

In the opinion of Nixon Peabody LLP, New York, New York, Bond Counsel, under existing law and assuming compliance with the tax covenants described herein, and the accuracy of certain representations and certifications made by the Issuer, the Borrower and the Charter School described herein, interest on the Series 2022A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Bond Counsel is also of the opinion that interest on the Series 2022A Bonds is not treated as a preference item in calculating the alternative minimum tax imposed under the Code. Bond Counsel is further of the opinion that interest on the Series 2022A Bonds is exempt from personal income taxation imposed by the State of New York or any political subdivision of the State of New York, including The City of New York. Interest on the Series 2022B Bonds is not excluded from gross income for federal income tax purposes and is not exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). See "TAX MATTERS—SERIES 2022A BONDS" and "TAX MATTERS—SERIES 2022B BONDS" herein regarding certain other tax considerations.



**BUILD NYC RESOURCE CORPORATION
REVENUE BONDS
(WHIN MUSIC COMMUNITY CHARTER SCHOOL PROJECT)
Consisting of**

\$40,840,000

Tax-Exempt Revenue Bonds

**(WHIN Music Community Charter School Project), (WHIN Music Community Charter School Project),
Series 2022A**

\$3,070,000

Taxable Revenue Bonds

**(WHIN Music Community Charter School Project), (WHIN Music Community Charter School Project),
Taxable Series 2022B**

Dated: Date of Issuance

Due: July 1, as shown on the inside front cover

The above-referenced Build NYC Resource Corporation Revenue Bonds (WHIN Music Community Charter School Project), Series 2022A and Taxable Series 2022B (collectively, the **"Series 2022 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 J of this Limited Offering Memorandum.

The Series 2022 Bonds are special limited revenue obligations of the Issuer, payable as to principal, Sinking Fund Installments, Redemption Price and interest, from and secured in part by (a) certain unconditional loan payments to be made by the Borrower (as hereinafter defined) pursuant to the Loan Agreement, dated as of June 1, 2022, between the Issuer and Friends of WHIN Music Community Charter School, Inc., a New York not-for-profit corporation (the **"Borrower"**), (b) all right, title and interest of the Issuer in and to the Promissory Note, (c) a pledge of certain funds and accounts established under the Indenture of Trust, dated as of June 1, 2022, between the Issuer and The Bank of New York Mellon, New York, New York, as trustee (the **"Trustee"**), (d) Leasehold Mortgages relating to the Facility (defined below), (e) assignments of Leasehold Mortgages, leases and rents and (f) a pledge by the Borrower to the Trustee of the Pledged Collateral (as defined herein). Neither the State of New York nor any political subdivision thereof, including The City of New York, shall be obligated to pay the principal or Redemption Price of, Sinking Fund Installments for, or the interest on, the Series 2022 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 2022 Bonds. The Series 2022 Bonds will not be payable out of any funds of the Issuer other than those pledged therefor pursuant to the Indenture. The Series 2022 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, Sinking Fund Installments for, or the interest on, the Series 2022 Bonds against any member, officer, director, employee or agent of the Issuer. The Issuer has no taxing power. See **"SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2022 BONDS"** in this Limited Offering Memorandum.

Proceeds derived from the sale of the Series 2022 Bonds will be used by the Borrower to: (a)(i) finance the construction, renovation, furnishing and equipping of an existing three-story 29,880 square foot building located on a 9,992 square foot parcel of land located at 528 West 162nd Street, New York, New York, to serve as a new educational facility thereon (the **"Existing Facility"**), to be used by the Charter School (defined herein) as its school building serving students in kindergarten through 5th grade, eventually expanding to 8th grade; (ii) finance the construction, furnishing and equipping of an addition to the Existing Facility consisting of a five-story approximately 25,000 square foot addition (the **"Addition"** and, together with the Existing Facility, the **"Facility"**); (b) fund the Capitalized Interest Fund; (c) fund the Debt Service Reserve Fund; (d)(i) finance the security deposit required under the Lease, (ii) finance capitalized payments on the Lease and (iii) finance working capital; and (e) pay for certain costs related to the issuance of the Series 2022 Bonds. The Facility is owned by 528 W 162 LLC (the **"Landlord"**) and leased by the Landlord to the Borrower. The Borrower has subleased the Facility to WHIN Music Community Charter School, a New York not-for-profit education corporation (the **"Charter School"**). See **"THE SERIES 2022 PROJECT AND PLAN OF FINANCE"** in this Limited Offering Memorandum.

The Series 2022 Bonds will be issued as fully registered bonds initially issued 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. Purchases of the Series 2022 Bonds will be made in book-entry form only. Purchasers of beneficial interests will not receive physical certificates. The Series 2022 Bonds are subject to optional and mandatory redemption as described in this Limited Offering Memorandum. Interest on the Series 2022 Bonds will be payable on January 1 and July 1 of each year, commencing January 1, 2023. See **"THE SERIES 2022 BONDS"** in this Limited Offering Memorandum. **Purchase of the Series 2022 Bonds involves a high degree of risk and the Series 2022 Bonds are a speculative investment. See "RISK FACTORS" in this Limited Offering Memorandum. Investors must read the entire Limited Offering Memorandum, including the Appendices hereto.**

THE SERIES 2022 BONDS ARE TO BE OFFERED AND SOLD (INCLUDING IN SECONDARY MARKET TRANSACTIONS) ONLY TO (1) AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN RULE 501 OF REGULATION D OF THE SECURITIES ACT OF 1933 OR (2) A "QUALIFIED INSTITUTIONAL BUYER" AS THAT TERM IS DEFINED UNDER RULE 144A OF THE SECURITIES EXCHANGE COMMISSION. The Indenture contains provisions limiting transfers of the Series 2022 Bonds and beneficial ownership interests in the Series 2022 Bonds only to Qualified Institutional Buyers and Accredited Investors. The initial purchaser or purchasers of the Series 2022 Bonds are required to execute an Investment Certificate attached hereto as APPENDIX I prior to the purchase thereof in a form satisfactory to the Issuer.

SEE THE INSIDE FRONT COVER FOR THE MATURITY SCHEDULES FOR THE SERIES 2022 BONDS

The Series 2022 Bonds are offered, subject to prior sale, when, as and if accepted by D.A. Davidson & Co. and subject to an opinion as to the validity of the Series 2022 Bonds and the tax-exempt status of the Series 2022A Bonds by Nixon Peabody LLP, New York, New York, Bond Counsel; the approval of certain legal matters for the Issuer by its General Counsel, for the Borrower and the Charter School by its counsel, Cohen Schneider Law, P.C., New York, New York, and for the Trustee by its counsel, Papparone Law PLLC, New York, New York, and for the Underwriter by its counsel, Ballard Spahr LLP, New York, New York, and certain other conditions. It is expected that delivery of the Series 2022 Bonds will be made on or about June 29, 2022 through the facilities of DTC.



D|A| DAVIDSON

DATED JUNE 23, 2022

**BUILD NYC RESOURCE CORPORATION
REVENUE BONDS
(WHIN MUSIC COMMUNITY CHARTER SCHOOL PROJECT)**

MATURITY SCHEDULE

\$40,840,000

**Tax-Exempt Revenue Bonds
(WHIN Music Community Charter School Project)
Series 2022A**

SERIAL MATURITIES

Maturity Date (July 1)	Principal Amount	Interest Rate	Yield	Price	CUSIP^{®, 1}
2032	\$360,000	6.500%	5.875%	104.677%	12008E SR8

TERM MATURITIES

\$ 9,275,000	6.500% Term Bond maturing July 1, 2042	Yield: 6.250%	Price: 101.838% ²	CUSIP: 12008E SS6 ^{®, 1}
\$17,420,000	6.500% Term Bond maturing July 1, 2052	Yield: 6.375%	Price: 100.913% ²	CUSIP: 12008E ST4 ^{®, 1}
\$13,785,000	6.500% Term Bond maturing July 1, 2057	Yield: 6.500%	Price: 100.000%	CUSIP: 12008E SU1 ^{®, 1}

\$3,070,000

**Taxable Revenue Bonds
(WHIN Music Community Charter School Project)
Taxable Series 2022B**

\$3,070,000	9.750% Term Bond maturing July 1, 2032	Yield: 9.750%	Price: 100.000%	CUSIP: 12008E SV9 ^{®, 1}
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¹ None of the Issuer, Trustee, Borrower, or Charter School take responsibility for the accuracy of the CUSIP numbers, which are included solely for the convenience of owners of the Series 2022 Bonds.

