurisdiction or for an administrative hearing is made to contest the LW Violation Initial Determination within 30 days after Obligor's receipt thereof, then the LW Violation Initial Determination shall be deemed to be a "LW Violation Final Determination". If such a filing is made, then a "LW Violation Final Determination" will be deemed to exist when the matter has been finally adjudicated. Obligor shall perform the Asserted Cure (subject to the judicial decision) no later than 30 days after the LW Violation Final Determination.
- (b) For the first LW Violation Final Determination imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Issuer or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees; and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (c) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, at the direction of the Issuer or the DCA (but not both), (i) Obligor shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Obligor to such direct Site Employees, and Obligor shall pay fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee, and/or (ii) in the case of a violation that does not result in monetary damages owed by Obligor, Obligor shall cure, or cause the cure of, such non-monetary violation.
- (d) For the second and any subsequent LW Violation Final Determinations imposed on Obligor in respect of any direct Site Employees of Obligor, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Obligor in respect

J-16

14. Notwithstanding any other provision of this Agreement, in no event shall the partners, members, counsel, directors, shareholders or employees of Obligor have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties of Obligor contained in this Agreement.

IN WITNESS WHEREOF, Obligor has executed and delivered this Agreement as of the date first written above.

[\_\_\_\_\_]

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

of its direct Site Employees is in excess of the LW Violation Threshold for all past and present LW Violation Final Determinations imposed on Obligor, then in lieu of the remedies specified in subparagraph (c) above and at the direction of the Issuer or the DCA (but not both), Obligor shall pay (i) two hundred percent (200%) of the Owed Monies and Owed Interest in respect of the present LW Violation Final Determination to the affected direct Site Employees of Obligor, and (ii) fifty percent (50%) of the total amount of such Owed Monies and Owed Interest to the DCA as an administrative fee.

(e) It is acknowledged and agreed that the sole monetary damages that Obligor may be subject to for a violation of this Agreement are as set forth in this paragraph 9.

10. Obligor acknowledges that the terms and conditions of this Agreement are intended to implement the Mayor's Executive Order No. 7 dated September 30, 2014.

11. All notices under this Agreement shall be in writing and shall be delivered by (a) return receipt requested or registered or certified United States mail, postage prepaid, (b) a nationally recognized overnight delivery service for overnight delivery, charges prepaid, or (c) hand delivery, addressed as follows:

(a) If to Obligor, to [Obligor's Name], [Street Address], [City], [State], [Zip Code], Attention: [Contact Person].

(b) If to the Issuer, to Build NYC Resource Corporation, 110 William Street, New York, NY, 10038, Attention: General Counsel, with a copy to Build NYC Resource Corporation, 110 William Street, New York, NY, 10038, Attention: Executive Director.

(c) If to the DCA, to Department of Consumer Affairs of The City of New York, 42 Broadway, New York, NY, 10004, Attention: Living Wage Division.

(d) If to the Comptroller, to Office of the Comptroller of The City of New York, One Centre Street, New York, NY 10007, Attention: Chief, Bureau of Labor Law.

12. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of New York.

13. Obligor hereby irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York in New York County or the United States District Court for the Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (d) waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to any federal court other than the United States District Court for the Southern District of New York, and (iii) to move for a change of venue to a New York State Court outside New York County.

J-17

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

---

**APPENDIX G**  
**FORM OF MORTGAGE**

---

[THIS PAGE INTENTIONALLY LEFT BLANK]

# TABLE OF CONTENTS

Page

## FORM OF MORTGAGE AND SECURITY AGREEMENT (BUILDING LOAN)

From

**NEW DAWN CHARTER SCHOOLS,**  
a not-for-profit education corporation created and existing under  
the laws of the State of New York, having its principal office at  
238-242 Hoyt Street, Brooklyn, New York 11217, as Debtor

To

**BUILD NYC RESOURCE CORPORATION,**  
a local development corporation created pursuant to the Not-for-Profit Corporation Law  
of the State of New York at the direction of the Mayor of The City of New York, having  
its principal office at 110 William Street, New York, New York 10038,  
as Issuer and Mortgagee

And

**THE BANK OF NEW YORK MELLON,**  
a banking corporation duly organized and existing under the laws of the  
State of New York, together with any successor Trustee under the Indenture of Trust  
referred to herein, having a corporate trust office at  
240 Greenwich Street, New York, New York 10286,  
as Trustee and Mortgagee

Dated as of February 1, 2019

Build NYC Resource Corporation  
Revenue Bonds  
(New Dawn Charter Schools Project), Series 2019

Affecting that real property described in the Description of Land in the appendices to this  
Mortgage and Security Agreement (Building Loan)  
in the County of Kings, The City of New York, State of New York

Record and Return to:	Address	County	Block	Lot
Hawkins Delafield & Wood L.L.P.	238-242 Hoyt Street	Kings	409	38
7 World Trade Center	Brooklyn, New York			
250 Greenwich Street, 41 <sup>st</sup> Floor				
New York, New York 10007				
Attention: Arthur M. Cohen, Esq. Secured Principal Amount: \$				

## TABLE OF CONTENTS (continued)

	Page
Section 5.3. Sole Discretion of the Mortgagee .....	22
Section 5.4. Recovery of Sums Required To Be Paid .....	22
Section 5.5. Events of Default .....	23
Section 5.6. Remedies Following an Event of Default .....	24
Section 5.7. Appointment of a Receiver .....	26
Section 5.8. Foreclosure .....	26
Section 5.9. Non-Impairment .....	26
Section 5.10. No Remedy Exclusive .....	27
Section 5.11. Delay To Not Constitute Waiver .....	27
Section 5.12. Effect of Discontinuance of Proceedings .....	27
Section 5.13. Marshalling .....	28
Section 5.14. Actions and Proceedings .....	28
Section 5.15. Attorneys' Fees and Other Costs .....	28
Section 5.16. No Additional Waiver Implied by One Waiver .....	28
Section 5.17. Application of Proceeds .....	29
Section 5.18. Waiver of Moratorium .....	29
Section 5.19. Waiver of Notice .....	29
Section 5.20. Time of Essence .....	29

## ARTICLE VI

### LIMITATIONS ON LIABILITY

Section 6.1. No Liability of Debtor's Members, Managers, Officers, Directors, Employees and Agents .....	30
Section 6.2. Usury Laws .....	30

## ARTICLE VII

### MISCELLANEOUS

Section 7.1. Applicability of Section 13 of the Lien Law .....	31
Section 7.2. No Merger .....	31
Section 7.3. This Mortgage Constitutes A Commercial Transaction .....	31
Section 7.4. Consents .....	32
Section 7.5. Service of Process .....	32
Section 7.6. Notices .....	32
Section 7.7. Consent to Jurisdiction .....	33
Section 7.8. Mortgage for Benefit of Issuer, Debtor and Trustee .....	34
Section 7.9. Authorization .....	34
Section 7.10. Amendments and Modifications .....	34
Section 7.11. Applicable Law .....	34
Section 7.12. Date of Mortgage for Reference Purposes Only .....	34
Section 7.13. Incorporation of Certain Indenture Provisions .....	34
Section 7.14. Entire Agreement; Counterparts .....	35

## ARTICLE I

### DEFINITIONS; CONSTRUCTION

Section 1.1. Certain Definitions .....	6
Section 1.2. Construction .....	8

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF DEBTOR

Section 2.1. Representations and Warranties of Debtor .....	10
---	----

## ARTICLE III

### GENERAL AGREEMENTS OF DEBTOR

Section 3.1. Payment, Performance, Observance and Compliance .....	12
Section 3.2. Acknowledgment of Amount Due .....	12
Section 3.3. Security Agreement .....	12
Section 3.4. Ownership; Instruments of Further Assurance .....	12
Section 3.5. Creation of Liens; Indebtedness; Sale of Facility .....	13
Section 3.6. Release of Property .....	13
Section 3.7. Recording and Filing .....	13
Section 3.8. After-Acquired Property .....	16
Section 3.9. Additional Taxes or Charges .....	16
Section 3.10. Notice of Event of Default .....	16
Section 3.11. Insurance Requirements .....	16

## ARTICLE IV

### ASSIGNMENT OF LEASES AND RENTS

Section 4.1. Assignment of Leases and Rents .....	20
Section 4.2. No Cancellation or Modification of Leases .....	20
Section 4.3. Required Lease Provisions .....	20
Section 4.4. Debtor Not to Waive Rents .....	21
Section 4.5. Debtor to Furnish Rent Rolls .....	21

## ARTICLE V

### REMEDIES; EVENTS OF DEFAULT

Section 5.1. Protective Action .....	22
Section 5.2. Benefit of Section 254 of the Real Property Law .....	22

## TABLE OF CONTENTS (continued)

	Page
Section 7.15. Severability .....	35
Section 7.16. Waiver of Jury Trial .....	35
Section 7.17. Property Not Covered .....	35
Section 7.18. Assignment of Mortgage .....	35
Section 7.19. Mortgage Subject to Other Mortgage .....	35
Section 7.20. Legal Counsel; Mutual Drafting .....	35

## EXHIBITS

EXHIBIT A — Description of Land  
EXHIBIT B — Description of Facility Personality

**MORTGAGE AND SECURITY AGREEMENT  
(BUILDING LOAN)**

This **MORTGAGE AND SECURITY AGREEMENT (BUILDING LOAN)** dated as of the date set forth on the cover page hereof (this "Mortgage") from that entity identified on the cover page hereof as the Debtor to the Issuer and the Trustee as the Mortgagee (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Indenture or in the Loan Agreement, each as referred to below):

**WITNESSETH:**

**WHEREAS**, the Issuer is authorized pursuant to Section 1411(a) of the Not-for-Profit Corporation Law of the State of New York, as amended, and its Certificate of Incorporation and By-laws, (i) to promote community and economic development and the creation of jobs in the non-profit and for-profit sectors for the citizens of The City of New York (the "City") by developing and providing programs for not-for-profit institutions, manufacturing and industrial businesses and other entities to access tax-exempt and taxable financing for their eligible projects; (ii) to issue and sell one or more series or classes of bonds, notes and other obligations through private placement, negotiated underwriting or competitive underwriting to finance such activities above, on a secured or unsecured basis; and (iii) to undertake other eligible projects that are appropriate functions for a non-profit local development corporation for the purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, carrying on scientific research for the purpose of aiding the City by attracting new industry to the City or by encouraging the development of or retention of an industry in the City, and lessening the burdens of government and acting in the public interest; and

**WHEREAS**, the Issuer intends to issue the Bonds pursuant to the Authorizing and Bond Resolution and the Indenture; and

**WHEREAS**, to facilitate the Project and the issuance by the Issuer of the Bonds, (i) the Issuer will make the Loan of the proceeds of the Bonds, in the original principal amount of the Bonds, to the Debtor pursuant to the Loan Agreement and (ii) the Debtor will execute the Promissory Note in favor of the Issuer to evidence the Debtor's obligation under the Loan Agreement to repay the Loan, and the Issuer will endorse the Promissory Note to the Trustee; and

**WHEREAS**, the proceeds derived from the issuance of the Bonds are to be used to finance a portion of the cost of the Project constituting the Facility owned by the Debtor and located at the Facility Address; and

**WHEREAS**, in order to induce the Issuer to issue, and the initial owners to purchase, the Bonds, the Debtor is entering into this Mortgage; and

**WHEREAS**, pursuant to the Assignment of Mortgage, the Issuer intends to assign to the Trustee all of its right, title and interest as Mortgagee under this Mortgage;

plants, engines, motors, compressors, ducts, coal, oil and gas burning apparatus, pipes, pumps, plumbing, radiators, sinks, bath tubs, water closets, refrigerators, gas and electrical fixtures, communications apparatus, stoves, ranges, shades, screens, awnings, vacuum cleaning system, and sprinkler system or other fire prevention or extinguishing apparatus and materials, all of which shall be deemed to be, remain and form a part of the Facility and are covered by the lien of this Mortgage; excluding, however, the Institution's Property (as defined in Section 3.4(d) of the Loan Agreement) from the lien of this Mortgage.

**III**

All property insurance proceeds, awards, payments and other compensation payments, including interest thereon, and the right to receive the same, which are heretofore or hereafter made with respect to the Facility as a result of or in lieu of any taking by eminent domain (including any transfer made in lieu of the exercise of said right), the alteration of the grade of any street, or any other damage or injury to or decrease in the value of the Facility or the occurrence of any Loss Event (as defined in Section 6.1 of the Loan Agreement), to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Mortgagee, and of the reasonable attorneys' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment, subject to the terms of the Indenture and the Loan Agreement as to the application of all such amounts so received.

**IV**

All right, title and interest of the Debtor in and to (a) any and all present and future leases of space in any building(s) on or to be erected upon the Facility Realty; (b) any and all present and future subleases of space in any building(s) on or to be erected upon the Facility Realty; (c) all rents, issues and profits payable under any such leases and subleases; (d) any contracts for the sale of all or any portion of the Facility Realty or any building(s) or portions thereof on or to be erected upon the Facility Realty ("sale contracts"); and (e) any interest of the Debtor in contracts, agreements or other arrangements with architects, engineers and other professionals responsible for the design and supervision of the Project Work. Nothing in this paragraph is intended to constitute the consent of the Issuer, the Trustee or the Bondholders to any such leases, subleases or sale contracts.

**V**

All right, title and interest of the Debtor in all proceeds of any unearned premiums on any insurance policies (other than liability insurance policies) concerning the Facility, including, without limitation, the right to receive and apply the proceeds of any property insurance, judgments or settlements made in lieu thereof, for damages to the Facility, subject, however, to the terms of the Indenture and the Loan Agreement.