² Priced to the earliest call date of July 1, 2032.

**BUILD NYC RESOURCE CORPORATION
REVENUE BONDS
(WHIN MUSIC COMMUNITY CHARTER SCHOOL PROJECT)**

Issuer

Build NYC Resource Corporation
New York, New York

Bond Counsel to the Issuer

Nixon Peabody LLP
New York, New York

Borrower Board of Directors

Arnold Adlin, Chairperson
Rosa Franco, Secretary
Ed Brown, Treasurer

Charter School Board of Trustees

Gregory David, Chair
Ivonne Norman, Secretary
Joshua Bederman, Treasurer
Robert Green, Member
Arnold Adlin, Member
Kenneth Grover, Member
Heidi Morales, Member
Cynthia Ivanick, Member
Lee Ann Norman, Member
Shewar Kahn, Member

Borrower's and Charter School's Counsel

Cohen Schneider Law, P.C.
New York, New York

Underwriter

D.A. Davidson & Co.
Denver, Colorado

Underwriter's Counsel

Ballard Spahr LLP
New York, New York

Trustee, Bond Registrar, and Paying Agent

The Bank of New York Mellon
New York, New York

Trustee's Counsel

Paparone Law PLLC
New York, New York

No person has been authorized by the Issuer, the Underwriter, the Borrower or the Charter School to give any information regarding the Series 2022 Bonds, the Borrower, the Charter School, the Series 2022 Project, the offering contained herein, or 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, the Borrower or the Charter School 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, directors, officers, 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 "ABSENCE OF MATERIAL LITIGATION—The Issuer." Except with respect to the information contained under such captions, neither the Issuer nor any of its members, directors, officers, agents, employees or representatives makes any representation as to the completeness, sufficiency, or truthfulness of the statements set forth in this Limited Offering Memorandum. None of the members, directors, officers, agents, employees or representatives of the Issuer nor any other person executing the Series 2022 Bonds are subject to personal liability by reason of the issuance of the Series 2022 Bonds. Other than the information under the captions "THE ISSUER" and "ABSENCE OF MATERIAL 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.

The Trustee has not participated in the preparation of this Limited Offering Memorandum or any other disclosure documents relating to the Series 2022 Bonds. Except for information under the heading "THE TRUSTEE," the Trustee neither has nor assumes no responsibility as to the accuracy or completeness of any information contained in this Limited Offering Memorandum or any other such disclosure documents.

References in this Limited Offering Memorandum to New York law, the Series 2022 Bonds, the Indenture, the Loan Agreement, the Depositary Agreement, the Borrower DACA, the Pledge and Security Agreement, the Covenant Agreement, the Use Agreement, the Lease, the Sublease, the Leasehold Mortgages, 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 Charter School.

THE SERIES 2022 BONDS ARE TO BE OFFERED AND SOLD (INCLUDING IN SECONDARY MARKET TRANSACTIONS) ONLY TO "QUALIFIED INSTITUTIONAL BUYERS" (AS DEFINED IN RULE 144A OF THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT")) OR "ACCREDITED INVESTORS" (AS DEFINED IN REGULATION D OF THE SECURITIES ACT). THE INDENTURE CONTAINS PROVISIONS LIMITING TRANSFERS OF

THE SERIES 2022 BONDS AND BENEFICIAL OWNERSHIP INTERESTS IN THE SERIES 2022 BONDS ONLY TO QUALIFIED INSTITUTIONAL BUYERS AND ACCREDITED INVESTORS.

THE SERIES 2022 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 2022 BONDS IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF LAWS OF THE STATES IN WHICH SERIES 2022 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 2022 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 BUDGET PROJECTION CONTAINED IN APPENDIX C ATTACHED TO THIS LIMITED OFFERING MEMORANDUM IS NOT A HISTORICAL STATEMENT OF FINANCIAL PERFORMANCE BUT IS A FORWARD-LOOKING PROJECTION OF FUTURE, PROJECTED FINANCIAL PERFORMANCE. THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS OR IN THE BUDGET PROJECTION 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 BUDGET PROJECTION. THE CHARTER SCHOOL DOES NOT EXPECT OR INTEND TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS OR TO THE BUDGET PROJECTION IF OR WHEN ITS EXPECTATIONS CHANGE OR EVENTS, CONDITIONS, OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS OR FORECASTS ARE BASED OCCUR OR FAIL TO OCCUR.

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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 J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE” 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 “**Act**”), and is authorized by the Act to issue the Series 2022 Bonds. See “THE ISSUER” in this Limited Offering Memorandum.

Borrower

Friends of WHIN Music Community Charter School, Inc. (the “**Borrower**”), a New York not-for-profit corporation and exempt from federal taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”), formed for the sole purpose of furthering the educational and charitable purposes of WHIN Music Community Charter School, a New York not-for-profit education corporation and exempt from federal taxation pursuant to section 501(c)(3) of the Code (the “**Charter School**”). The Borrower received a 501(c)(3) determination letter on September 16, 2020 with an effective date of October 1, 2019, from the Internal Revenue Service. See “THE BORROWER” and “APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL” in this Limited Offering Memorandum.

Charter School

The Charter School 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 Code. The Charter School currently operates within the boundaries of Community School District No. 6 (“**CSD 6**”) in New York City, in the State of New York (the “**State**”), currently offering kindergarten through 5th grade. The Charter School was authorized to operate pursuant to its charter (the “**Charter**”) granted in 2016 by the New York State Board of Regents (the “**Regents**”) on behalf of the New York State Education Department (the “**Authorizer**”). The Charter School received a 501(c)(3) determination letter on March 17, 2017 with an effective date of June 14, 2016, from the Internal Revenue Service. See “THE CHARTER SCHOOL” and “APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL” 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.

The Charter School currently operates grades kindergarten through 5th grade in two (2) locations. Students in grades 2nd through 5th are housed in dedicated and shared space within Middle School 328 Community Math & Science Prep, a New York City Department of Education (“**NYCDOE**”) operated public school located at 401 West 164th Street, New York, New York (the “**328 Facility**”). Students in grades kindergarten through 1st are housed in a private space within the Church of St. Rose of Lima, a Catholic church located at 1086 St. Nicholas Avenue, New York, New York (the “**Lima Facility**” and, together with the 328 Facility, the “**Current Facilities**”). Upon completion, the Charter School will move

to the education facility to be constructed and financed with proceeds of the Series 2022 Bonds located at 528 West 162nd Street, New York, New York (the “**Facility**”). The Current Facilities are approximately 0.3 miles from the Facility.

On March 14, 2022, the Charter School received a full five (5) year renewal of its Charter, as well as approval to expand to serve middle school student in grades 6-8. The Charter School anticipates expanding its enrollment to grade 6, commencing with the 2022-2023 school year, and adding 7th grade in the 2023-2024 school year and 8th grade in the 2024-2025 school year.

Series 2022 Bonds

The Issuer is issuing its (a) Tax-Exempt Revenue Bonds (WHIN Music Community Charter School Project) Series 2022A (the “**Series 2022A Bonds**”), in the aggregate principal amount of \$40,840,000 and (b) Taxable Revenue Bonds (WHIN Music Community Charter School Project) Taxable Series 2022B (the “**Series 2022B Bonds**” and together with the Series 2022A Bonds, the “**Series 2022 Bonds**”), in the aggregate principal amount of \$3,070,000.

The Series 2022 Bonds are being issued pursuant to an Indenture of Trust, dated as of June 1, 2022 (the “**Indenture**”), by and between the Issuer and The Bank of New York Mellon, as trustee (the “**Trustee**”), including any amendments or supplements thereto. The Series 2022 Bonds will be issued in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof (“**Authorized Denominations**”). See “THE SERIES 2022 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 2022 Bonds to the Borrower pursuant to the terms of a Loan Agreement, dated as of June 1, 2022 (the “**Loan Agreement**”), by and between the Issuer and the Borrower.

Series 2022A Bonds. Proceeds of the Series 2022A Bonds will be used by the Borrower to: (a)(i) finance the construction, renovation, furnishing and equipping of an existing three-story 29,880 square foot building located on a 9,992 square foot parcel of land located at 528 West 162nd Street, New York, New York, to serve as a new educational facility thereon (the “**Existing Facility**”), to be used by the Charter School (defined herein) as its school building serving students in kindergarten through 5th grade, eventually expanding to 8th grade; (ii) finance the construction, furnishing and equipping of an addition to the Existing Facility consisting of a five-story approximately 25,000 square foot addition (the “**Addition**” and, together with the Existing Facility, the “**Facility**”); (b) fund a debt service reserve fund subaccount for the benefit of the Series 2022A Bonds; (c) fund capitalized interest on the Series 2022A Bonds; and (d) pay for certain costs related to the issuance of the Series 2022A Bonds (collectively, the “**Series 2022A Project**”).

The Facility is owned by 528 W 162 LLC (the “**Landlord**”) and leased by the Landlord to the Borrower pursuant to a Lease dated as of April 16, 2021 (the “**Original Lease**”), as amended by that certain First Amendment of Lease dated as of April 4, 2022 (the “**Lease First Amendment**” and, together with the Original Lease and any current or future amendments thereto, the “**Lease**”). The term (the “**Term**”) of the Lease is forty-eight (48) years, commencing no later than the date which is the first day of the first full month which is 60 days after the issuance of the Series 2022 Bonds. Upon termination of the Lease, ownership of the Facility vests in the Landlord. The Borrower has entered into a Sublease with the Charter School dated as of June 15, 2021 (the “**Original Sublease**”), as amended by that certain First Amended and Restated Sublease Agreement prior to the issuance of the Series 2022 Bonds (the “**A & R Sublease**” and, together with the Original Sublease and any current or future amendments thereto, the “**Sublease**”),

pursuant to which the Borrower will sublease the Facility to the Charter School subject to the terms and conditions of the Lease, with a term that will commence simultaneously with the Lease.

Series 2022B Bonds. Proceeds of the Series 2022B Bonds will be used by the Borrower to (a)(i) finance the security deposit required under the Lease; (ii) finance payments due under the Lease for the first two years of the Lease; (iii) finance a proportionate share of the title insurance expense; and (iv) finance working capital; (b) fund capitalized interest on the Series 2022 Bonds; (c) fund a debt service reserve fund subaccount for the benefit of the Series 2022B Bonds; and (d) pay for certain costs related to the issuance of the Series 2022 Bonds (collectively, the “**Series 2022B Project**” and together with the Series 2022A Project, the “**Series 2022 Project**”).

The rents due under the Sublease are planned to be sufficient to pay debt service on the Series 2022 Bonds, the Lease Payment Reserve Requirement, Repair and Replacement Fund Requirement, as well as such other facilities-operational expenses as may be agreed to between Borrower and the Charter School from time to time. See “THE SERIES 2022 PROJECT AND PLAN OF FINANCE,” “SOURCES AND USES OF FUNDS” and “APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL” in this Limited Offering Memorandum.

Security for the Series 2022 Bonds

Pursuant to the Indenture, the Series 2022 Bonds will be secured by and payable from an assignment and pledge by the Issuer of (a) all money held in the Funds and Accounts established under the Indenture as set forth therein (but excluding funds in the Rebate Fund), (b) the right, title and interest of the Issuer in the Loan Agreement (except for the Issuer’s Reserved Rights), and (c) Loan payments due from the Borrower under the Loan Agreement and the Promissory Notes (as defined herein).

The amounts payable by the Charter School under the Sublease (the “**Rents**”) will be in amounts totaling not less than the debt service on the Series 2022 Bonds as the same become due and payable, but without acceleration, amounts due under the Lease as well as such other facilities-operational expenses as may be agreed to between Borrower and the Charter School from time to time. The Borrower will enter into a Depositary Agreement, dated as of June 1, 2022 (the “**Depositary Agreement**”), by and between the Borrower and The Bank of New York Mellon as depositary bank (the “**Depositary Bank**”) for the creation of a deposit account (the “**Borrower Account**”) for the deposit of certain funds received by the Borrower, including but not limited to Rents under the Sublease from the Charter School. Pursuant to the terms of the Account Control Agreement (the “**Borrower DACA**”) dated as of June 1, 2022, by and among the Trustee, as secured party thereunder, the Borrower and the Depositary Bank, the Borrower will grant a security interest in the Borrower Account to the Trustee and authorize the Trustee to transfer the amounts required under the Indenture and the Loan Agreement to the Revenue Fund established under the Indenture. Rents are to be paid by the Charter School from Gross Revenues to the Depositary Bank into the Borrower Account created under the Depositary Agreement. Upon an Event of Default, the Trustee may exercise control of and have the right to make withdrawals from the Borrower Account subject to the Borrower DACA pursuant to the terms thereof.

All obligations of the Charter School due under the Sublease are payable from the Gross Revenues of the Charter School. Gross Revenue is defined in the Covenant Agreement (as defined below) as all funds, money, grants, donations, or other distributions received by the Charter School from the State, City or any other sources, together with all other revenues, income or receipts of any kind whatsoever (collectively, “**Gross Revenues**”).

The Series 2022 Bonds will also be secured by (a) a lien on and security interests in the Borrower’s leasehold title interest in the Facility pursuant to (i) a Leasehold Mortgage and Security Agreement

(Building Loan) and (iii) a Leasehold Mortgage and Security Agreement (Indirect Loan), recorded against the Facility (collectively, the **“Leasehold Mortgages”**); each dated as of June 1, 2022 and each from the Borrower to the Issuer and the Trustee; as assigned by the Issuer to the Trustee under the terms of (b) (i) an Assignment of Leasehold Mortgage and Security Agreement (Building Loan) and (ii) an Assignment of Leasehold Mortgage and Security Agreement (Indirect Loan), with respect to the Leasehold Mortgages; each dated as of June 1, 2022 (collectively, the **“Assignment of Leasehold Mortgages”**).

The Series 2022 Bonds are further secured by a lien and security interest in the Pledged Collateral pursuant to, and as defined in a certain Pledge and Security Agreement, dated as of June 1, 2022 (the **“Pledge and Security Agreement”**) from the Borrower to the Trustee. Pledged Collateral is defined in the Pledge and Security Agreement as (a) all accounts, investment property, payment intangibles, general intangibles, monies, receipts, earnings (inclusive of any investment income), revenues, rentals, income, insurance proceeds, lease payments fees, gifts, donations, contributions, charges and other moneys received or receivable by or on behalf of the Borrower, including, but without limiting the generality of the foregoing, (i) fees and charges of the Borrower including lease payments fees or charges derived from the ownership or operation of the Facility, and all rights to receive any of the above, whether in the form of accounts, payment intangibles, contract rights, general intangibles or other rights, and the proceeds of such rights, whether now owned or held or hereafter coming into existence; and (ii) gifts, grants, bequests, donations and contributions heretofore or hereafter made to the Borrower, but excluding (y) the Unrestricted Investments Fund of the Borrower and (z) Restricted Gifts, and further including all income, distributions, dividends, earnings and revenues (y) derived from and deposited in the Unrestricted Investment Fund; and (z) derived from Restricted Gifts (unless otherwise prohibited by the terms of a Restricted Gift) (collectively, **“Pledged Revenues”**); (b) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action, and all cash (or evidences of cash or of rights to cash) or other property or rights thereto relating to such claims or causes of action; and (c) all Proceeds (including, without limitation, insurance proceeds and condemnation awards), whether cash or non-cash, of any of the above (collectively **“Pledged Collateral”**).