**VI**

All right, title and interest of the Debtor in all construction contracts, payment bonds, performance bonds, surety bonds, warranties, guarantees, maintenance, repair or replacement agreements and other contractual obligations of any contractor, subcontractor,

**NOW, THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure:

(i) payment of the Secured Principal Amount of the Bonds and the indebtedness represented thereby, and the redemption premium, if any, and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied in the Bonds, and

(ii) payment, performance and observance of all obligations of the Debtor under the Project Documents including this Mortgage,

whether now arising or hereafter arising, direct or indirect, absolute or contingent, joint or several, due or to become due, liquidated or unliquidated, secured or unsecured, original, renewed or extended, whether arising directly or acquired from others (all such indebtedness and obligations described in clauses (i) and (ii) above being collectively referred to herein as the "Obligations"), provided, however, that the maximum principal amount secured hereby shall not exceed the Secured Principal Amount, the Debtor does hereby grant, bargain, sell, convey, transfer, mortgage, grant a security interest in, pledge and assign to the Issuer and the Trustee as Mortgagee, and their respective assigns forever, its right, title and interest in and to the following (the "Mortgaged Property"), subject to the Mortgage and Security Agreement (Acquisition Loan):

**GRANTING CLAUSES**

**I**

The Facility Realty together with the tenements, hereditaments, servitudes, appurtenances, estate, rights, privileges, liberties, licenses, royalties, mineral, oil and gas rights, water, water rights, reversions, remainders and immunities thereunto belonging or appertaining which may from time to time be owned or leased by the Debtor, including all the right, title and interest of the Debtor in and to all streets, ways, alleys, roads, waters, water courses, water rights, waterways, passages, sewer rights and public places adjoining the Facility Realty and all easements and rights-of-way, public or private, and gores of land, now or hereafter used in connection therewith, together with all land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Facility Realty to the center line thereof, now or hereafter used in connection with the Facility Realty.

**II**

The Facility Personalty together with all fixtures, equipment, machinery, furniture, apparatus, appliances, fittings, chattels and articles of personal property of every kind and nature useable in connection with the operation of the improvements now or hereafter located at the Facility Realty, and all building materials and supplies of any nature whatsoever whether now owned or hereafter acquired, now or hereafter attached to, or used or usable in connection with any present or future operation or occupancy of the Facility and owned by the Debtor or in which the Debtor has or shall have an interest and all renewals and replacements thereof and additions and accessions thereto, including without limitation all partitions, elevators, lifts, steam and hot water boilers, heating and air conditioning equipment, lighting and power

**2**

surety, guarantor, manufacturer, dealer, laborer, supplier or materialman made with respect to the Facility or any part thereof.

**VII**

All the right, in the name and on behalf of the Debtor, to appear in and defend any action or proceeding brought with respect to the Facility and to commence any action or proceeding to protect the interest of the Mortgagee in the Facility, including, but not limited to, all commercial tort claims related to the Facility, the Improvements or the tangible personal property located at the Facility;

**VIII**

Any and all air rights, rights affecting development rights, zoning rights or other similar rights or interests which benefit or are appurtenant to the Facility and any proceeds arising therefrom.

**IX**

All agreements (other than the Loan Agreement) and/or contracts now or hereafter entered into by the Debtor for the Project Work or in connection with the Facility or any part thereof, and all permits, licenses, bonds, plans and specifications relative to the Project.

**X**

Any and all further estate, right, title, interest, property, claim and demand whatsoever of the Debtor in and to any of the above.

**XI**

Any and all other property of every kind and nature from time to time which was heretofore or hereafter is by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder, by the Debtor or by any other Person with or without the consent of the Debtor, to the Mortgagee which is hereby authorized to receive any and all such property at any time and at all times to hold and apply the same subject to the terms hereof.

**XII**

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims.

**TO HAVE AND TO HOLD** all the same with all privileges and appurtenances hereby conveyed and assigned or agreed or intended so to be, to the Mortgagee and their successors and to them and their assigns forever;



**THIS MORTGAGE** secures the payment, performance and observance of the Obligations and shall continue in full force and effect until the Obligations shall be paid and satisfied in full or otherwise provided for in accordance with their respective terms.

**THIS IS A BUILDING LOAN MORTGAGE**, the proceeds of which are advanced and to be advanced pursuant to the terms of a Building Loan Agreement dated as of even date herewith by and among the parties hereto.

Notwithstanding anything contained herein to the contrary, the maximum amount of Obligations secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is the Secured Principal Amount plus interest thereon, plus all amounts expended by the Mortgagee after default by the Debtor which constitute payment of (i) taxes, charges or assessments which may be imposed by law upon the Mortgaged Property; (ii) premiums on insurance policies covering the Mortgaged Property; (iii) reasonable expenses incurred in protecting or upholding the lien of this Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this Mortgage; (iv) reasonable expenses incurred in protecting the collateral encumbered by this Mortgage; or (v) any amount, cost or charge to which the Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity, or under express statutory authority.

**DEBTOR HEREBY** represents, warrants, covenants and agrees with the Mortgagee as set forth below:

5

**Improvements** shall mean (i) all buildings, structures, foundations, related facilities, fixtures and other improvements of every nature whatsoever existing on the Closing Date and hereafter erected or situated on the Land; (ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land (including any improvements or demolitions made as part of the Project Work pursuant to Section 3.2 of the Loan Agreement); and (iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

**Indenture** shall mean the Indenture of Trust, dated as of even date herewith, between the Issuer and the Trustee, and includes any and all amendments thereof and supplements thereto made in accordance therewith.

**Land** shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn, Block 409 and Lot 38, generally known by the street address 238-242 Hoyt Street, Brooklyn, New York, all as more particularly described in **Exhibit A** — "Description of Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c) of the Loan Agreement.

**Loan Agreement** shall mean the Loan Agreement, dated as of even date herewith, between the Issuer and the Debtor, and includes any and all amendments thereof and supplements thereto made in accordance therewith and with the Indenture.

**Loan** shall have the meaning assigned to that term in the Loan Agreement.

**Majority Holders** shall have the meaning assigned to that term in the Indenture.

**Mortgage and Security Agreement (Acquisition Loan)** shall mean the Mortgage and Security Agreement (Acquisition Loan), dated as of even date herewith, from the Debtor to the Issuer and the Trustee, as Mortgagee, and includes any and all amendments thereof and supplements thereto made in accordance therewith and with the Indenture.

**Mortgage and Security Agreement (Indirect Loan)** shall mean the Mortgage and Security Agreement (Indirect Loan), dated as of even date herewith, from the Debtor to the Issuer and the Trustee, as Mortgagee, and includes any and all amendments thereof and supplements thereto made in accordance therewith and with the Indenture.

**Mortgage** shall mean this Mortgage and Security Agreement (Building Loan) from the Debtor to the Issuer and the Trustee, as Mortgagee, and includes any and all amendments hereto and supplements hereto made in accordance herewith and with the Indenture.

**Opinion of Counsel** shall have the meaning assigned to that term in the Indenture.

**Outstanding** shall have the meaning assigned to that term in the Indenture.

7

## ARTICLE I

### DEFINITIONS; CONSTRUCTION

**Section 1.1. Certain Definitions.** The following terms shall have the respective meanings in this Mortgage, except as the context otherwise requires:

**Assignment of Mortgage** shall mean the Assignment of Mortgage and Security Agreement (Building Loan), dated as of even date herewith, from the Issuer to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Authorizing and Bond Resolution** shall mean the resolution of the Issuer adopted on June 12, 2018 authorizing the Project and the issuance of the Bonds.

**Bonds** shall mean the Issuer's \$20,685,000 Revenue Bonds (New Dawn Charter Schools Project), Series 2019 authorized, issued, executed, authenticated and delivered under the Indenture.

**Business Day** shall have the meaning assigned to that term in the Indenture.

**Closing Date** shall mean February 28, 2019, the date of the initial issuance and delivery of the Bonds.

**Debtor** shall mean New Dawn Charter Schools, a not-for-profit education corporation created and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Debtor under Section 8.9 or 8.20 of the Loan Agreement.

**Facility** shall mean, collectively, the Facility Personalty and the Facility Realty.

**Facility Address** shall mean 238-242 Hoyt Street, Brooklyn, New York 11217.

**Facility Personalty** shall mean those items of machinery, equipment, furniture and other items of personalty the acquisition and/or the installation of which is to be financed in whole or in part with the proceeds of the Bonds for installation or use at the Facility Realty as part of the Project pursuant to Section 3.2 of the Loan Agreement and described in **Exhibit B** — "Description of Facility Personalty", together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of Sections 3.5 and 6.4 of the Loan Agreement, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 3.5 of the Loan Agreement.

**Facility Realty** shall mean, collectively, the Land and the Improvements.

**Holders** shall have the meaning assigned to that term in the Indenture.

6

**Permitted Encumbrances** shall have the meaning assigned to that term in the Indenture.

**Person** shall have the meaning assigned to that term in the Indenture.

**Project** shall mean the acquisition, construction, renovation, equipping and furnishing of an approximately 24,000 square-foot building on an approximately 7,500 square-foot parcel of land located at 238-242 Hoyt Street, Brooklyn, New York, which is being operated by the Debtor as a public charter school for over-aged and under-credited students in grades 9-12.

**Project Documents** shall have the meaning assigned to that term in the Indenture.

**Project Work** shall mean (i) the design, construction and/or renovation of the Improvements, including the acquisition of building materials and fixtures, and (ii) the acquisition, whether by title or lease, of the Facility Personalty and any work required to install same.

**Promissory Note** shall have the meaning assigned to that term in the Loan Agreement.

**Purchase Price** shall have the meaning assigned to that term in the Indenture.

**Secured Principal Amount** shall mean \$\_\_\_\_\_.

**Security Documents** shall have the meaning assigned to that term in the Indenture.

**State** shall mean the State of New York.

**Section 1.2. Construction.** In this Mortgage, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Mortgage, refer to this Mortgage, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Closing Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Mortgage, and any table of contents appended to copies hereof, shall be solely for

8

convenience of reference and shall not constitute a part of this Mortgage, nor shall they affect its meaning, construction or effect.

(e) Unless the context indicates otherwise, references to designated "Exhibits," "Articles," "Sections," "Subsections," "clauses" and other subdivisions are to the designated Exhibits, Articles, Sections, Subsections, clauses and other subdivisions of or to this Mortgage.

(f) The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

9

(f) This Mortgage and the other Project Documents to which the Debtor is a party (x) have been duly authorized by all necessary action on the part of the Debtor, (y) have been duly executed and delivered by the Debtor, and (z) constitute the legal, valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with their respective terms.

(g) The assumption by the Debtor of its obligations hereunder will result in a direct financial benefit to the Debtor.

(h) The Debtor has power to enter into and perform this Mortgage, to create, pledge and grant the mortgage, pledge, assignment and security interest in the Mortgaged Property as provided in this Mortgage, and to own its property and assets.

(i) The Debtor is vested with good and marketable title to the Facility Realty, subject to no mortgage, lien, charge, pledge, assignment, security interest, conditional sale agreement or encumbrance of any kind whatsoever, other than Permitted Encumbrances.

(j) The Debtor is, as of the Closing Date, and after giving effect to all instruments evidencing or securing the Obligations will be, in a solvent condition.

(k) The execution and delivery of this Mortgage does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code as so constituted or under any other applicable law.

(l) No bankruptcy or insolvency proceedings are pending or contemplated by or, to the best knowledge of the Debtor, against, the Debtor.

(m) This Mortgage does not give any Person other than the Mortgagee the right to payment of the Obligations.

(n) The Debtor is duly authorized to mortgage and grant a security interest in the Mortgaged Property, and this Mortgage is a second lien upon the Mortgaged Property, subject only to the Mortgage and Security Agreement (Acquisition Loan) and Permitted Encumbrances.

(o) The Facility is not located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as the same may have been amended to date and is insured pursuant to a policy of insurance described in Section 3.11 hereof.

11

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF DEBTOR

**Section 2.1. Representations and Warranties of Debtor.** The Debtor does hereby represent and warrant that:

(a) The Mortgagor shall (i) duly and punctually pay as provided in the Bonds, as and when due and payable, all sums due and payable under the Bonds, the Loan Agreement, this Mortgage and the other Project Documents, and shall duly and punctually pay all other sums secured hereby, and (ii) satisfy all of its other obligations under the Project Documents in accordance with the terms of the Project Documents.

(b) The Debtor is a not-for-profit corporation duly created under the laws of the State pursuant to Article 56 of the Education Law and in accordance with the charter agreement between the Debtor and the Board of Regents of the University of the State of New York, as renewed from time to time (the "Charter Agreement"), is validly existing and in good standing under the laws of the State, is duly qualified to act within the terms of the Charter Agreement, is not in violation of any provision of its Organizational Documents or the Charter Agreement, has the requisite power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Mortgage and each other Project Document to which it is or shall be a party and represents that its correct legal name, jurisdiction of formation/existence, or, if applicable, sole place of business are as set forth on the cover page hereof.

(c) The execution, delivery and performance of this Mortgage and each other Project Document to which the Debtor is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Organizational Documents of the Debtor, or any indenture, agreement or other instrument to which the Debtor is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or, to the best of the Debtor's knowledge, anticipated, threatened by or against the Debtor or by before any court or administrative agency that would adversely affect the ability of the Debtor to perform its obligations under this Mortgage or any other Project Document to which it is or shall be a party.

(e) The Debtor has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Debtor as of the Closing Date in connection with the execution and delivery of this Mortgage and each other Project Document to which the Debtor is a party or in connection with the performance of the obligations of the Debtor hereunder and under each of the Project Documents.

10

## ARTICLE III

### GENERAL AGREEMENTS OF DEBTOR

**Section 3.1. Payment, Performance, Observance and Compliance.** The Debtor agrees to pay, perform, observe and comply with such of the Obligations to which it shall be subject (including this Mortgage) upon the terms and provisions required of the Debtor therein.

**Section 3.2. Acknowledgment of Amount Due.** The Debtor shall, upon request, furnish to the Mortgagee, in person within five (5) days, or, by mail within ten (10) days, a written statement duly acknowledged of the amount due under this Mortgage and whether any offsets or defenses exist against the Obligations.