The Charter Schools Act prohibits the Charter School from pledging or assigning Education Aid, Rental Assistance, and other amounts payable by NYSED, NYCDOE or the federal government to the Charter School. Upon an Event of Default, the Trustee may exercise control of and have the right to make withdrawals from the Borrower Account subject to the Borrower DACA pursuant to the terms thereof.

Pursuant to a Covenant Agreement, dated as of June 1, 2022 (the **“Covenant Agreement”**), by the Charter School for the benefit of the Trustee, the Charter School will fulfill certain covenants and agreements in order to provide additional security for timely payment of amounts due under the Sublease, for the benefit of the holders of the Series 2022 Bonds and any Additional Bonds issued under the Indenture. See **“SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2022 BONDS”** in this Limited Offering Memorandum.

Additionally, pursuant to a Use Agreement, dated as of June 1, 2022 (the **“Use Agreement”**), by the Charter School for the benefit of the Issuer and the Trustee, the Charter School will make certain covenants for the benefit of the Issuer and the Trustee. See **“SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2022 BONDS”** and **“APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE”** in this Limited Offering Memorandum.

Special, Limited Obligations

THE SERIES 2022 BONDS ARE SPECIAL LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE AS TO PRINCIPAL, SINKING FUND INSTALLMENTS, REDEMPTION PRICE AND INTEREST SOLELY FROM THE TRUST ESTATE AND CERTAIN FUNDS AND ACCOUNTS ESTABLISHED UNDER THE INDENTURE. NEITHER THE STATE OF NEW YORK (THE “STATE”) NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF NEW YORK (THE “CITY”) SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR REDEMPTION PRICE OF, SINKING FUND INSTALLMENTS FOR, OR INTEREST ON, THE SERIES 2022 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 2022 BONDS. THE SERIES 2022 BONDS WILL NOT BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE SERIES 2022 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, SINKING FUND INSTALLMENTS FOR, OR INTEREST ON, THE SERIES 2022 BONDS AGAINST ANY MEMBER, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE OR AGENT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

Risk Factors

Purchase of the Series 2022 Bonds involves a high degree of risk and the Series 2022 Bonds are a speculative investment. A prospective purchaser of the Series 2022 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 2022 Bonds.

Purchase and Transfer Restrictions

The Series 2022 Bonds may be purchased only by (a) a “Qualified Institutional Buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “**Securities Act**”), or (b) an “Accredited Investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act. The purchase restrictions described in this paragraph apply to initial purchases of the Series 2022 Bonds and to all subsequent sales or transfers of the Series 2022 Bonds. See “THE SERIES 2022 BONDS—Purchase and Transfer Restrictions on Series 2022 Bonds” and “TRANSFER RESTRICTIONS” in this Limited Offering Memorandum.

Optional and Mandatory Redemption

See “THE SERIES 2022 BONDS—Redemption of Series 2022 Bonds” in this Limited Offering Memorandum.

Exchange and Transfer

While the Series 2022 Bonds remain in book-entry only form, transfer of ownership by Beneficial Owners may be made as described in “THE SERIES 2022 BONDS” and “APPENDIX H—BOOK-ENTRY ONLY SYSTEM” in this Limited Offering Memorandum.

Payment

Interest accrues on the Series 2022 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 January 1 and July 1 of each year, commencing January 1, 2023 (each an **“Interest Payment Date”**). The Series 2022 Bonds mature as set forth on the inside front cover of this Limited Offering Memorandum. Interest on and the principal of the Series 2022 Bonds is payable as described under the heading **“THE SERIES 2022 BONDS”** in this Limited Offering Memorandum.

Trustee, Bond Registrar and Paying Agent

The Bank of New York Mellon in New York, New York, is acting as Trustee, Bond Registrar and Paying Agent. See **“THE TRUSTEE”** in this Limited Offering Memorandum.

Form

The Series 2022 Bonds will be registered under a book-entry system in the name of The Depository Trust Company (**“DTC”**) or its nominees. See **“THE SERIES 2022 BONDS”** in this Limited Offering Memorandum.

Tax Status

In the opinion of Nixon Peabody LLP, New York, New York, Bond Counsel, under existing law and assuming compliance with the tax covenants described herein, and the accuracy of certain representations and certifications made by the Issuer, the Borrower and the Charter School described herein, interest on the Series 2022A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the **“Code”**). Bond Counsel is also of the opinion that interest on the Series 2022A Bonds is not treated as a preference item in calculating the alternative minimum tax imposed under the Code. Bond Counsel is further of the opinion that interest on the Series 2022A Bonds is exempt from personal income taxation imposed by the State of New York or any political subdivision of the State of New York, including The City of New York. Interest on the Series 2022B Bonds is not excluded from gross income for federal income tax purposes and is not exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). See **“TAX MATTERS – SERIES 2022A BONDS”** and **“TAX MATTERS—SERIES 2022B BONDS”** herein regarding certain other tax considerations.

Continuing Disclosure Agreement

Pursuant to the requirements of Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. Part 240, § 240.15c2-12) (the **“Rule”**), the Borrower and the Charter School have agreed for the benefit of the Registered Owners and Beneficial Owners of the Series 2022 Bonds to provide certain financial information, other operating data and notices of material events. Neither the Borrower nor the Charter School has been subject to any prior continuing disclosure undertaking under the Rule. See **“CONTINUING DISCLOSURE,”** and **“APPENDIX G—FORM OF CONTINUING DISCLOSURE AGREEMENT”** in this Limited Offering Memorandum.

No Rating

There is no rating assigned to the Series 2022 Bonds.

Delivery Information

The Series 2022 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 2022 Bonds will be made on or about June 29, 2022 through the facilities of DTC in New York, New York, against payment therefor.

Bond Counsel and Other Counsels; Underwriter

Nixon Peabody LLP, New York, New York, is acting as Bond Counsel to the Issuer. Certain legal matters will be passed upon for the Borrower and the Charter School by its counsel, Cohen Schneider Law, P.C., New York, New York. Certain legal matters will be passed upon for the Trustee by its counsel, Paparone Law PLLC, New York, New York and for the Underwriter by its counsel, Ballard Spahr LLP, New York, New York. D.A. Davidson & Co., Denver, Colorado will serve as the Underwriter for the Series 2022 Bonds. See “UNDERWRITING” in this Limited Offering Memorandum.

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, 1550 Market Street, Suite 300, Denver, Colorado 80202 or the Trustee, 240 Greenwich Street, Floor 7E, New York, New York 10286, Attention: Corporate Trust Administration.

Audited Financial Statements

The audited financial statements of the Charter School for the fiscal years ended June 30, 2020 and June 30, 2021 are included in this Limited Offering Memorandum as APPENDIX E and APPENDIX D, respectively. The financial statements in APPENDIX D and APPENDIX E were audited by Mengel Metzger Barr & Co. LLP. See “AUDITED FINANCIAL STATEMENTS OF THE CHARTER SCHOOL” and “APPENDIX D—AUDITED FINANCIAL STATEMENTS, OTHER FINANCIAL INFORMATION AND INDEPENDENT AUDITOR’S REPORT OF THE CHARTER SCHOOL FOR THE FISCAL YEAR ENDED JUNE 30, 2021” and “APPENDIX E—AUDITED FINANCIAL STATEMENTS, OTHER FINANCIAL INFORMATION AND INDEPENDENT AUDITOR’S REPORT OF THE CHARTER SCHOOL FOR THE FISCAL YEAR ENDED JUNE 30, 2020” in this Limited Offering Memorandum. The financial statements for the fiscal year ended June 30, 2021 are the most recent audited financial statements available for the Charter School.

Budget Projection

The Budget Projection (the “**Budget Projection**”) attached hereto in APPENDIX C is a projection of the future financial performance of the Charter School based upon certain assumptions made by the Charter School and contained therein. NO ASSURANCES CAN BE GIVEN THAT THE OPERATIONS OF THE CHARTER SCHOOL WILL EQUAL OR EXCEED THE SERIES 2022 PROJECTED FUTURE FINANCIAL PERFORMANCE SET FORTH IN THE BUDGET PROJECTION. The Budget Projection is for the six (6) fiscal years of the Charter School ending June 30, 2023 through June 30, 2028.