**Section 3.3. Security Agreement.** This Mortgage is and shall be deemed to be a security agreement under the New York State Uniform Commercial Code with respect to the Mortgaged Property, and the Mortgagee shall have all the rights of a secured party thereunder with respect to that part of the Mortgaged Property that constitutes personal property subject thereto (sometimes referred to herein as the "Secured Property"). Upon request by the Mortgagee, the Debtor, at its sole cost and expense, shall execute and deliver to the Mortgagee any security agreement, financing or continuation statement or other document the Mortgagee reasonably deems necessary to protect or perfect its lien on the Mortgaged Property. If the Debtor shall default under this Mortgage, the Mortgagee, in addition to any other rights and remedies that it may have, shall have and may exercise immediately and without demand any and all rights and remedies granted to a secured party upon default under the New York State Uniform Commercial Code, including the right to take possession of the Secured Property or any part thereof or indicia thereof, and to take such other measures as the Mortgagee may deem necessary for the care, protection and preservation of the Secured Property. Upon request or demand of the Mortgagee, the Debtor shall, at the Debtor's sole cost and expense, assemble the Secured Property and make it available to the Mortgagee at a convenient place acceptable to the Mortgagee. The Debtor shall pay to the Mortgagee on demand all costs and expenses, including reasonable legal expenses and documented reasonable attorneys' fees and expenses, incurred or paid by the Mortgagee in protecting its interest in the Secured Property and in enforcing its rights hereunder with respect to the Secured Property. Any notice of sale, other disposition, or other intended action by the Mortgagee with respect to the Secured Property sent to the Debtor in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, other disposition, or other intended action set forth or specified in the notice shall conclusively be deemed to be commercially reasonable within the meaning of the New York State Uniform Commercial Code unless objected to in writing by the Debtor within five (5) days after receipt by the Debtor of the notice. The proceeds of any sale or other disposition of the Secured Property, or any part thereof, shall be applied to the payment of the Obligations as provided in Section 5.17.

**Section 3.4. Ownership; Instruments of Further Assurance.** The Mortgagee on behalf of the Debtor (at the sole cost and expense of the Debtor) shall defend the title of the Debtor to the Mortgaged Property and every part thereof and the Debtor agrees to warrant and defend such title against the claims and demands of all Persons whomsoever. The Debtor

12

covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, at the sole cost and expense of the Debtor, such supplements hereto and such further acts, instruments and transfers as the Mortgagee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Mortgagee all and singular the property herein described and subject to the lien and security interest of this Mortgage and those revenues pledged hereby and by the Indenture to the payment of the Obligations. Any and all property hereafter acquired (including the Institution's Property) which is of the kind or nature herein provided to be and become subject to the lien and security interest hereof shall *ipso facto*, and without any further conveyance, assignment or act on the part of the Debtor or the Mortgagee, become and be subject to the lien and security interest of this Mortgage as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Debtor heretofore made by this Section 3.4.

**Section 3.5. Creation of Liens; Indebtedness; Sale of Facility.** The Debtor covenants that this Mortgage is and will be a second lien upon the Mortgaged Property, subject only to the Mortgage and Security Agreement (Acquisition Loan) and Permitted Encumbrances. The lien of the Indenture is subject and subordinate to the liens of this Mortgage, the Mortgage and Security Agreement (Acquisition Loan) and the Mortgage and Security Agreement (Indirect Loan). The Debtor shall not create or suffer to be created any lien or charge upon or pledge of the Mortgaged Property or any part thereof, except the lien, charge and pledge created by this Mortgage and the other Permitted Encumbrances. The Debtor shall not incur any indebtedness or issue any evidences of indebtedness, other than the Obligations, secured by a lien on or pledge of the Mortgaged Property, except for Permitted Encumbrances or as set forth in the Loan Agreement. The Debtor further covenants and agrees not to sell, convey, transfer, lease, mortgage or encumber the Facility or any part thereof except as specifically permitted under the Loan Agreement, the Indenture, this Mortgage and the other Permitted Encumbrances, so long as any of the Obligations are Outstanding.

**Section 3.6. Release of Property.** Reference is made to the provisions of the Loan Agreement, including, without limitation, Sections 3.5 and 8.10 thereof, whereby the Debtor may withdraw from the Facility any Facility Personalty or fixtures or any right-of-way, easement, permit or license or unimproved portion thereof, all upon compliance with the terms and conditions of the Loan Agreement. At the request of the Debtor, and at the sole cost and expense of the Debtor, the Mortgagee shall release from the lien and security interest of this Mortgage, the Mortgage and Security Agreement (Acquisition Loan) and the Mortgage and Security Agreement (Indirect Loan), and release from the Loan Agreement, such portion of the property of the Facility so withdrawn upon compliance with the provisions of the Loan Agreement and shall confirm any such release.

**Section 3.7. Recording and Filing.** (a) The Debtor shall cause this Mortgage and all supplements hereto to be recorded (at the sole cost and expense of the Debtor) as a mortgage of real property in the appropriate offices of the Register of The City of New York or in such other offices as may be at the time provided by law as the proper place for the recordation thereof. In addition, the security interest of the Mortgagee, as created by this Mortgage, in the personal property and fixtures and the rights and other intangible interests herein described, shall be perfected by the filing of financing statements by the Debtor, at the

13

Opinion of Counsel to the Debtor. In the event the Debtor chooses to have the Mortgagee perform all or some of the Continuation Actions, as provided in clause "(A)(i)", the Mortgagee shall reasonably promptly perform such Continuation Actions at the Debtor's sole expense. The Debtor shall perform the obligations described hereinabove in clauses "(A)" (in every case) and "(B)" (if so requested) no later than ten (10) days prior to (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) each fifth (5th) anniversary thereafter, and/or (ii) the date (not covered by clause "(i)") on which a Continuation Action is to be taken to preserve the lien and security interest of this Mortgage.

If an Opinion of Counsel to the Debtor is requested pursuant to clause "(B)", then the Opinion of Counsel to the Debtor shall be addressed to the Debtor, the Issuer and the Mortgagee. If so requested, the Debtor shall deliver successive Opinions of Counsel in respect of (i)(y) the thirtieth (30th) anniversary of the Closing Date, and (z) every five-year anniversary thereafter through the term of the Bonds, and/or (ii) the date of any required Continuation Action not covered by clause "(i)", in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Debtor, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Mortgagee with instruments and papers prepared by the Debtor, or (ii) the Debtor through electronic filing, or (iii) the Mortgagee as to some Continuation Actions, and the Debtor as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Debtor, the Issuer and the Mortgagee then requisite to the maintenance of the perfection of the security interest of the Mortgagee in and to all property and interests which by the terms of this Mortgage are to be subjected to the lien and security interest of this Mortgage.

(d) Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Debtor (which shall be reasonably acceptable to the Mortgagee) shall have the right to designate a company to facilitate the filing of the Uniform Commercial Code financing statements.

(e) The Debtor and the Mortgagee (on behalf of itself and the Bondholders) acknowledge and agree that neither the Issuer nor the Mortgagee, nor any of their respective directors, members, officers, employees, servants, agents, persons under its control or supervision, or attorneys (including Bond Counsel to the Issuer), shall have any responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or rerecording of any document, or the failure to effect any act referred to in this Section, or the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

(f) All costs (including documented reasonable attorneys' fees and expenses) incurred in connection with the effecting of the requirements specified in this Section shall be paid by the Debtor.

15

sole cost and expense of the Debtor, in the office of the Secretary of State of the State in the City of Albany, New York, and in the offices of such Register of The City of New York, which financing statements shall be in accordance with Article 9 (Secured Transactions) of the New York State Uniform Commercial Code. All mortgage recording taxes, if any, and filing and recording charges and fees shall be payable by the Debtor.

(b) As of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code provides that an initial financing statement filed in connection with a "public-finance transaction" is effective for a period of thirty (30) years after the date of filing if such initial financing statement indicates that it is filed in connection with a public-finance transaction,

(ii) Section 9-102(67) of the New York State Uniform Commercial Code defines a "public-finance transaction" as a secured transaction in connection with which (x) debt securities are issued, (y) all or a portion of the debt securities issued have an initial stated maturity of at least twenty (20) years, and (z) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a security interest is a state or a governmental unit of a state, and

(iii) subject to any future change in law, the initial financing statement as shall be filed with respect to the security interest described above shall therefore have an effective period of thirty (30) years after the date of filing, for the purpose of determining the date by which continuation statements shall be filed.

(c) The parties hereto acknowledge and agree that, because the foregoing financing statements evidence collateral for the Bonds, and because the Bonds are municipal debt securities with a term that is at least twenty (20) years in duration, there is no need under the Uniform Commercial Code of the State of New York to re-file such financing statements in order to preserve the liens and security interests that they create for the period commencing with the Closing Date and terminating on the thirtieth anniversary of the Closing Date.

Subsequent to the initial filings, if it is necessary to re-file financing statements and/or file continuation statements and/or take any other actions to preserve the lien and security interest of this Mortgage (individually or collectively, the "Continuation Action(s)"), then the Debtor in a timely manner shall: (A) as applicable, (i) prepare and deliver to the Mortgagee all necessary instruments and filing papers, together with remittances equal to the cost of required filing fees and other charges, so that the Mortgagee may perform the Continuation Actions, or (ii) electronically perform the Continuation Actions and deliver to the Mortgagee written certification (upon which the Mortgagee may conclusively rely) that such performance has occurred, specifying the Continuation Actions performed, or (iii) perform some of the Continuation Actions in the manner described in clause "(i)" and the others in the manner described in clause "(ii)"; and (B) if requested by the Mortgagee (acting at the direction of the Majority Holders), deliver or cause to be delivered to the Issuer and the Mortgagee the Opinion of Counsel to the Debtor as described below. The Mortgagee may conclusively rely upon (y) when applicable, the certification referred to in clause "(A)(ii)," and (z) in all instances, the

14

(g) The Debtor agrees to perform all other acts (including the payment of all fees and expenses) necessary in order to enable the Mortgagee to comply with this Section, and with Section 7.07 of the Indenture, including but not limited to, providing prompt notice to the Mortgagee of any change in either the name or address of the Debtor. The Debtor agrees that the Mortgagee, if permitted by applicable law, may provide for the re-recording of this Mortgage or any other Security Document or the filing or re-filing of continuation statements without the cooperation of the Debtor as necessary at the Debtor's sole cost and expense.

**Section 3.8. After-Acquired Property.** Except as provided in Section 3.4(d) of the Loan Agreement, all right, title and interest of the Debtor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property (other than trade fixtures), or any part thereof, hereafter acquired, constructed, assembled or placed by or at the direction of the Debtor on or in the Facility (other than trade fixtures), and all conversions and proceeds of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of the Debtor, shall become subject to the security and lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Debtor and specifically described in the Granting Clauses hereof; but at any and all times the Debtor, on demand, will execute, acknowledge, deliver to the Mortgagee and the Debtor will cause to be recorded or filed as provided in Section 3.7, any and all such further assurances and mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purposes of expressly and specifically subjecting the same to the security and lien of this Mortgage.

**Section 3.9. Additional Taxes or Charges.** If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on this Mortgage, the Debtor will pay such tax, with interest and penalties thereon, if any. If at any time the United States of America, any state thereof or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to this Mortgage or any of the other Security Documents, the Debtor agrees to pay for the same, with interest and penalties thereon, if any. Nothing contained in this Section 3.9 shall obligate the Debtor to indemnify the Mortgagee for any income tax liability of the Mortgagee arising by reason of this Mortgage.

**Section 3.10. Notice of Event of Default.** The Debtor shall immediately notify the Mortgagee in writing of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Security Document. Any notice required to be given pursuant to this Section shall be signed by the Debtor and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken to cure a default, the notice should plainly state this fact.

**Section 3.11. Insurance Requirements.** In addition to any insurance required pursuant to Section 8.1 of the Loan Agreement, the Debtor does hereby warrant and agree as follows:

(a) At all times throughout the term of this Mortgage, including without limitation during any period of construction, reconstruction or substantial renovation of the Facility, the Debtor shall maintain insurance, or cause there to be maintained insurance, if

16

applicable, with respect to the Facility, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Debtor. In addition to this general requirement, such insurance shall, for purposes of subsections (b) through (f) of this Section 3.11, include, without limitation, insurance coverage described in paragraphs (i) through (iv) below (hereinafter, "Specific Coverage"):

(i) (A) Property damage insurance, and (B) during any period of construction, reconstruction or substantial renovation of the Facility (to the extent not otherwise covered by property damage insurance), Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by all risk of physical loss at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Issuer, the Debtor or the Trustee from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to the greater of (A) 110% of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Debtor) not less often than once every three years, at the expense of the Debtor, and (B) the principal amount of the Outstanding Bonds; any such insurance may provide that the insurer is not liable to the extent of the first \$10,000 with the result that the Debtor is its own insurer to the extent of \$10,000 of such risks;

(ii) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus located on the Facility from risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar business enterprises;

(iii) To the extent the Facility may be located in a flood zone, or if otherwise required by federal law, flood certification or flood insurance, to the extent not covered by property damage insurance, in an amount equal to the greater of the full replacement cost or the maximum amount then available under the National Flood Insurance Program; and

(iv) Such other insurance, including revision of the insurance requirements set forth above, in such amounts and against such insurable hazards as the Trustee (at the specific written direction of the Majority Holders) from time to time may reasonably require.

(b) All Specific Coverage required by Section 3.11(a) shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and having an A.M. Best rating of "A" or better. At least once every two Fiscal Years, the Debtor agrees to deliver a certificate of an independent insurance consultant to the Trustee which indicates that the insurance then maintained by the Debtor meets the requirements of this Section 3.11 and Section 8.1 of the Loan Agreement.