THE BORROWER AND THE CHARTER SCHOOL HAVE PROVIDED THE INFORMATION SET FORTH IN APPENDICES A, C, D AND E, AND NEITHER THE ISSUER NOR THE UNDERWRITER MAKES ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

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LIMITED OFFERING MEMORANDUM

BUILD NYC RESOURCE CORPORATION REVENUE BONDS (WHIN MUSIC COMMUNITY CHARTER SCHOOL PROJECT)

\$40,840,000	\$3,070,000
Tax-Exempt Revenue Bonds	Taxable Revenue Bonds
(WHIN Music Community Charter School Project), Series 2022A	(WHIN Music Community Charter School Project), Taxable Series 2022B

INTRODUCTION

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 J or in any 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 J 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 (a) Tax-Exempt Revenue Bonds (WHIN Music Community Charter School Project) Series 2022A (the “**Series 2022A Bonds**”), in the aggregate principal amount of \$40,840,000 and (b) Taxable Revenue Bonds (WHIN Music Community Charter School Project) Taxable Series 2022B (the “**Series 2022B Bonds**” and together with the Series 2022A Bonds, the “**Series 2022 Bonds**”), in the aggregate principal amount of \$3,070,000.

The Series 2022 Bonds will be issued pursuant to an Indenture of Trust, dated as of June 1, 2022 (the “**Indenture**”), by and between the Issuer and The Bank of New York Mellon, as trustee (the “**Trustee**”), including any amendments or supplements thereto. The Issuer will loan the proceeds of the Series 2022 Bonds (the “**Loan**”) to Friends of WHIN Music Community Charter School, Inc. (the “**Borrower**”), a New York not-for-profit corporation and exempt from federal taxation pursuant to section 501(c)(3) of the Code, pursuant to a Loan Agreement, dated as of June 1, 2022 (the “**Loan Agreement**”), between the Issuer and the Borrower. See “APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE—Form of Loan Agreement” in this Limited Offering Memorandum.

Proceeds of each series of the Series 2022 Bonds will be used by the Borrower pursuant to the terms of the Loan Agreement as follows:

Series 2022A Bonds. Proceeds of the Series 2022A Bonds will be used by the Borrower to: (a)(i) finance the construction, renovation, furnishing and equipping of an existing three-story 29,880 square foot building located on a 9,992 square foot parcel of land located at 528 West 162nd Street, New York, New York, to serve as a new educational facility thereon (the “**Existing Facility**”), to be used by the Charter School (defined herein) as its school building serving students in kindergarten through 5th grade, eventually expanding to 8th grade; (ii) finance the construction, furnishing and equipping of an addition to the Existing

Facility consisting of a five-story approximately 25,000 square foot addition (the “**Addition**” and, together with the Existing Facility, the “**Facility**”); (b) fund a debt service reserve fund subaccount for the benefit of the Series 2022A Bonds; (c) fund capitalized interest on the Series 2022A Bonds; and (d) pay for certain costs related to the issuance of the Series 2022A Bonds (collectively, the “**Series 2022A Project**”).

The Facility is owned by 528 W 162 LLC (the “**Landlord**”) and leased by the Landlord to the Borrower pursuant to a Lease dated as of April 16, 2021 (the “**Original Lease**”), as amended by that certain First Amendment of Lease dated as of April 4, 2022 (the “**Lease First Amendment**” and, together with the Original Lease and any current or future amendments thereto, the “**Lease**”). The term (the “**Term**”) of the Lease is forty-eight (48) years, commencing no later than the date which is the first day of the first full month which is 60 days after the issuance of the Series 2022 Bonds. Upon termination of the Lease, ownership of the Facility vests in the Landlord. The Borrower has entered into a sublease with the Charter School dated as of June 15, 2021 (the “**Original Sublease**”), as amended by that certain First Amended and Restated Sublease Agreement prior to the issuance of the Series 2022 Bonds (the “**A & R Sublease**” and, together with the Original Sublease and any current or future amendments thereto, the “**Sublease**”), pursuant to which the Borrower will sublease the Facility to the Charter School subject to the terms and conditions of the Lease, with a term that will commence simultaneously with the Lease.

Series 2022B Bonds. Proceeds of the Series 2022B Bonds will be used by the Borrower to (a)(i) finance the security deposit required under the Lease; (ii) finance payments due under the Lease for the first two years of the Lease; (iii) finance a proportionate share of the title insurance expenses; and (iv) finance working capital; (b) fund capitalized interest on the Series 2022 Bonds; (c) fund a debt service reserve fund subaccount for the benefit of the Series 2022B Bonds; and (d) pay for certain costs related to the issuance of the Series 2022 Bonds (collectively, the “**Series 2022B Project**” and together with the Series 2022A Project, the “**Series 2022 Project**”).

“THE SERIES 2022 PROJECT AND PLAN OF FINANCE,” “SOURCES AND USES OF FUNDS” and “APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL” in this Limited Offering Memorandum.

Loan of Series 2022 Bond Proceeds; Leasehold Mortgages and Other Security

Proceeds of the Series 2022 Bonds will be loaned by the Issuer to the Borrower pursuant to the Loan Agreement, and the Series 2022 Bonds will be payable primarily from and secured by a pledge of payments to be made by the Borrower (the “**Loan Payments**”) under the Loan Agreement and two Promissory Notes (one with respect to each series of Series 2022 Bonds) from the Borrower to the Issuer including the endorsement thereof from the Issuer to the Trustee (collectively, the “**Promissory Notes**”), which are required to be sufficient to pay when due the scheduled principal of, Sinking Fund Installments for, and interest on the Series 2022 Bonds and any Additional Bonds (collectively, the “**Bonds**”).

The Series 2022 Bonds will also be secured by (a) a lien on and security interests in the Borrower’s leasehold title interest in the Facility pursuant to (i) a Leasehold Mortgage and Security Agreement (Building Loan) and (ii) a Leasehold Mortgage and Security Agreement (Indirect Loan), recorded against the Facility (collectively, the “**Leasehold Mortgages**”); each dated as of June 1, 2022 and each from the Borrower to the Issuer and the Trustee; as assigned by the Issuer to the Trustee under the terms of (b) (i) an Assignment of Leasehold Mortgage and Security Agreement (Building Loan) and (ii) an Assignment of Leasehold Mortgage and Security Agreement (Indirect Loan), with respect to the Mortgages; each dated as of June 1, 2022 (collectively, the “**Assignment of Leasehold Mortgages**”). See “APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE” in this Limited Offering Memorandum.

The Series 2022 Bonds are further secured by a lien and security interest in the Pledged Collateral of the Borrower pursuant to, and as defined in a certain Pledge and Security Agreement, dated as of June 1, 2022 (the “**Pledge and Security Agreement**”) from the Borrower to the Trustee. Pledged Collateral is defined in the Pledge and Security Agreement as (a) all accounts, investment property, payment intangibles, general intangibles, monies, receipts, earnings (inclusive of any investment income), revenues, rentals, income, insurance proceeds, lease payments fees, gifts, donations, contributions, charges and other moneys received or receivable by or on behalf of the Borrower, including, but without limiting the generality of the foregoing, (i) fees and charges of the Borrower including lease payments fees or charges derived from the ownership or operation of the Facility, and all rights to receive any of the above, whether in the form of accounts, payment intangibles, contract rights, general intangibles or other rights, and the proceeds of such rights, whether now owned or held or hereafter coming into existence; and (ii) gifts, grants, bequests, donations and contributions heretofore or hereafter made to the Borrower, but excluding (y) the Unrestricted Investments Fund of the Borrower and (z) Restricted Gifts, and further including all income, distributions, dividends, earnings and revenues (y) derived from and deposited in the Unrestricted Investment Fund; and (z) derived from Restricted Gifts (unless otherwise prohibited by the terms of a Restricted Gift) (collectively, “**Pledged Revenues**”); (b) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action, and all cash (or evidences of cash or of rights to cash) or other property or rights thereto relating to such claims or causes of action; and (c) all Proceeds (including, without limitation, insurance proceeds and condemnation awards), whether cash or non-cash, of any of the above (collectively “**Pledged Collateral**”).

The Charter School has subleased the Facility from the Borrower pursuant to the Sublease. The amounts payable by the Charter School under the Sublease (the “**Rents**”) will be in amounts totaling not less than the debt service on the Series 2022 Bonds as the same become due and payable, but without acceleration, amounts due under the Lease as well as such other facilities-operational expenses as may be agreed to between Borrower and the Charter School from time to time. The Borrower will enter into a Deposit Agreement, dated as of June 1, 2022 (the “**Depositary Agreement**”), by and between the Borrower and The Bank of New York Mellon as depository bank (the “**Depositary Bank**”) for the creation of a deposit account (the “**Borrower Account**”) for the deposit of certain funds received by the Borrower, including but not limited to Rents under the Sublease from the Charter School. Pursuant to the terms of the Deposit Account Control Agreement (the “**Borrower DACA**”) dated as of June 1, 2022, by and among the Trustee, as secured party thereunder, the Borrower and the Depositary Bank, the Borrower will grant a security interest in the Borrower Account to the Trustee and authorize the Trustee to transfer the amounts required under the Indenture and the Loan Agreement to the Revenue Fund established under the Indenture. Rents are to be paid by the Charter School from Gross Revenues to the Depositary Bank into the Borrower Account created under the Depositary Agreement. Upon an Event of Default, the Trustee may exercise control of and have the right to make withdrawals from the Borrower Account subject to the Borrower DACA pursuant to the terms thereof. All obligations of the Charter School due under the Sublease are payable from the Gross Revenues of the Charter School. Gross Revenue is defined in the Covenant Agreement as all funds, money, grants, donations, or other distributions received by the Charter School from the State, City or any other sources, together with all other revenues, income or receipts of any kind whatsoever (collectively, “**Gross Revenues**”).

Pursuant to the Indenture, the Issuer will pledge to the Trustee, for the benefit of the holders of the Series 2022 Bonds, all of its interest in the Promissory Notes and all of its right, title and interest in and to the Loan Agreement and the amounts payable thereunder (other than the Issuer’s Reserved Rights) to secure payment of the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Series 2022 Bonds. The obligation of the Borrower to make Loan Payments under the Loan Agreement and the Promissory Notes is an absolute and unconditional obligation of the Borrower. However, the Borrower will not have any other sources of revenue to make its Loan Payments other than the Rents

received from the Charter School under the Sublease, and the ability of the Borrower to generate additional revenues is limited in the event that the Education Aid payments and Rental Assistance (as defined herein) received by the Charter School are not sufficient to make the required payments of Rents under the Sublease. See “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2022 BONDS” in this Limited Offering Memorandum.

Lease

The Borrower has entered into the Lease for the Facility. The forty-eight (48)-year term of the Lease (the “**Term**”) will commence no later than the day which is the first day of the first full month which is 60 days after the issuance of the Series 2022 Bonds (the “**Commencement Date**”). Commencing on the Commencement Date, the Borrower is to pay to the Landlord \$840,000 per year in equal monthly payments of \$70,000, subject to periodic increases during the 6th year, 11th year, 16th year, 21st year, 26th year, 31st year and 36th year during the Term in an amount equal to the greater of (i) 10% of the then-payable rent and (ii) the percentage increase in per pupil funding from the New York City Department of Education over the prior five year period. The rent payable by the Borrower to the Landlord from the 41st year through the 48th year is to be equal to the then fair market rental value for the Facility, determined in accordance with the procedure described in the Lease First Amendment. Upon termination of the Lease, ownership of the Facility vests in the Landlord. The Borrower has entered into the Sublease with the Charter School pursuant to which the Borrower will sublease the Facility to the Charter School subject to the terms and conditions of the Lease, with a term that will commence simultaneously with the Lease.

The Lease is a “triple net lease” and Borrower, during the Term (and during any period in which Borrower holds over after expiration of the Term), Borrower is responsible for any and all costs and expenses in maintaining, repairing and if necessary replacing the Facility and maintaining, repairing and if necessary replacing portions of the Facility (including the sidewalks contiguous to the Facility). The foregoing obligation shall include making all structural and non-structural repairs and replacements to the Facility.

See “APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE—Form of Lease” in this Limited Offering Memorandum.

Sublease

The Borrower has subleased the Facility to the Charter School through a term of June 30, 2070, unless the Term is extended through the exercise by the Borrower of one or both of the Renewal Options, or the Sublease is earlier terminated in accordance with its terms. The Charter School will operate the Facility following completion of the Series 2022 Project. The Charter School will continue to operate at one or both of the Current Facilities until the completion of the Series 2022 Project.

The rent (the “**Rents**”) due from the Charter School to the Borrower under the Sublease will be in amounts anticipated to be sufficient to make Loan Payments under the Loan Agreement on each January 5, March 5, May 5, July 5, September 5 and November 5, commencing September 5, 2022, payments due under the Lease as well as such other facilities-operational expenses as may be agreed to between Borrower and the Charter School from time to time. The Sublease contains a fixed rent payment schedule which provides for Rents in an amount and at such times to pay the required debt service on the Series 2022 Bonds and additional operational costs of the Facility, including amounts due under the Lease. Interest will be capitalized on the Series 2022 Bonds during construction from the Closing Date until July 1, 2024, in part.

Additionally, pursuant to the Sublease, the Borrower is responsible for all costs incurred by Borrower in complying with all of Borrower's insurance obligations, including but not limited to the payment of all insurance premiums. Borrower, in consultation with the Charter School to confirm the Charter School's needs, is responsible for contracting directly for and paying certain costs and expenses associated with all utilities including, without limitation, charges for water, gas, oil, sanitary and storm sewer, electricity, steam, telephone service, trash collection, internet access, cable television or satellite service, and all other utilities that may be charged against the Facility during the term of the Sublease, and other costs and expenses involved in the care, management and use thereof, and Borrower shall contract in its own name with the providers providing the foregoing services to the Facility.

See "APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE" for a more complete description of the Sublease.

Continuing Disclosure

The Borrower and the Charter School will agree in the Continuing Disclosure Agreement to provide certain annual financial reports, quarterly financial reports and notices of certain other events with respect to the Series 2022 Bonds. See "CONTINUING DISCLOSURE" in this Limited Offering Memorandum.

Special Covenants of the Charter School; Additional Indebtedness

Pursuant to the Covenant Agreement, the Charter School will make certain covenants for the benefit of the Trustee, including that the Charter School will comply with the terms of the Sublease, for the benefit of the holders of the Series 2022 Bonds and any Additional Bonds issued under the Indenture. The Covenant Agreement requires the Charter School to comply with certain financial covenants and places certain restrictions on the incurrence of indebtedness by the Charter School. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2022 BONDS" in this Limited Offering Memorandum.

Additionally, pursuant to a Use Agreement, dated as of June 1, 2022 (the "**Use Agreement**"), by the Charter School for the benefit of the Issuer and the Trustee, the Charter School will make certain covenants for the benefit of the Issuer and the Trustee. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2022 BONDS" in this Limited Offering Memorandum.

Bondholders' Risks

Purchase of the Series 2022 Bonds involves a high degree of risk and the Series 2022 Bonds are a speculative investment. Certain risks associated with an investment in the Series 2022 Bonds are discussed under "RISK FACTORS" in this Limited Offering Memorandum. Other risks may exist which are not discussed within "RISK FACTORS".