17

Facility with any excess to be retained by the Debtor) shall be deposited in the Renewal Fund and applied in accordance with Section 6.2 of the Loan Agreement and the Indenture.

(e) The Debtor shall deliver or cause to be delivered to the Trustee the following documents evidencing compliance with the Specific Coverage requirements of this Section 3.11: (i) on or prior to the Closing Date: (A) a broker's certificate of coverage, upon which the Trustee may conclusively rely in order to confirm compliance with the requirements of this Section 3.11, confirming that the Debtor, as of the Closing Date, has obtained Specific Coverage in accordance with the requirements of this Section 3.11, and (B) evidence of property insurance and certificates or other evidence of other required insurance and, (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Debtor shall furnish the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Mortgage.

(f) The Debtor shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Trustee (upon the specific written direction of the Majority Holders) to collect from insurers for any loss covered by any insurance required to be obtained by this Section 3.11. The Debtor shall not do any act, or suffer or permit any act to be done, whereby any Specific Coverage required by this Section 3.11 would or might be suspended or impaired.

(g) THE DEBTOR ACKNOWLEDGES THAT THE INSURANCE SPECIFIED HEREIN AND IN THE LOAN AGREEMENT IS NOT IN ANY WAY A REPRESENTATION BY THE ISSUER OR THE TRUSTEE THAT SUCH INSURANCE, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE DEBTOR.

19

(c) Each of the policies evidencing the Specific Coverage required above to be obtained shall:

(i) designate the Debtor and the Trustee as additional insureds as their respective interests may appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the property of the Facility be endorsed and made payable to the Trustee and shall name the Trustee as a loss payee under the standard loss payee clause and as a mortgagee under the terms of a standard mortgage clause, which insurance proceeds shall be paid over to the Trustee and deposited in the Renewal Fund;

(iii) provide that there shall be no recourse against the Trustee for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iv) provide that in respect of the interest of the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Debtor or any other Person and shall insure the Trustee regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(v) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Trustee to the extent that such other insurance provides the Trustee with contingent and/or excess liability insurance with respect to its interest in the Facility;

(vi) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Trustee until at least thirty (30) days, or ten (10) days due to nonpayment of premium, after receipt by the Trustee of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

(vii) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and

(viii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of its properties, require to be contained in policies or interim insurance contracts with respect to facilities similar to the Facility owned or operated by it.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility (except if such Net Proceeds so received for any Loss Event shall be less than \$50,000 in which event such Net Proceeds shall be paid directly to the Debtor and applied by the Debtor to the rebuilding, replacement, repair and restoration of the

18

## ARTICLE IV

### ASSIGNMENT OF LEASES AND RENTS

**Section 4.1. Assignment of Leases and Rents.** The Debtor hereby assigns to the Mortgagee the rents, issues and profits of the Facility (other than any amounts paid pursuant to the Loan Agreement) as further security for the payment of the Obligations, and the Debtor grants to the Mortgagee the right to enter upon and to take possession of the Facility for the purpose of collecting the same and to let the Facility or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses, on account of the Obligations. This assignment and grant shall continue in effect until the Obligations are paid. The Mortgagee hereby waives the right to enter upon and to take possession of the Facility for the purpose of collecting said rents, issues and profits, and the Debtor shall be entitled to collect and receive said rents, issues and profits and to apply same in payment of the amounts becoming due on the Obligations, operating expenses related to the Facility and other expenses (capital or otherwise) consistent with the purposes of the Debtor until the occurrence of an Event of Default hereunder. The Debtor will not, without the written consent of the Mortgagee, receive or collect rent from any tenant of the Facility or any part thereof for a period of more than one month in advance. Upon the occurrence of an Event of Default hereunder, the Debtor will pay monthly in advance to the Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Facility or of such part thereof as may be in the possession of the Debtor, and upon default in any such payment will vacate and surrender the possession of the Facility to the Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings.

**Section 4.2. No Cancellation or Modification of Leases.** The Debtor shall not, without the prior written consent of the Mortgagee, make, or suffer to be made, any leases or cancel or modify any leases or accept prepayments of installments of rent for a period of more than one month in advance or further assign the whole or any part of the rents. No lease or contract (other than the Loan Agreement) covering all or any part of the Mortgaged Property shall be valid or effective without the prior written approval of the Mortgagee. The Mortgagee shall have all of the rights against the Debtor of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York. In respect of any lease, the Debtor will (i) fulfill or perform each and every provision thereof on its part to be fulfilled or performed; (ii) promptly send copies of all notices of default which either shall send or receive thereunder to the Mortgagee; and (iii) enforce, short of termination thereof, the performance or observance of the provisions thereof. Nothing contained in this Mortgage shall be deemed to impose on the Mortgagee any of the obligations of the lessor under the leases.

**Section 4.3. Required Lease Provisions.** Subject to Section 4.1, all leases must provide that the tenant thereunder shall pay to the Mortgagee upon an Event of Default hereunder all sums due under the lease upon notice to the tenant from the Mortgagee, and that the Debtor, and any tenant shall, at the Mortgagee's option, furnish the Mortgagee with an estoppel and attornment letter as to the leases in form and substance reasonably acceptable to the Mortgagee.

20

**Section 4.4. Debtor Not to Waive Rents.** The Debtor will not waive, release, reduce, discount or otherwise discharge or assign to any Person other than the Mortgagee the leasehold payments, rents, issues and profits of the Facility (other than as contemplated by the Loan Agreement), or cancel, abridge or otherwise modify any lease of all or any part of the Facility. In addition, the Debtor will observe and comply with all of its obligations as lessor under any such lease, will promptly notify the Mortgagee if it receives any default notice thereunder and forward a copy of the default notice to the Mortgagee, and enforce any default thereunder by the tenant. The Debtor shall not, however, terminate any such lease without the prior written consent of the Mortgagee.

**Section 4.5. Debtor to Furnish Rent Rolls.** Only to the extent that a Person or Entity other than the Debtor occupies the Facility, the Debtor will furnish to the Mortgagee, within fifteen (15) Business Days after mailing to the Debtor of a written request therefor, a detailed statement in writing, duly sworn, and covering the period of time specified in such request, showing all income derived from the operation of the Facility and all disbursements made in connection therewith, and containing a list of the names of all tenants of the Facility specified in such request, showing all income derived from the operation of the Facility and occupants other than those claiming possession through such tenants, the portion or portions of the Facility occupied by such tenant and occupant, the rents and other charges payable under the terms of their leases or other agreements, and the periods covered by such leases or other agreements.

action, for a default or defaults by the Debtor existing at the time such earlier action was commenced.

**Section 5.5. Events of Default.** Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Debtor to pay any amount that has become due and payable hereunder, and continuance of such failure for a period of two (2) Business Days after written notice has been given to the Debtor specifying the nature of such default by the Mortgagee;

(b) Failure of the Debtor to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 5.5(a) above) and (1) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Debtor specifying the nature of such failure by the Mortgagee, or (2) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Debtor fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice;

(c) The Debtor shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(d) A proceeding or case shall be commenced, without the application or consent of the Debtor in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Debtor or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Debtor shall be entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); the terms "dissolution" or "liquidation" of the Debtor as used above shall not be construed to prohibit any action otherwise permitted by Section 8.20 of the Loan Agreement;

(e) Any representation or warranty made by the Debtor (i) in the application and related materials submitted to the Issuer for approval of the Project or the transactions contemplated by this Mortgage, (ii) herein, (iii) in any other Project Document, or (iv) in any

21

23

## ARTICLE V

### REMEDIES; EVENTS OF DEFAULT

**Section 5.1. Protective Action.** The Mortgagee (at the direction of the Majority Holders) may take such action as the Mortgagee deems reasonably appropriate upon ten (10) days prior written notice to the Debtor (except that no such prior notice shall be required if in the reasonable judgment of the Mortgagee an emergency condition shall exist that threatens to do severe damage to or destruction of the Facility) to protect the Mortgaged Property or the status or priority of the lien of this Mortgage thereon including, but not limited to, entry upon the Facility to protect it from deterioration or damage, or to cause the Mortgaged Property to be put in compliance with any governmental, insurance rating or contract requirements; dispossession of the Debtor if necessary to remedy an emergency condition; payments of amounts due on liens having priority over this Mortgage if such lien constitutes a default pursuant to this Mortgage; curing any default by the Debtor under any of the Security Documents including this Mortgage; payment of any tax or charge for purposes of assuring the priority or enforceability of this Mortgage if failure to pay such tax by the Debtor is a default pursuant to this Mortgage; obtaining insurance on the Mortgaged Property; or commencement or defense of any legal action or proceeding to assert or protect the validity or priority of the lien of this Mortgage. The Debtor agrees to reimburse the Mortgagee for all expenses in taking any such action, on demand, with interest at a rate being the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under the applicable usury law, and the amount thereof shall be secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the Obligations heretofore stated.

**Section 5.2. Benefit of Section 254 of the Real Property Law.** Nothing herein contained shall be construed as depriving the Mortgagee of any right or advantage available under Section 254 of the Real Property Law of the State of New York, but all covenants herein differing therefrom shall be construed as conferring additional and not substitute rights and advantages.

**Section 5.3. Sole Discretion of the Mortgagee.** Wherever pursuant to this Mortgage the Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to the Mortgagee, the decision of the Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of the Mortgagee and shall be final and conclusive. Notwithstanding the foregoing, if, pursuant to the terms of the Indenture or this Mortgage, a stated percentage of Holders of the Outstanding Bonds has the right to direct the Mortgagee in the exercise of any such right, such direction shall be final and conclusive, provided that such direction shall not be arbitrary or capricious.

**Section 5.4. Recovery of Sums Required To Be Paid.** The Mortgagee shall have the right (at the written direction of the Majority Holders) from time to time to take action to recover any sum or sums which constitutes a part of the Obligations as the same becomes due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other

22

report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall, in any case, prove to be false, misleading or incorrect in any material respect as of the date made;

(f) The Debtor shall be in default under any other mortgage covering any part of the Mortgaged Property and proceedings shall have been commenced to foreclose such mortgage, whether it be superior or inferior to the lien of this Mortgage; or

(g) An "Event of Default" under any Security Document shall occur and be continuing.

**Section 5.6. Remedies Following an Event of Default.** Upon the occurrence of an Event of Default hereunder, the Mortgagee may, in addition to any other rights or remedies available to it hereunder or elsewhere, take such action, without notice or demand, as it deems advisable, as directed by the Majority Holders, to protect and enforce its rights against the Debtor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Mortgagee, as directed by the Majority Holders, may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee:

(a) enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys, and dispossess the Debtor and its agents and servants therefrom, and thereupon the Mortgagee, as directed by the Majority Holders, may:

- (1) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct business thereat and therewith;
- (2) complete any construction, renovation, rebuilding or repairing of the Mortgaged Property in such manner and form as the Mortgagee deems advisable;
- (3) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property;
- (4) exercise all rights and powers of the Debtor with respect to the Mortgaged Property, whether in the name of the Debtor or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Mortgaged Property and every part thereof; and
- (5) apply the receipts from the Mortgaged Property to the payment of the Obligations in accordance with Section 8.03 of the Indenture;

(b) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this

24

Mortgage for the portion of the Obligations then due and payable, subject to the continuing security and lien of this Mortgage for the balance of the Obligations not then due;

(c) institute proceedings to foreclose the lien of this Mortgage against all or, from time to time, against any part of the Mortgaged Property and to have the same sold under the judgment or decree of a court of competent jurisdiction to the highest bidder, at public or private sale, subject to statutory and other legal requirements, if any, including all right, title and interest, claim and demand therein and thereto and all right of redemption thereof;

(d) sell, assign or transfer the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of the Debtor therein and right of redemption thereof, pursuant to power of sale or otherwise, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law (provided that ten (10) days notice of sale of the Mortgaged Property shall be deemed reasonable notice) for such price and form of consideration as the Mortgagee may determine or as may be required by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein;

(f) apply for the appointment of or appoint a trustee, receiver, liquidator or conservator of the Mortgaged Property, without regard for the adequacy of the security for the Obligations and without regard for the solvency of any Person liable for the payment of the Obligations whether or not in connection with an action to foreclose this Mortgage;

(g) take possession of the Mortgaged Property (which shall, to the extent practicable, be assembled and made available to the Mortgagee by the Debtor at such place in New York City or elsewhere as may be required by the Mortgagee) and otherwise exercise any and all of the rights of secured parties under the New York State Uniform Commercial Code-Secured Transactions;

(h) without prejudice to its right to bring an action for foreclosure of this Mortgage, sell the Mortgaged Property, or any part thereof, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted and pursuant to the procedures provided by applicable law, including, without limitation, Article 14 of the Real Property Actions and Proceedings Law of the State of New York and any amendments or substitute statutes in regard thereto, at one or more sales as a single parcel or in parcels, and at such time and place and upon such terms and after such notice thereof as may be required or permitted by law; or

(i) pursue such other remedies as the Mortgagee may have under applicable law.

Further, the Debtor, if there shall occur an Event of Default, shall pay monthly in advance to the Mortgagee, or to any receiver appointed at the request of the Mortgagee to collect the rents, revenues, issues, income and profits of the Mortgaged Property, the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or of such part thereof as may be in the possession of the Debtor. Upon default in the payment thereof, the Debtor shall vacate

25

foreclosing this Mortgage or from enforcing its rights hereunder or under any other instrument governing or securing the Obligations, (c) shall preclude or bar the Mortgagee upon foreclosure from obtaining a deficiency judgment against the Debtor, against any subsequent owner of the Mortgaged Property who assumes the Obligations on a non-recourse basis, or against any other Person liable for the payment and performance of the Obligations (subject to the provisions of Section 6.1), (d) shall require the Mortgagee to accept a part of the Mortgaged Property (as distinguished from its entirety) as payment of the debt secured hereby, or (e) shall compel the Mortgagee to accept or allow any appointment of the debt secured hereby to or among any separate parts of the Mortgaged Property.