Miscellaneous

This Limited Offering Memorandum (including the Appendices hereto) contains descriptions of, among other matters, the Indenture, the Loan Agreement, the Leasehold Mortgages, the Lease, the Sublease, the Assignment of Leasehold Mortgages, the Pledge and Security Agreement, the Covenant Agreement, the Use Agreement, the Continuing Disclosure Agreement, the Issuer, the Facility, the Series 2022 Project, the Borrower, the Charter School and the Series 2022 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, created in 2011, 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 (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 for-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 “ABSENCE OF MATERIAL 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 2022 Bonds, the Issuer has not otherwise assisted in the public offer, sale or distribution of the Series 2022 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 2022 Bonds.

The Series 2022 Bonds are special limited revenue obligations of the Issuer payable solely from the payments made by the Borrower under the Loan Agreement and the Promissory Notes and from the Trust Estate as described in the Indenture. The Issuer has no taxing power. Neither the Issuer nor its members, directors, officers, agents, employees or representatives are personally liable with respect to the Series 2022 Bonds. Accordingly, no financial information with respect to the Issuer or its members, directors, officers, agents, employees or representatives has been included in this Limited Offering Memorandum.

THE BORROWER

The Borrower is a New York not-for-profit corporation formed on October 1, 2019. The Borrower 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 Borrower received a 501(c)(3) determination letter on September 16, 2020 with an effective date of October 1, 2019, from the Internal Revenue Service.

The Borrower adopted its Bylaws on January 9, 2020. Pursuant to the Borrower’s Bylaws, the Borrower’s property, business, and affairs are vested in the Borrower and managed by a self-perpetuating Board of Directors, which has the powers and duties necessary or appropriate for the administration of the affairs of the Borrower as are permitted by law, the Certificate of Incorporation of the Borrower and the Bylaws. The Borrower’s Board of Directors consists of no fewer than three (3) and not more than seven (7) directors. The number of Directors may be increased or decreased by action of a majority of the entire Borrower’s Board of Directors, provided, however, that no decrease shall shorten the term of any incumbent Director. Directors on the Borrower’s Board of Directors are elected by the board at its annual meeting.

Each Director serves until the next succeeding annual meeting and until such director's successor is elected or qualified.

The current directors on the Borrower's Board of Directors are set forth in the table below:

Board of Directors		
Name	Occupation	Office
Arnold Adlin	Investment Banking	Chairperson
Rosa Franco	Director of Lending and Business Development, Neighborhood Trust Federal Credit Union	Secretary
Ed Brown	Finance and Operations Officer	Treasurer

The Facility is owned by the Landlord and leased by the Landlord to the Borrower pursuant to the Lease. The Facility is subleased by the Borrower to the Charter School pursuant to the Sublease.

THE CHARTER SCHOOL

The Charter School 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 Code. The Charter School currently operates within the boundaries of New York City Community School District No. 6 (“**CSD 6**”) in Manhattan, in the State of New York (the “**State**”), offering kindergarten through 5th grade. The Charter School was first authorized in 2016 by the Board of Regents of the State of New York on behalf of the New York State Education Department (the “**Authorizer**”).

The Charter School provides its diverse student population with rigorous academic instruction, intensive music education and a positive learning environment so that every student can thrive academically and personally. The Charter School currently operates one school for grades kindergarten through 5th grade in two (2) locations. Students in grades 2nd through 5th are housed in dedicated and shared space within Middle School 328 Community Math & Science Prep, a New York City Department of Education (“**NYCDOE**”)–operated public school located at 401 West 164th Street, New York, New York (the “**328 Facility**”). Students in grades kindergarten through 1st are housed in a private space within the Church of St. Rose of Lima, a Catholic church located at 1086 St. Nicholas Avenue, New York, New York (the “**Lima Facility**” and, together with the 328 Facility, the “**Current Facilities**”). Upon completion, the Charter School will move to the education facility to be constructed and financed with proceeds of the Series 2022 Bonds located at 528 West 162nd Street, New York, New York (the “**Facility**”). The Current Facilities are approximately 0.3 miles from the Facility.

The Charter School occupies the 328 Facility along with NYCDOE pursuant to approvals from the NYCDOE, rent and expense free. Approval of the Charter School's use of the 328 Facility is set to end on June 30, 2022. The Charter School occupies the Lima Facility pursuant to a lease agreement with a term through August 31, 2023. The Charter School is in the process of modifying and extending its lease at the Lima Facility to allow the Charter School to continue its operations through construction of the Series 2022 Project. The Lima Facility can accommodate the Charter School's planned enrollment, when it ceases operations at the 328 Facility.

The Charter School 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 Charter School 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 Charter School's Charter and Bylaws provide that the Charter School is managed and controlled by a Board of Trustees. For more information with respect to the Charter School and its history and operations, see "APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL" in this Limited Offering Memorandum. The Charter School will have no obligations under the Loan Agreement or under the Promissory Notes to make Loan Payments under the Loan Agreement or pay debt service on the Series 2022 Bonds.

See "THE CHARTER SCHOOL" and "APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL" 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.

THE SERIES 2022 PROJECT AND PLAN OF FINANCE

Use of Proceeds of the Series 2022A Bonds. Proceeds of the Series 2022A Bonds will be used by the Borrower to: (a)(i) finance the construction, renovation, furnishing and equipping of an existing three-story 29,880 square foot building located on a 9,992 square foot parcel of land located at 528 West 162nd Street, New York, New York, to serve as a new educational facility thereon (the "**Existing Facility**"), to be used by the Charter School (defined herein) as its school building serving students in kindergarten through 5th grade, eventually expanding to 8th grade; (ii) finance the construction, furnishing and equipping of an addition to the Existing Facility consisting of a five-story approximately 25,000 square foot addition (the "**Addition**" and, together with the Existing Facility, the "**Facility**"); (b) fund a debt service reserve fund subaccount for the benefit of the Series 2022A Bonds; (c) fund capitalized interest on the Series 2022A Bonds; and (d) pay for certain costs related to the issuance of the Series 2022A Bonds.

The Borrower has entered into a Lease with an effective date of April 16, 2021 (the "**Original Lease**") with 528 W 162 LLC (the "**Landlord**"), as lessor, for the Facility, as amended by that certain First Amendment of Lease dated as of April 4, 2022 (the "**Lease First Amendment**" and, together with the Original Lease and any current or future amendments thereto, the "**Lease**"). The term (the "**Term**") of the Lease is forty-eight (48) years and will commence no later than the day which is the first day of the first full month which is 60 days after the issuance of the Series 2022 Bonds (the "**Commencement Date**"). Commencing on the Commencement Date, the Borrower is to pay to the Landlord \$840,000 per year in equal monthly payments of \$70,000, subject to periodic increases during the 6th year, 11th year, 16th year, 21st year, 26th year, 31st year and 36th year during the Term in an amount equal to the greater of (i) 10% of the then-payable rent and (ii) the percentage increase in per pupil funding from the New York City Department of Education over the prior five year period. The rent payable by the Borrower to the Landlord from the 41st year through the 48th year is to be equal to the then fair market rental value for the Facility, determined in accordance with the procedure described in the Lease First Amendment. Upon termination of the Lease, ownership of the Facility vests in the Landlord. The Borrower has entered into a Sublease with the Charter School dated as of June 15, 2021 (the "**Original Sublease**"), as amended by that certain First Amended and Restated Sublease Agreement prior to the issuance of the Series 2022 Bonds (the "**A & R Sublease**" and, together with the Original Sublease and any current or future amendments thereto, the "**Sublease**"), pursuant to which the Borrower will sublease the Facility to the Charter School subject to the terms and conditions of the Lease, with a term that will commence simultaneously with the Lease.

Upon the issuance of the Series 2022 Bonds, the Existing Facility will be renovated to serve as an educational facility for the Charter School and such improvements are anticipated to be completed by July of 2024. The Addition includes the construction of a five-story 25,015 square foot addition on the Existing Facility and the Addition is anticipated to be completed by July of 2024. The Existing Facility was

constructed in 1914 as a three-story parking garage and has been used as a parking garage since its construction. Following completion of the renovations to the Existing Facility and the Addition, the Facility will house approximately 18 classrooms, a cafeteria, an auditorium, support spaces, gymnasium and a rooftop play area. As planned, the Facility will have no parking spaces. Upon completion of the renovation of the Existing Facility and the Addition, the total square footage of the Facility will be approximately 55,000 square feet. The Facility is planned to serve up to approximately 486 students in kindergarten through 8th grade.