**Section 5.10. No Remedy Exclusive.** No remedy conferred upon or reserved to the Mortgagee hereunder is or shall be deemed to be exclusive of any other available remedy or remedies. Each such remedy shall be distinct, separate and cumulative, shall not be deemed to be inconsistent with or in exclusion of any other available remedy, may be exercised in the discretion of the Mortgagee at any time, in any manner, and in any order, and shall be in addition to and separate and distinct from every other remedy given the Mortgagee under this Mortgage or any other Security Document or now or hereafter existing in favor of the Mortgagee at law or in equity or by statute. Without limiting the generality of the foregoing, the Mortgagee shall have the right to exercise any available remedy to recover any amount due and payable hereunder without regard to whether any other amount is due and payable, and without prejudice to the Mortgagee to exercise any available remedy for other Events of Default existing at the time the earlier action was commenced.

**Section 5.11. Delay To Not Constitute Waiver.** Any delay, omission or failure by the Mortgagee to insist upon the strict performance by the Debtor of any of the covenants, conditions and agreements herein set forth to be exercised by it or to exercise any right or remedy available to it upon the occurrence of an Event of Default hereunder shall not impair any such right or remedy or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, by injunction or other appropriate legal or equitable remedy, strict compliance by the Debtor with all of the covenants, conditions and agreements herein to be exercised by it, or of the right to exercise any such rights or remedies if such default by the Debtor be continued or repeated. Any failure of the Mortgagee to exercise the option to accelerate the maturity of Obligations secured hereby, or any forbearance by the Mortgagee before or after any exercise of any such option, or any forbearance to exercise any other remedy of the Mortgagee, or any withdrawal or abandonment of the Mortgagee of any of its rights in any one circumstance shall not be construed as a waiver of any option, power, remedy or right of the Mortgagee hereunder. The rights and remedies of the Mortgagee expressed and contained in this Mortgage are cumulative and none of them shall be deemed to be exclusive of any other or of any right or remedy the Mortgagee may now or hereafter have in law or in equity. The election of any one or more remedies shall not be deemed to be an election of remedies under any statute, rule, regulation or case law. The covenants of this Mortgage shall run with the Mortgaged Property and other properties and the estates hereby mortgaged and bind the Debtor and its assigns, legal representatives and successors and shall inure to the benefit of the Mortgagee, its successors and assigns.

**Section 5.12. Effect of Discontinuance of Proceedings.** In case any proceedings taken by the Mortgagee on account of any Event of Default hereunder shall have

27

and surrender possession of the Mortgaged Property to the Mortgagee or such receiver, and upon a failure so to do may be evicted by summary proceedings.

If an Event of Default shall happen and be subsisting, in case there shall be pending proceedings for the bankruptcy or for the reorganization of the Debtor under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Debtor or in the case of any other similar judicial proceedings relative to the Debtor, or to the credits or property of the Debtor, the Mortgagee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Mortgage, irrespective of whether the principal of the Obligations or any amount hereunder shall then be due and payable as therein or herein expressed or by declaration or otherwise, and irrespective of whether the Mortgagee shall have made any demand pursuant to the provisions of this Section 5.6 or of Section 8.01 of the Indenture, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Mortgagee allowed in such judicial proceedings relative to the Debtor, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of their charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Mortgagee, and to pay to the Mortgagee any amount due it for compensation and expenses, including reasonable counsel fees and expenses incurred by it up to the date of such distribution.

**Section 5.7. Appointment of a Receiver.** Upon the occurrence of an Event of Default, the Mortgagee shall be entitled to the appointment of a receiver. The right to have a receiver appointed shall be a matter of strict right and without regard to the value or adequacy of the security and such receiver may enter upon and take possession of the Mortgaged Property, collect the rents, issues and profits therefrom and apply the same as the court may direct, such receiver to have all of the rights and powers as a receiver may have under the laws of the State of New York. The expenses, including, without limitation, receiver's fees, counsel fees and expenses, costs and agent's commissions and compensation incurred pursuant to the powers herein granted shall be added to the principal portion of the Obligations and secured hereby.

**Section 5.8. Foreclosure.** In a case of a foreclosure sale or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety in one parcel (or as one integrated unit) or separate parcels (or one or more of the interests comprising the Mortgaged Property separately from the others) in such manner or order as the Mortgagee in its sole and absolute discretion may elect. If the Mortgagee so elects it may sell the remainder of the property except for the land, buildings and improvements, at one or more separate sales in the manner provided by the Uniform Commercial Code of the State of New York. One or more exercises of the powers herein granted shall neither extinguish nor exhaust such powers, until the entire property is sold or the Obligations secured hereby are paid in full or otherwise provided for in accordance with their terms.

**Section 5.9. Non-Impairment.** No provision of this Mortgage: (a) is or shall be deemed to be a release or impairment of any of the Obligations including this Mortgage, (b) shall preclude the Mortgagee, upon the occurrence of an Event of Default hereunder, from

26

been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every such case, the Debtor, the Mortgagee and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Mortgagee shall continue as in effect prior to the commencement of such proceedings.

**Section 5.13. Marshalling.** The Debtor agrees, to the fullest extent that it may lawfully do so, that in any foreclosure or other action brought by the Mortgagee, it will not, at any time, insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this Mortgage or any right or remedies the Mortgagee may have hereunder or by law.

**Section 5.14. Actions and Proceedings.** The Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding which the Mortgagee, in its discretion, determines to be brought to protect its interest in the Mortgaged Property. The Mortgagee shall further have the right, from time to time, to sue for any sums required to be paid under the terms of this Mortgage or any other mortgage to which this Mortgage is expressly subordinate, as the same become due, without regard to whether or not the principal sums secured or any other sums secured by this Mortgage shall be due and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure or any other action for a default or defaults by the Debtor existing at the time such earlier action was commenced.

**Section 5.15. Attorneys' Fees and Other Costs.** The Debtor agrees to bear all costs, fees and expenses including court costs and reasonable expenses (including documented reasonable attorneys' fees and disbursements) for legal services of or incidental to the enforcement of any provisions hereof (whether incurred during the continuance of an Event of Default or by the Mortgagee or any Holders of the Bonds), or enforcement, compromise or settlement of any of the collateral pledged hereunder, and for the curing thereof, or defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise, and will pay to the Mortgagee any such expenses incurred, and such expenses shall be deemed part of the Obligations secured by this Mortgage and shall be collectible in like manner as the Obligations secured by this Mortgage, and until so paid shall bear interest at a rate being the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted under the applicable usury law. All rights and remedies of the Mortgagee shall be cumulative and may be exercised singly or concurrently.

**Section 5.16. No Additional Waiver Implied by One Waiver.** In the event any covenant or agreement contained in this Mortgage should be breached by the Debtor and thereafter waived by the Mortgagee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the Mortgagee. No course of dealing between the Issuer and/or the Debtor and/or any other Person or any delay or omission on the part of the Mortgagee in exercising any rights hereunder shall operate as a waiver.

28

**Section 5.17. Application of Proceeds.** All proceeds derived through the exercise of any remedies or the commencement of any proceedings under this Mortgage shall be applied in accordance with Section 8.03 of the Indenture.

**Section 5.18. Waiver of Moratorium.** The Debtor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, or the exemption from execution from sale of any or all of the property, now or any time hereafter enacted or enforced, nor claim, take or insist upon the benefit of any law now or hereafter enacted or enforced providing for the valuation or appraisal of the Mortgaged Property or any part thereof prior to any sale or sales thereof which may be made pursuant to any provisions herein or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted or enforced to redeem the property so sold or any part thereof. The Debtor, to the extent permitted by law, hereby expressly waives the benefit or advantage of any such law or laws and covenants not to delay or impede the execution of any power herein granted or delegated to the Mortgagee.

**Section 5.19. Waiver of Notice.** The Debtor shall not be entitled to any notices of any nature whatsoever from the Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by the Mortgagee to the Debtor, and the Debtor hereby expressly waives the right to receive any notice from the Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of such notice.

**Section 5.20. Time of Essence.** The Debtor agrees that where, by the terms of the Bonds, this Mortgage or any of the other Project Documents, a day is named or a time is fixed for the payment of any sum of money or the performance of any agreement, the day and time stated enters into the consideration, and is of the essence, of the whole agreement between the Debtor and the Mortgagee.

29

## ARTICLE VII

### MISCELLANEOUS

**Section 7.1. Applicability of Section 13 of the Lien Law.** This Mortgage is given in order to secure funds to pay for the Project and by reason thereof, it is intended that this Mortgage shall be superior to any laborers', mechanics' or materialmen's liens which may be placed upon the Mortgaged Property subsequent to the recordation hereof. The Debtor shall, therefore, in compliance with Section 13 of the New York Lien Law, receive the advances secured hereby and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvements of the Facility Realty and shall apply the same first to the payment of the cost of the improvements of the Facility Realty before using any part of the total of the same for any other purpose.

**Section 7.2. No Merger.** It is the intention of this Mortgage that if the Mortgagee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, or any interest therein or lien thereon under any other mortgage or instrument, then, and until the Obligations have been paid in full or otherwise discharged or satisfied in accordance with their terms, the interest of the Mortgagee hereunder and the security interest created by this Mortgage shall not merge or become merged in or with the estate and interest of the Mortgagee as the holder and owner of title to all or any portion of the Mortgaged Property, or in or with the interest of the Mortgagee under the lien of such other mortgage or instrument, and that, until such payment, discharge or satisfaction, the estate of the Mortgagee in the Mortgaged Property and the security interest created by this Mortgage and the interest of the Mortgagee hereunder shall continue in full force and effect to the same extent as if the Mortgagee had not acquired title to all or any portion of the Mortgaged Property or any other interest therein or lien thereon. If, however, the Mortgagee shall consent to such merger or if such merger shall nevertheless occur without its consent, then this Mortgage shall attach to, and cover and be a conveyance of the fee title or any other estate, title or interest in the Mortgaged Property acquired by the Debtor, and the same shall be considered as granted, released, assigned, transferred, pledged, conveyed and set over to the Mortgagee and this Mortgage spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, conveyed, set over and spread, provided, however, the Debtor shall pay any and all transfer, recording or other taxes in connection therewith.

**Section 7.3. This Mortgage Constitutes A Commercial Transaction.** THE DEBTOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A COMMERCIAL TRANSACTION, AND HEREBY VOLUNTARILY AND KNOWINGLY WAIVES, TO THE EXTENT PERMITTED BY LAW, ITS RIGHTS TO NOTICE AND HEARING AS ALLOWED UNDER ANY STATE OR FEDERAL LAW OR OTHER RIGHT WITH RESPECT TO ANY PREJUDGMENT REMEDY OR OTHER RIGHT WHICH THE MORTGAGEE MAY DESIRE TO USE. FURTHER, THE DEBTOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, THE BENEFITS OF ALL PRESENT AND FUTURE VALUATION, APPRAISEMENT, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS.

31

## ARTICLE VI

### LIMITATIONS ON LIABILITY

**Section 6.1. No Liability of Debtor's Members, Managers, Officers, Directors, Employees and Agents.** It is agreed that the members, managers, directors, officers, employees and agents of the Debtor shall have no personal liability hereunder. All covenants, stipulations, promises, agreements and obligations of the Debtor contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Debtor and not of any member, manager, director, officer, employee or agent of the Debtor in his individual capacity, and no recourse shall be had hereunder for the payment of the principal of any debt or interest thereon or any of the Obligations or for any claim based thereon or hereunder against any member, manager, director, officer, employee or agent of the Debtor or any natural person executing this Mortgage.

**Section 6.2. Usury Laws.** This Mortgage and all other Security Documents are subject to the express condition that at no time shall the Issuer or the Debtor be obligated or required to pay interest on the principal balance due under the Obligations at a rate which could subject the holder of the Obligations to either civil or criminal liability as a result of being in excess of the maximum interest rate which the Issuer or the Debtor, as applicable, is permitted by law to contract or agree to pay. If by the terms of this Mortgage or any of the other Security Documents, the Issuer or the Debtor is at any time required or obligated to pay interest on the principal balance due under the Obligations at a rate in excess of such maximum rate, the rate of interest under the Obligations shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate.

30

**Section 7.4. Consents.** Wherever in this Mortgage the prior consent of the Mortgagee is required, the consent of the Mortgagee given as to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. Any such consents shall be in writing.

**Section 7.5. Service of Process.** The Debtor represents that it is subject to service of process in the State and covenants that it will remain so subject until all obligations, covenants and agreements of the Debtor under this Mortgage shall be satisfied and met. If for any reason the Debtor should cease to be so subject to service of process in the State, the Debtor hereby irrevocably consents to the service of all process, pleadings, notices or other papers in any judicial proceeding or action by designating and appointing the Executive Director of the Debtor at 242 Hoyt Street, Brooklyn, New York 11217, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Debtor as a result of any of its obligations under this Mortgage. If such appointed agent shall cease to act or otherwise cease to be subject to service of process in the State, the Debtor hereby irrevocably designates and appoints the Secretary of State of the State of New York as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the Debtor as a result of any of its obligations under this Mortgage; provided, however, that the service of such process, pleadings, notices or other papers shall not constitute a condition to the Debtor's obligations hereunder.

For such time as any of the obligations, covenants and agreements of the Debtor under this Mortgage remain unsatisfied, the Debtor's agent(s) designated in this Section 7.5 shall accept and acknowledge on the Debtor's behalf each service of process in any such suit, action or proceeding brought in any such court. The Debtor agrees and consents that each such service of process upon such agents and written notice of such service to the Debtor in the manner set forth in Section 7.6 shall be taken and held to be valid personal service upon the Debtor whether or not the Debtor shall then be doing, or at any time shall have done, business within the State and that each such service of process shall be of the same force and validity as if service were made upon the Debtor according to the laws governing the validity and requirements of such service in the State, and waives all claim of error by reason of any such service.

Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Debtor or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Debtor.

**Section 7.6. Notices.** All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including bank wire, teletype or similar writing) and shall be given to such party or other Person, addressed to it, at its address or teletype number set forth below or such other address or teletype number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

32

Party	Address
To the Debtor	New Dawn Charter Schools 242 Hoyt Street Brooklyn, New York 11217 Attention: Executive Director
	with a copy to
	Davidoff Hatcher & Citron LLP 605 Third Avenue New York, New York 10158 Attention: Maria Groeneveld, Esq.
To the Issuer	Build NYC Resource Corporation 110 William Street New York, New York 10038 Attention: General Counsel
	with a copy to
	Build NYC Resource Corporation 110 William Street New York, New York 10038 Attention: Deputy Executive Director
To the Trustee	The Bank of New York Mellon 240 Greenwich Street, Floor 7W New York, New York 10286 Attention: Corporate Trust Administration

Any party hereunder may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

**Section 7.7. Consent to Jurisdiction.** The Debtor irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Mortgage or any other Project Document, the Facility, the Project, the relationship between the Issuer and the Debtor, the Debtor's ownership, use or occupancy of the Facility and/or any claim for injury or damages may be brought in the courts of record of the State in New York County or the United States District Court for the Southern District of New York; (ii) consents to the

33

**Section 7.14. Entire Agreement; Counterparts.** This Mortgage constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof (other than any Project Documents) and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**Section 7.15. Severability.** If any one or more of the provisions of this Mortgage shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions of this Mortgage, but this Mortgage shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

**Section 7.16. Waiver of Jury Trial.** The Debtor hereby expressly waives, to the extent permitted by law, the right to assert a counterclaim in any action or proceeding brought against it by the Mortgagee, and waives, to the extent permitted by law, all rights to a trial by jury on any cause of action or proceeding brought by any party hereto against the other or in any counterclaim asserted by the Mortgagee against the Debtor, or in any matters whatsoever arising out of or in any way connected with this Mortgage or the Obligations, the Debtor's obligations hereunder, the Facility, the Mortgaged Property, the Project, the relationship between the Issuer and the Debtor, the Debtor's ownership, use or occupancy of the Facility and/or any claim for injury or damages.

**Section 7.17. Property Not Covered.** This Mortgage does not cover property principally improved or to be improved by one or more structures containing in the aggregate not more than six individual residential dwelling units, each having its own separate cooking facilities.

**Section 7.18. Assignment of Mortgage.** Upon the execution and delivery by the Issuer of the Assignment of Mortgage, all references within this Mortgage to the "Mortgagee" shall be deemed to refer to the Trustee.

**Section 7.19. Mortgage Subject to Other Mortgage.** This Mortgage is and shall be subject to the Mortgage and Security Agreement (Acquisition Loan).

**Section 7.20. Legal Counsel; Mutual Drafting.** Each party acknowledges that this Mortgage is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Mortgage. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Mortgage and agrees that this Mortgage and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the contra proferentem doctrine, that would require interpretation of any ambiguities in this Mortgage against the party that has drafted it.

[Intentionally Left Blank]

35

jurisdiction of each such court in any such suit, action or proceeding; (iii) waives any objection which it may have to the venue of any such suit, action or proceeding in such courts; and (iv) waives and relinquishes any rights it might otherwise have (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Debtor commences any action against the Mortgagee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Debtor shall, upon request from the Mortgagee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Debtor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

**Section 7.8. Mortgage for Benefit of Issuer, Debtor and Trustee.** The covenants and agreements contained in this Mortgage (including all indemnities set forth herein) shall run with the land and bind the Debtor and its heirs, executors, administrators, legal representatives, successors and assigns and each Person constituting the Debtor, and all subsequent owners, encumbrancers and tenants of the Mortgaged Property, or any part thereof, and shall inure to the benefit of the Issuer and the Trustee, their respective successors and assigns, and all subsequent beneficial owners of this Mortgage, and survive the foreclosure of this Mortgage.

**Section 7.9. Authorization.** The execution of this Mortgage has been duly authorized by the appropriate governing body of the Debtor.

**Section 7.10. Amendments and Modifications.** This Mortgage shall be amended, modified or supplemented only by a written agreement executed by the Debtor and the Mortgagee and, in any event, only in accordance with the Indenture.

**Section 7.11. Applicable Law.** This Mortgage shall be governed by and construed in accordance with the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

**Section 7.12. Date of Mortgage for Reference Purposes Only.** The date of this Mortgage shall be for reference purposes only and shall not be construed to imply that this Mortgage was executed on the date first above written. This Mortgage was executed and delivered on the Closing Date.

**Section 7.13. Incorporation of Certain Indenture Provisions.** All provisions of Article IX of the Indenture shall be construed as extending to and including all of the rights, duties and obligations imposed upon the Trustee under this Mortgage as fully and for all purposes as if said Article IX were contained in this Mortgage.

IN WITNESS WHEREOF, the Debtor has duly executed this Mortgage as of the date first above written.

NEW DAWN CHARTER SCHOOLS, as Debtor

By: \_\_\_\_\_  
Sara Asmussen  
Executive Director

[Signature Page to Mortgage and Security Agreement (Building Loan)]



STATE OF NEW YORK       )  
                                  : ss.  
COUNTY OF NEW YORK    )

**EXHIBIT A**

**DESCRIPTION OF LAND**

On the \_\_\_\_ day of February, in the year two thousand nineteen, before me, the undersigned, personally appeared Sara Asmussen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northwesterly side of Hoyt Street, distant 25 feet northeasterly from the corner formed by the intersection of the northwesterly side of Hoyt Street with the northeasterly side of Douglass Street;

THENCE northwesterly parallel with Douglass Street and part of the distance through a party wall, 100 feet;

THENCE northeasterly parallel with Hoyt Street, 75 feet;

THENCE southeasterly parallel with Douglass Street, 100 feet to the northwesterly side of Hoyt Street;

THENCE southwesterly along the said northwesterly side of Hoyt Street, 75 feet to the point or place of BEGINNING.

**EXHIBIT B**

**DESCRIPTION OF FACILITY PERSONALTY**

- (72) Evaporator Units (84 Tons) and associated ductwork.
- (7) Condensers (84 Tons) and associated piping
- (1) 3,200 CFM Make Up Air Unit With Associated Ductwork
- (1) 4,000 CFM Kitchen Exhaust Fan With Associated Ductwork
- (1) 5,000 CFM ERV with Associated Ductwork
- (1) Dedicated 3 Ton Split Elevator Machine Room A/C System
- (1) Dedicated 1.5 Ton Split IDF Room A/C System
- (1) 250 MBH Gas Fired Hot Water Boilers
- (1) 1600 Amp CT Cabinet
- (4) Electrical Service Switches
- Lighting Fixtures
- Fire Alarm System
- 4" Sprinkler Service with Associated Piping and Valves
- (1) 100 Gallon 199 MBTU/Hr. Gas Fired Water Heater
- (1) 2,500 lb Five Stop Traction Elevator
- Cold Applied Roof Membrane
- Thermal Windows
- Food Service Equipment

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

---

**APPENDIX H**

**FORM OF BOND COUNSEL OPINION**

---

[THIS PAGE INTENTIONALLY LEFT BLANK]

## APPENDIX H

*Upon delivery of the Series 2019 Bonds, Bond Counsel to the Issuer proposes to issue its approving opinion in substantially the following form:*

*Hawkins Delafield & Wood LLP*

7 WORLD TRADE CENTER  
NEW YORK, NY 10007  
WWW.HAWKINS.COM

February \_\_, 2019

Build NYC Resource Corporation  
New York, New York

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance of the Revenue Bonds (New Dawn Charter Schools Project), Series 2019 in the aggregate principal amount of \$20,685,000 (the "Series 2019 Bonds") of Build NYC Resource Corporation, a local development corporation organized pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFP Corporation Law") at the direction of the Mayor of The City of New York (the "Issuer").

The Series 2019 Bonds are issued under and pursuant to an Indenture of Trust, dated as of February 1, 2019 (the "Indenture"), between the Issuer and The Bank of New York Mellon, as trustee (the "Trustee"), and a resolution of the Issuer adopted on June 12, 2018 authorizing the Series 2019 Bonds.

The Series 2019 Bonds are dated the date hereof and are issuable as fully registered bonds. The Series 2019 Bonds shall mature and shall bear interest at fixed rates payable on February 1 and August 1 of each year commencing August 1, 2019, all as set forth in the Indenture. The Series 2019 Bonds are subject to optional and mandatory redemption prior to maturity in the manner and upon the terms and conditions set forth in the Indenture.

The Series 2019 Bonds are issued for the purpose of financing a portion of the cost of a facility (the "Facility") for New Dawn Charter Schools, a not-for-profit education corporation organized and existing under the laws of the State of New York (the "Institution"), consisting of the acquisition, construction, renovation, equipping and furnishing of an approximately 24,000 square-foot building on an approximately 7,500 square-foot parcel of land located at 238-242 Hoyt Street, Brooklyn, New York, which will be owned and operated by the Institution as a public charter school for over-aged and under-credited students in grades 9-12 (the "Project").

The Issuer and the Institution have entered into a Loan Agreement, dated as of February 1, 2019 (the "Loan Agreement"), providing, among other things, for the financing of the Project and the loan of the proceeds of the Series 2019 Bonds to the Institution. The obligation of the Institution to repay the loan is evidenced by a certain Promissory Note, dated the date hereof, from the Institution in favor of the Issuer and endorsed by the Issuer to the Trustee (the "Promissory Note").

The Series 2019 Bonds are secured by mortgage liens on and security interests in the Institution's fee title interest in the Mortgaged Property (as such term is defined in the Mortgages as hereinafter defined) pursuant to a Mortgage and Security Agreement (Acquisition Loan), a Mortgage and Security Agreement (Building Loan) and a Mortgage and Security Agreement (Indirect Loan), each dated as of February 1, 2019, and each from the Institution, as mortgagor, to the Issuer and the Trustee, as mortgagees (collectively, the "Mortgages"). Pursuant to an Assignment of Mortgage and Security Agreement (Acquisition Loan), an Assignment of Mortgage and Security Agreement (Building Loan) and an Assignment of Mortgage and Security Agreement (Indirect Loan), each dated as of February 1, 2019 (collectively, the "Assignments of Mortgages"), the Issuer has assigned to the Trustee all of the Issuer's right, title and interest in and to the Mortgages.

It is provided in the Indenture that, upon complying with certain prescribed conditions, the Issuer may issue additional bonds from time to time on the terms and conditions and for the purposes stated in the Indenture, and said additional bonds, if issued, will be equally and ratably secured under the Indenture with the Outstanding (as defined in the Indenture) Bonds.

**We are of the opinion that:**

1. The Issuer is duly organized and validly existing under the NFP Corporation Law, and has the right and power thereunder to enter into the Indenture, and the Indenture has been duly authorized, executed and delivered by the Issuer, is in full force and effect, and is valid and binding upon the Issuer and enforceable against the Issuer in accordance with its terms.

2. The Issuer has the right and power under the NFP Corporation Law to enter into the Loan Agreement, and the Loan Agreement has been duly authorized, executed and delivered by the Issuer, is in full force and effect, and constitutes a valid and binding agreement of the Issuer enforceable against the Issuer in accordance with its terms.

3. The Issuer has the right and power under the NFP Corporation Law to enter into the Assignments of Mortgages, and the Assignments of Mortgages have been duly authorized, executed and delivered by the Issuer, are in full force and effect, and constitute valid and binding agreements of the Issuer enforceable against the Issuer in accordance with their terms.

4. The Series 2019 Bonds have been duly authorized and issued by the Issuer in accordance with law and in accordance with the Indenture and are the valid and binding special limited revenue obligations of the Issuer, payable solely from the loan payments, revenues and receipts derived from the Loan Agreement and the Promissory Note and pledged under the Indenture. The Series 2019 Bonds are secured pursuant to the liens and security interests of the Mortgages in the Mortgaged Property. The Series 2019 Bonds are enforceable in accordance with their terms and the terms of the Indenture and are entitled to the benefit of the Indenture. All conditions precedent to the delivery of the Series 2019 Bonds under the Indenture have been fulfilled.

5. Under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described below, (i) interest on the Series 2019 Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Series 2019 Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code. To the extent that any of the Series 2019 Bonds have original issue discount ("Discount Bonds"), original issue discount that has accrued and is properly allocable to the owners of the Discount Bonds under Section 1288 of the Code is excludable from gross income for federal income tax purposes to the same extent as other interest on the Series 2019 Bonds.

The Code establishes certain requirements that must be met subsequent to the issuance and delivery of the Series 2019 Bonds in order that, for federal income tax purposes, interest on the Series 2019 Bonds be not included in gross income pursuant to Section 103 of the Code. These requirements include, but are not limited to, requirements relating to the use and expenditure of proceeds of the Series 2019 Bonds, restrictions on the investment of proceeds of the Series 2019 Bonds prior to expenditure and the requirement that certain earnings be rebated to the federal government. Noncompliance with such requirements may cause the interest on the Series 2019 Bonds to become subject to federal income taxation retroactive to their date of issue, irrespective of the date on which such noncompliance occurs or is ascertained.

On the date of delivery of the Series 2019 Bonds, the Issuer, the Institution and the Trustee have executed the Tax Regulatory Agreement (the "Tax Regulatory Agreement") containing provisions and procedures pursuant to which such requirements can be satisfied. In executing the Tax Regulatory Agreement, the Issuer and the Institution covenant that they will comply with the provisions and procedures set forth therein and that they will do and perform all acts and things necessary or desirable to assure that the interest paid on the Series 2019 Bonds will, for federal income tax purposes, be excluded from gross income.

6. Under existing statutes, the interest on Series 2019 Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof, including The City of New York.

In rendering the opinions in paragraphs 5 and 6 above, we have (i) relied upon and assumed the material accuracy of the representations, statements of intention and reasonable expectations, and certifications of fact contained in the Issuer Tax Certification delivered on the date hereof by the Issuer and in the Tax Regulatory Agreement with respect to the use of proceeds of the Series 2019 Bonds and the investment of certain funds, and other matters affecting the exclusion of interest on the Series 2019 Bonds from gross income for federal income tax purposes under Section 103 of the Code, (ii) relied upon the opinion of Davidoff Hatcher & Citron LLP, special counsel to the Institution, dated the date hereof, regarding, among other matters, the current qualifications of the Institution as being an organization described in Section 501(c)(3) of the Code, and (iii) relied upon and assumed compliance by the Issuer and the Institution with the procedures and ongoing covenants set forth in the Tax Regulatory Agreement and with the ongoing tax covenants set forth in the Loan Agreement. We note that the opinion of counsel to the Institution is subject to a number of qualifications and limitations. The Institution has covenanted that it will do nothing to impair its status as a tax-exempt organization, and that it will comply with the requirements of the Code and any applicable regulations throughout the term of the Series 2019 Bonds. Failure of the Institution to be organized and operated in accordance with the Internal Revenue Service's requirements for the maintenance of the Institution's status as an organization described in Section 501(c)(3) of the Code or to use the assets being financed and refinanced with the proceeds of the Series 2019 Bonds in activities of the Institution that do not constitute unrelated trades or businesses within the meaning of Section 513 of the Code may result in interest on the Series 2019 Bonds being included in gross income for federal income tax purposes, possibly from the date of issuance of the Series 2019 Bonds.

Further, under the Code, failure to comply with such procedures and covenants may cause the interest on the Series 2019 Bonds to be included in gross income for federal income tax purposes, retroactive to the date of issuance of the Series 2019 Bonds, irrespective of the date on which such noncompliance occurs or is ascertained. Compliance with certain of such requirements may necessitate that persons not within the control of the Issuer or the Institution take or refrain from taking certain actions.

We express no opinion as to any other federal, state or local tax consequences arising with respect to the Series 2019 Bonds, or the ownership or disposition thereof, except as stated in paragraphs 5 and 6 above. We render our opinion under existing statutes and court decisions as of the date hereof, and we assume no obligation to update, revise or supplement our opinion to reflect any action hereafter taken or not taken, any fact or circumstance that may hereafter come to our attention, any change in law or interpretation thereof that may hereafter occur, or for any other reason. We express no opinion as to the consequence of any of the events described in the preceding sentence or the likelihood of their occurrence. In addition, we express no opinion on the effect of any action taken or not taken in reliance upon an opinion of other counsel regarding federal, state or local tax matters, including, without limitation, exclusion from gross income for federal income tax purposes of interest on the Series 2019 Bonds.

The foregoing opinions are qualified only to the extent that the enforceability of the Series 2019 Bonds, the Indenture, the Tax Regulatory Agreement, the Promissory Note, the Mortgages, the Assignments of Mortgages and the Loan Agreement may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

In rendering this opinion, we have assumed the due recording of the Mortgages and the Assignments of Mortgages and the due filing and sufficiency of financing statements under the New York State Uniform Commercial Code.

In rendering this opinion, we have relied as to matters of title of the Institution to the real property constituting a part of the Mortgaged Property under the Mortgages on the mortgagee title insurance policy issued by Commonwealth Land Title Insurance Company insuring the Trustee's and the Issuer's mortgagee interests under the Mortgages in the real property constituting a part of the Mortgaged Property, dated the date hereof.

In rendering this opinion, with respect to the due authorization, execution and delivery of the Loan Agreement, the Promissory Note, the Mortgages and the Tax Regulatory Agreement by the Institution, and the enforceability of each of the same against the Institution, we have relied upon the opinion of Davidoff Hatcher & Citron LLP, special counsel to the Institution, dated the date hereof.

In rendering this opinion, with respect to the due authorization, execution and delivery of the Indenture and the Tax Regulatory Agreement by the Trustee, and the enforceability of each of the same against the Trustee as its legal, valid and binding obligation, we have relied upon the opinion of Paparone Law PLLC, counsel to the Trustee, dated the date hereof.

Attention is called to the fact that we have not been requested to examine and have not examined any documents or information relating to the Institution other than the record of proceedings hereinabove referred to, and no opinion is expressed as to any financial or other information, or the adequacy thereof, which has been or may be supplied to any purchaser or purchasers of the Series 2019 Bonds.

In rendering this opinion, we express no opinion as to the necessity for obtaining any licenses, permits or other approvals relating to the Facility or the Project or the application or effect of any environmental laws, ordinances, rules, regulations or other requirements of any governmental authority with respect to the Facility, the Project or the transactions contemplated under the Indenture.

The foregoing opinions are further subject, however, to the qualification that we express no opinion as to matters relating to the rights in, title to or sufficiency of the description of any property



or collateral described in the Security Documents (as defined in the Indenture) or the creation, perfection or relative priority of any lien or security interest created with respect to such property or collateral thereunder.

We have examined a Series 2019 Bond in fully registered form numbered R-1, and, in our opinion, the form of said Bond and its execution are regular and proper.

We undertake no responsibility for the accuracy, completeness or fairness of any limited offering memorandum or other offering materials relating to the Series 2019 Bonds and express herein no opinion relating thereto.

This opinion is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any action hereafter taken or not taken, or any facts or circumstances, or any changes in law or in interpretations thereof, that may hereafter arise or occur, or for any other reason.

Very truly yours,

[THIS PAGE INTENTIONALLY LEFT BLANK]

---

**APPENDIX I**

**FORM OF CONTINUING DISCLOSURE AGREEMENT**

---

[THIS PAGE INTENTIONALLY LEFT BLANK]

## FORM OF CONTINUING DISCLOSURE AGREEMENT

This CONTINUING DISCLOSURE AGREEMENT dated as of February 28, 2019 (the "*Disclosure Agreement*") is executed and delivered by and between NEW DAWN CHARTER SCHOOLS (the "*Institution*"), a New York not-for-profit education corporation, and THE BANK OF NEW YORK MELLON, as dissemination agent (the "*Dissemination Agent*"), in connection with the issuance by Build NYC Resource Corporation (the "*Issuer*") of its \$20,685,000 Revenue Bonds (New Dawn Charter Schools Project), Series 2019 (the "*Series 2019 Bonds*"). The Series 2019 Bonds are being issued pursuant to an Indenture of Trust dated as of February 1, 2019 (as supplemented and amended, the "*Indenture*") between the Issuer and The Bank of New York Mellon, New York, New York, as Trustee. The proceeds of the Series 2019 Bonds are being loaned to the Institution pursuant to a Loan Agreement dated as of February 1, 2019 (as supplemented and amended, the "*Loan Agreement*"), between the Issuer and the Institution. Capitalized terms used but not otherwise defined herein shall have the meanings assigned thereto in the Indenture and the Loan Agreement. The Dissemination Agent and the Institution covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Institution and the Dissemination Agent for the benefit of the Beneficial Owners of the Series 2019 Bonds and in order to assist B.C. Ziegler and Company (the "*Underwriter*") in complying with the Rule (as defined below), as it may be applicable from time to time. The Institution and the Dissemination Agent acknowledge that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Agreement, and has no liability to any Person, including any Beneficial Owner of the Series 2019 Bonds, with respect to the Rule (defined below).

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Disclosure Agreement, the following capitalized terms shall have the following meanings:

"*Annual Financial Information*" means annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 4(a) of this Disclosure Agreement.

"*Annual Report*" shall mean any Annual Report provided by the Institution pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

"*Audited Financial Statements*" means the audited financial statements and other financial information of the Institution for the prior fiscal year, certified by an independent auditor as prepared in accordance with accounting principles generally accepted in the United States or otherwise, as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 4(b) of this Disclosure Agreement.

"*Beneficial Owner*" shall mean any Person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Series 2019 Bonds (including any Person holding Series 2019 Bonds through nominees, depositories or other intermediaries).

"*Institution*" means New Dawn Charter Schools, a not-for-profit education corporation organized under the laws of the State of New York, and its successors and assigns.

"*Disclosure Representative*" shall mean the executive director of the Institution or his or her designee, or such other person as the Institution shall designate in writing to the Dissemination Agent from time to time.

*"Dissemination Agent"* shall mean The Bank of New York Mellon, or any successor Dissemination Agent designated in writing by the Institution and which has filed with the Trustee a written acceptance of such designation.

*"EMMA"* shall mean the Electronic Municipal Market Access system and the EMMA Continuing Disclosure Service of MSRB, or any successor thereto approved by the Securities and Exchange Commission, as a repository for municipal continuing disclosure information pursuant to the Rule.

*"Fiscal Year"* means the fiscal year of the Institution.

*"Indenture"* means the Indenture of Trust dated as of February 1, 2019, between the Issuer and the Trustee, and all indentures supplemental to the Indenture.

*"Limited Offering Memorandum"* shall mean the Limited Offering Memorandum dated February 20, 2019, relating to the Series 2019 Bonds.

*"Listed Events"* shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

*"Loan Agreement"* means the Loan Agreement dated as of February 1, 2019, between the Issuer and the Institution, as supplemented and amended.

*"MSRB"* means the United States Municipal Securities Rulemaking Board or any successor to its functions, or any successor to its functions as a nationally recognized municipal securities information repository.

*"Quarterly Report"* shall mean any Quarterly Report provided by the Institution pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

*"Rule"* shall mean Rule 15c2-12(b)(5) adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

*"State"* shall mean the State of New York.

*"Underwriter"* shall mean B.C. Ziegler and Company.

### SECTION 3. Provision of Annual Reports, Quarterly Reports and Operations Reports.

(a) The Institution shall or, upon delivery to the Dissemination Agent pursuant to paragraph (b) below, the Dissemination Agent shall, not later than 130 days following the end of the Institution's Fiscal Years, commencing with the report for the fiscal year ended June 30, 2019, provide to the MSRB, in a PDF or other electronic format as prescribed by the MSRB, an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; provided that the Audited Financial Statements may be submitted separately from the balance of the Annual Report, and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Dissemination Agent submits the audited financial statements of the Institution at a later date, it shall provide unaudited or compiled financial statements by the above-specified deadline and shall provide the audited financial statements as soon as practicable after the audited financial statements become available. The Institution shall submit the audited financial statements to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent) as soon as practicable after they become available and the

Dissemination Agent shall submit the audited financial statements to the MSRB as soon as practicable thereafter. If the Fiscal Year changes, the Institution shall give notice of such change in the same manner as for a Listed Event under Section 5(e).

(b) Not later than five (5) Business Days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, the Institution shall provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). Neither the Dissemination Agent nor the Trustee shall be responsible in any manner for the content of any notice or report prepared by the Institution pursuant to this Disclosure Agreement, and shall have no duty or obligation to review any notice or report. If by five (5) Business Days prior to such date, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Institution and the Trustee (if the Trustee is not the Dissemination Agent) to notify the Institution and the Trustee (if the Trustee is not the Dissemination Agent) of the requirements of subsection (a) and this subsection (b).

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Institution, or upon delivery to the Dissemination Agent pursuant to paragraph (e) below, the Dissemination Agent, shall provide to the MSRB not later than 45 days following the end of each fiscal quarter for the Institution, commencing with the report for the fiscal quarter ending March 31, 2019, a Quarterly Report which is consistent with the requirements of Section 4 of this Disclosure Agreement.

(e) Not later than five (5) Business Days prior to the date specified in subsection (d) for providing the Quarterly Report to the MSRB, the Institution shall provide the Quarterly Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). Neither the Dissemination Agent nor the Trustee shall be responsible in any manner for the content of any notice or report prepared by the Institution pursuant to this Disclosure Agreement, and shall have no duty or obligation to review any notice or report. If by five (5) Business Days prior to such date, the Dissemination Agent has not received a copy of the Quarterly Report, the Dissemination Agent shall contact the Institution and the Trustee (if the Trustee is not the Dissemination Agent) to notify the Institution and the Trustee (if the Trustee is not the Dissemination Agent) of the requirements of subsection (d) and this subsection (e).

(f) If the Dissemination Agent is unable to verify that a Quarterly Report has been provided to the MSRB by the date required in subsection (d), the Dissemination Agent shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(g) If the Institution has provided the Annual Report or Quarterly Report, as applicable, to the Dissemination Agent, the Dissemination Agent shall file such report with the Trustee (if the Dissemination Agent is not the Trustee) and certify that the Annual Report or Quarterly Report, as applicable, has been provided to the MSRB pursuant to this Disclosure Agreement and set forth the date it was provided.

#### SECTION 4. Content of Annual and Quarterly Reports; Other Information.

(a) Audited Financial Statements: Each Annual Report shall contain Audited Financial Statements, as provided pursuant to Section 3(a). If Audited Financial Statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain

unaudited or compiled financial statements in a format similar to the Institution's audited financial statements, and the Audited Financial Statements shall be filed in the same manner as the Annual Report when they become available. The Audited Financial Statements shall include the information required by Section 8.29(b)(i) of the Loan Agreement.

(b) Operating Data: The Annual Report shall also contain the following information for the current year, of the type and in the format (but excluding projected information) initially provided in the Limited Offering Memorandum within Appendix A: Table 11: Enrollment; and Table 15: Historical Per Pupil Payments. The Annual Report shall also contain a certificate showing calculation of the Debt Service Coverage Ratio (as defined in the Loan Agreement) for the Institution for the previous Fiscal Year, and Days' Cash on Hand (as defined in the Loan Agreement) as of each June 30, which may be set forth in and as a part of the Institution's Audited Financial Statements.

(c) Quarterly Financial Information: Each Quarterly Report shall contain the information required by Section 8.29(c), (f) and (g) of the Loan Agreement and evidence of the property insurance coverage for any Separate Facility required by Section 8.32(b)(viii) of the Loan Agreement.

(d) Inclusion by Reference: The items listed above may be included by specific reference to other documents, including materials which have been submitted to the MSRB or the SEC. The Institution shall clearly identify each such other document so included by reference.

#### SECTION 5. Reporting of Listed Events.

(a) Pursuant to the provisions of this Section 5, the Institution shall give, or upon delivery of the information to the Dissemination Agent, the Dissemination Agent shall give, notice of the occurrence of any of the following events with respect to the Series 2019 Bonds, under applicable federal securities laws:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) (i) Adverse tax opinions, (ii) the issuance by the Internal Revenue Service of proposed or final determinations of taxability of the Series 2019 Bonds, (iii) Notices of Proposed Issue (IRS Form 5701-TEB), (iv) other material notices or determinations with respect to the tax status of the Series 2019 Bonds, or (v) other material events affecting the tax-exempt status of the Series 2019 Bonds;
- (7) Modifications to rights of holders of the Series 2019 Bonds, if material;
- (8) Bond calls, if material, and (ii) tender offers;
- (9) Defeasances;



- (10) Release, substitution, or sale of property securing repayment of the Series 2019 Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the Institution;
- (13) The consummation of a merger, consolidation, or acquisition involving the Institution or the sale of all or substantially all of the assets of the Institution, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;
- (15) Any failure of the Institution to provide an Annual Report on or before the date by which that Annual Report is required to be provided hereunder;
- (16) The entering into of a material debt obligation, guarantee, financing lease or derivative instrument related to an existing or planned debt obligation or asset (each, a "Financial Obligation"); and
- (17) Occurrence of any "event of default," "event of acceleration," "termination event" or similar event with respect to any Financial Obligation reflecting financial difficulties.

(b) The Institution shall or, upon delivery to the Dissemination Agent pursuant to paragraph (c) below, the Dissemination Agent shall, not later than ten (10) business days after the occurrence of the event, provide to the MSRB a notice of the occurrence of such Listed Event.

(c) If the Institution has determined that a Listed Event has occurred, the Institution shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (d).

(d) If the Dissemination Agent has been instructed by the Institution to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB.

SECTION 6. Termination of Reporting Obligation. The Institution's and the Dissemination Agent's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior prepayment or payment in full of all of the Series 2019 Bonds. If such termination occurs prior to the final maturity of the Series 2019 Bonds, the Institution shall give notice of such termination in the same manner as for a Listed Event under Section 5(d). If the Institution's obligations under the Loan Agreement are assumed in full by some other entity, such entity shall be responsible for compliance with this Disclosure Agreement relating thereto in the same manner as if it were the Institution and the Institution shall have no further responsibility hereunder with respect thereto.

SECTION 7. Dissemination Agent. The Institution may discharge the Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign at any time by providing at least thirty (30) days written notice to the Institution and the Trustee.

SECTION 8. Investor Calls. The Underwriter shall work with the Institution to arrange an investor conference call with Beneficial Owners to be held semiannually in July 2019, January 2020 and every six months thereafter until the Project is complete, and at least annually in every January thereafter. Investor calls shall cover the topics referenced in Section 8.29(d) of the Loan Agreement. The Institution shall provide at least 7 days' notice of such calls to the MSRB.

SECTION 9. Filings with the MSRB. Information filed with the MSRB shall be made to EMMA as provided in Exhibit B hereto.

SECTION 10. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Institution and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall agree to any amendment so requested by the Institution, provided that the Dissemination Agent shall not be obligated to enter into any amendment increasing or affecting its duties or obligations) and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 3(d), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an "obligated person" (as defined in the Rule) with respect to the Series 2019 Bonds, or the type of business conducted;

(b) This Disclosure Agreement, as amended or taking into account such waiver, would, in the opinion of Nationally Recognized Bond Counsel, have complied with the requirements of the Rule at the time of the original execution and delivery of the Series 2019 Bonds after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Holders of the Series 2019 Bonds in the same manner as provided in the Indenture for amendments to such Indenture with the consent of Holders, or (ii) does not, in the opinion of Nationally Recognized Bond Counsel, materially impair the interests of the Holders or Beneficial Owners of the Series 2019 Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Institution shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Institution. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(d), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 11. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Institution from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Institution chooses to include any information in any Annual Report or Quarterly Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the Institution shall have no obligation under the Agreement to update such information or include it in any future Annual Report or Quarterly Report or notice of occurrence of a Listed Event.

SECTION 12. Default. In the event of a failure of the Institution or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the right of any Holder to challenge the timely filing, failure to file or the adequacy of the information furnished pursuant to this Disclosure Agreement shall be limited to an action by or on behalf of Holders representing at least 25% of the aggregate outstanding principal amount of the Series 2019 Bonds. This Disclosure Agreement is also enforceable on behalf of the Holders of the Series 2019 Bonds by the Trustee, and the Trustee may, and upon the written direction of the Holders of not less than 25% of the aggregate outstanding principal amount of the Series 2019 Bonds or the Underwriter shall, proceed to protect and enforce the rights of the Holders of the Series 2019 Bonds pursuant to this Disclosure Agreement; provided that in all cases the Trustee shall be entitled to the indemnification and other provisions of the Indenture with regard to any actions, and prior to proceeding at the request or direction of the Underwriter the Trustee may require the same types of indemnification and related protections from the Underwriter to which the Trustee would otherwise be entitled under the Indenture if so requested or directed by the Holders. Any failure by the Institution to comply with the provisions of this Disclosure Agreement shall not be an Event of Default under the Loan Agreement or the Indenture. In no event shall any violation of this Disclosure Agreement, by itself, constitute a violation of any other laws, including other applicable securities laws.

The Holders' and the Trustee's rights to enforce the provisions of this Disclosure Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel the Institution to perform under this Disclosure Agreement, and their directors, officers and employees shall incur no liability under this Disclosure Agreement by reason of any act or failure to act hereunder. Without limiting the generality of the foregoing, neither the commencement nor the successful completion of an action to compel performance under this Section shall entitle the Trustee or any other person to attorneys' fees, financial damages of any sort or any other relief other than an order or injunction compelling performance; provided that the Trustee shall nevertheless be entitled to attorneys' fees and such other rights and amounts as provided in the Indenture.

SECTION 13. Duties, Immunities and Liabilities of the Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Institution agrees to indemnify and save the Dissemination Agent and its officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including reasonable attorney's fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's gross negligence or willful misconduct. The Dissemination Agent shall be paid compensation by the Institution for its services provided hereunder in accordance with its schedule of fees as agreed to between the Dissemination Agent and the Institution from time to time. The Dissemination Agent shall have no duty or obligation to review any information provided to it by the Institution hereunder and shall not be deemed to be acting in any fiduciary capacity for the Institution, the Holders, the Beneficial Owners or any other party. The obligations of the Institution under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Series 2019 Bonds.

SECTION 14. Notices. Any notices or communications to or among any of the parties to this Disclosure Agreement may be given at the addresses of the parties hereto set forth in the Indenture.

SECTION 15. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Trustee, the Dissemination Agent, the Underwriter, the Holders and the Beneficial Owners from time to time of the Series 2019 Bonds, and shall create no rights in any other person or entity.

SECTION 16. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 17. Choice of Law. This Disclosure Agreement shall be governed by and construed in accordance with the laws of the State of New York, provided that to the extent this Disclosure Agreement addresses matters of federal securities laws, including the Rule, this Disclosure Agreement shall be construed in accordance with such federal securities laws and official interpretations thereof.

(The remainder of this page is intentionally left blank.)

Dated the date set forth above.

NEW DAWN CHARTER SCHOOLS

By: \_\_\_\_\_  
Its: Executive Director

THE BANK OF NEW YORK MELLON,  
as Dissemination Agent

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

## EXHIBIT A

### NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: Build NYC Resource Corporation

Name of Series 2019 Bond Issue: \$20,685,000 Revenue Bonds, (New Dawn Charter Schools Project), Series 2019

Name of Obligated Persons: New Dawn Charter Schools

Date of Issuance: February 28, 2019

CUSIP Nos:

NOTICE IS HEREBY GIVEN that New Dawn Charter Schools (the "*Institution*") has not provided [an Annual Report] [a Quarterly Report] with respect to the above-named Bonds as required by the Continuing Disclosure Agreement dated as of February 28, 2019, between the Institution and the Dissemination Agent. The Institution has informed the Dissemination Agent that it anticipates that the [Annual] [Quarterly] Report will be filed by \_\_\_\_\_.

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

THE BANK OF NEW YORK MELLON, as Dissemination Agent

By: \_\_\_\_\_  
Authorized Representative

## EXHIBIT B

### MSRB PROCEDURES FOR SUBMISSION OF CONTINUING DISCLOSURE DOCUMENTS AND RELATED INFORMATION

Securities and Exchange Commission Release No. 34-59061 (the "*Release*") approves an MSRB rule change establishing a continuing disclosure service of the MSRB's Electronic Municipal Market Access system ("*EMMA*"). The rule change establishes, as a component of EMMA, the continuing disclosure service for the receipt of, and for making available to the public, continuing disclosure documents and related information to be submitted by issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Rule 15c2-12 ("*Rule 15c2-12*") under the Securities Exchange Act of 1934. The following discussion summarizes procedures for filing continuing disclosure documents and related information with the MSRB as described in the Release.

All continuing disclosure documents and related information is to be submitted to the MSRB, free of charge, through an Internet-based electronic submitter interface or electronic computer-to-computer data connection, at the election of the submitter. The submitter is to provide, at the time of submission, information necessary to accurately identify: (i) the category of information being provided; (ii) the period covered by any annual financial information, financial statements or other financial information and operating data; (iii) the issues or specific securities to which such document is related or otherwise material (including CUSIP number, issuer name, state, issue description/securities name, dated date, maturity date, and/or coupon rate); (iv) the name of any obligated person other than the issuer; (v) the name and date of the document; and (vi) contact information for the submitter.

Submissions to the MSRB are to be made in a portable document format (PDF) files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document.

All submissions to the MSRB's continuing disclosure service are to be made through password protected accounts on EMMA by (i) issuers, which may submit an addition, such PDF files must be word-searchable (that is, allowing the user to search for specific terms used within the document through a search or find function), provided that diagrams, images and other non-textual elements will not be required to be word-searchable, any documents with respect to their municipal securities; (ii) obligated persons, which may submit any documents with respect to any municipal securities for which they are obligated; and (iii) agents, designated by issuers and obligated persons to submit documents and information on their behalf. Such designated agents are required to register to obtain password-protected accounts on EMMA in order to make submissions on behalf of the designating issuers or obligating persons. Any party identified in a continuing disclosure undertaking as a dissemination agent or other party responsible for disseminating continuing disclosure documents on behalf of an issuer or obligated person will be permitted to act as a designated agent for such issuer or obligated person, without a designation being made by the issuer or obligated person as described above, if such party certifies through the EMMA on-line account management utility that it is authorized to disseminate continuing disclosure documents on behalf of the issuer or obligated person under the continuing disclosure undertaking. The issuer or obligated person, through the EMMA on-line account management utility, is able to revoke the authority of such party to act as a designated agent.

The MSRB's Internet-based electronic submitter interface (EMMA Dataport) is at [www.emma.msrb.org](http://www.emma.msrb.org).

[THIS PAGE INTENTIONALLY LEFT BLANK]



---

---

**APPENDIX J**

**BOOK-ENTRY ONLY SYSTEM**

---

---

[THIS PAGE INTENTIONALLY LEFT BLANK]

## APPENDIX J

### BOOK-ENTRY ONLY SYSTEM

*The information in this section concerning The Depository Trust Company ("DTC") and DTC's book-entry-only system has been obtained from DTC. The Issuer, Institution and Underwriter take no responsibility for the accuracy thereof.*

The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the Series 2019 Bonds. The Series 2019 Bonds will be issued as fully-registered bonds registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Series 2019 Bonds, each in the principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("*Indirect Participants*"). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of the Series 2019 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2019 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2019 Bond ("*Beneficial Owner*") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2019 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Series 2019 Bonds, except in the event that use of the book-entry system for the Series 2019 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2019 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2019 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in

beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2019 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2019 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping an account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements made among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Series 2019 Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such Series 2019 Bonds, as the case may be, to be redeemed.

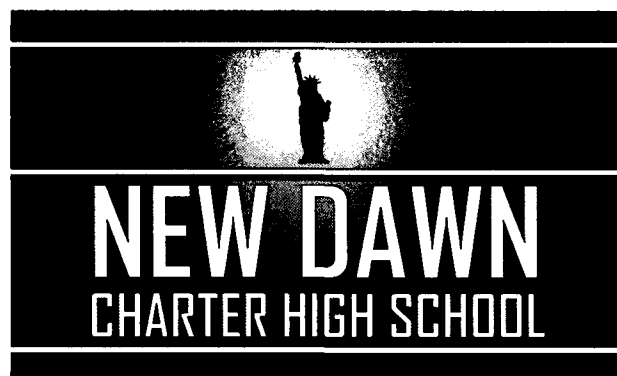
Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Series 2019 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2019 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and principal and interest payments on the Series 2019 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Issuer or the Trustee, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2019 Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2019 Bond certificates are required to be printed and delivered.

The Issuer may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Series 2019 Bond certificates will be printed and delivered to DTC.

THE INFORMATION IN THIS APPENDIX CONCERNING DTC AND THE DTC BOOK-ENTRY SYSTEM HAS BEEN PROVIDED BY DTC. THE ISSUER, THE INSTITUTION AND THE UNDERWRITER BELIEVE SUCH INFORMATION TO BE RELIABLE, BUT TAKE NO RESPONSIBILITY FOR THE ACCURACY THEREOF. NO REPRESENTATION IS MADE BY ANY SUCH PARTY AS TO THE ACCURACY OR ADEQUACY OF SUCH INFORMATION OR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF.



Printed by: ImageMaster, LLC  
[www.imagemaster.com](http://www.imagemaster.com)