See “APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL—PLAN OF FINANCE” in this Limited Offering Memorandum. The approximate budget for the Facility is set forth below:

Project Budget	
Hard Costs ¹	\$26,400,000
Soft Costs ²	2,619,016
Contingency	1,800,000
Title Insurance	122,778
Other Project Costs	<u>811,823</u>
Total	<u>\$31,753,617</u>

¹ The budget for these components of the Series 2022 Project is included in the GMP Contract (as defined herein).

² Amount includes reimbursements to the Charter School in the amount of approximately \$304,539.

The Borrower has selected GLUCK+ Construction CMc, located in New York, New York (the “**Contractor**” or “**Construction Manager**”) as both the architect and the construction manager for the Series 2022 Project. The Contractor and Borrower entered into an AIA Document A133-2019 – Standard form of Agreement Between Owner and Construction Manager where the basis of payment is the Cost of the Work plus a Fee with a Guaranteed Maximum Price contract, executed on March 7, 2022 (the “**GMP Contract**”), pursuant to which the parties agreed to a Guaranteed Maximum Price of \$26,400,000 to complete the Series 2022 Project. Schoolhouse Project (the “**Project Development Consultant**”) will serve as the Project Development Consultant for the Series 2022 Project pursuant to a Consultant Services Agreement (the “**Consultant Services Agreement**”) by and among the Borrower and the Project Development Consultant.

The Consultant Services Agreement provides that the Project Development Consultant will assist the Charter School and the Borrower with facility development including (a) planning, search, and acquisition; (b) budgeting and financing; (c) facility design, City approval, and permitting, and (d) construction, sign-off, and project closeout. The Consultant Services Agreement may be terminated upon the Charter School providing 60 days written notice.

Series 2022 Project costs in excess of the amount deposited into the Project Fund from Series 2022 Bond proceeds will need to be paid from legally available funds of the Charter School. See “RISK FACTORS—Construction Risk Relating to the Facility.”

Use of Proceeds of the Series 2022B Bonds. Proceeds of the Series 2022B Bonds will be used by the Borrower to (a)(i) finance the security deposit required under the Lease in the amount of \$225,000, (ii) finance payments due under the Lease for the first two years of the Lease in the amount of \$840,000, (iii) finance a proportionate share of the title insurance expenses in the amount of approximately \$9,229.38, and (iv) finance working capital in the approximate amount of \$783,566.36; (b) fund capitalized interest on the

Series 2022 Bonds; (c) fund a debt service reserve fund subaccount for the benefit of the Series 2022B Bonds; and (d) pay for certain costs related to the issuance of the Series 2022 Bonds.

SOURCES AND USES OF FUNDS

Following are the estimated sources and uses for funds (excluding investment income) associated with the Series 2022 Project and the issuance of the Series 2022 Bonds:

Sources of Funds

Series 2022A Bond Proceeds	\$40,840,000.00
Series 2022A Bonds Original Issue Premium	346,356.30
Series 2022B Bond Proceeds	<u>3,070,000.00</u>
Total Sources of Funds	<u><u>\$44,256,356.30</u></u>

Uses of Funds

Deposit to Project Fund	\$33,614,508.06
Deposit to the Series 2022 Capitalized Interest Account	5,931,760.69
Deposit to Debt Service Reserve Fund	3,321,075.00
Costs of Issuance and Real Estate Closing Costs ¹	<u>1,389,012.55</u>
Total Uses of Funds	<u><u>\$44,256,356.30</u></u>

¹ Includes Underwriter's discount and a rounding amount.
Source: The Underwriter.

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DEBT SERVICE SCHEDULE

The table below sets forth the amounts required to be paid with respect to each of the Series 2022A Bonds and the Series 2022B Bonds, as well the total debt service on the Series 2022 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 Funds and Accounts established under the Indenture. Interest on the Series 2022 Bonds will be paid on January 1 and July 1 of each year, commencing January 1, 2023. Principal of the Series 2022 Bonds will be paid on July 1 of each year, commencing July 1, 2026.

Year Ending July 1 of	Series 2022A		Series 2022B		Total Debt Service
	Principal Amount	Interest Amount	Principal Amount	Interest Amount	
2023	\$ --	\$ 2,669,348	\$ --	\$ 300,988	\$ 2,970,336
2024	--	2,654,600	--	299,325	2,953,925
2025	--	2,654,600	--	299,325	2,953,925
2026	--	2,654,600	365,000	299,325	3,318,925
2027	--	2,654,600	400,000	263,737	3,318,337
2028	--	2,654,600	440,000	224,738	3,319,338
2029	--	2,654,600	480,000	181,837	3,316,437
2030	--	2,654,600	530,000	135,038	3,319,638
2031	--	2,654,600	580,000	83,362	3,317,962
2032	360,000	2,654,600	275,000	26,813	3,316,413
2033	685,000	2,631,200	--	--	3,316,200
2034	730,000	2,586,675	--	--	3,316,675
2035	780,000	2,539,225	--	--	3,319,225
2036	830,000	2,488,525	--	--	3,318,525
2037	885,000	2,434,575	--	--	3,319,575
2038	940,000	2,377,050	--	--	3,317,050
2039	1,005,000	2,315,950	--	--	3,320,950
2040	1,070,000	2,250,625	--	--	3,320,625
2041	1,140,000	2,181,075	--	--	3,321,075
2042	1,210,000	2,106,975	--	--	3,316,975
2043	1,290,000	2,028,325	--	--	3,318,325
2044	1,375,000	1,944,475	--	--	3,319,475
2045	1,465,000	1,855,100	--	--	3,320,100
2046	1,560,000	1,759,875	--	--	3,319,875
2047	1,660,000	1,658,475	--	--	3,318,475
2048	1,770,000	1,550,575	--	--	3,320,575
2049	1,885,000	1,435,525	--	--	3,320,525
2050	2,005,000	1,313,000	--	--	3,318,000
2051	2,135,000	1,182,675	--	--	3,317,675
2052	2,275,000	1,043,900	--	--	3,318,900
2053	2,420,000	896,025	--	--	3,316,025
2054	2,580,000	738,725	--	--	3,318,725
2055	2,745,000	571,025	--	--	3,316,025
2056	2,925,000	392,600	--	--	3,317,600
2057	<u>3,115,000</u>	<u>202,475</u>	--	--	<u>3,317,475</u>
TOTAL	<u>\$40,840,000</u>	<u>\$69,045,398</u>	<u>\$3,070,000</u>	<u>\$2,114,488</u>	<u>\$115,069,886</u>

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 2022 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. 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 “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.

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 free access to New York City Department of Education (“NYCDOE”) owned or controlled 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 such a NYCDOE 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 school district building, alternative private space provided by NYCDOE 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 (“**Rental Assistance**”). For eligible charter schools that have expanded grade levels during the 2014–2015 school year or thereafter, the Rental Assistance are calculated, as described below, based on increases in enrollment from the school year prior to the first year of the expansion to the current school year.

If an appeal of NYCDOE’s offer or failure to offer a co-location site in response to a charter school’s request results in a determination in favor of the charter school, NYCDOE 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 Charter Schools 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.

A 2017 amendment to the Charter Schools Act increased the percentage in (b) above from 20% to 30%. Further, pursuant to the Charter Schools Act, there have been annual adjustments to the calculation of Charter School Basic Tuition, which have resulted in increases to the amount of Rental Assistance available to eligible New York City charter schools, to the extent such amount does not exceed a charter school's actual rental costs. Such available amounts of Rental Assistance have been as follows: (a) 2017–2018 school year, approximately \$4,350 per pupil; (b) 2018–2019 school year, approximately \$4,590 per pupil; (c) 2019–2020 school year, approximately \$4,836 per pupil; (d) 2020–2021 school year, approximately \$4,837 per pupil; and (e) 2021–2022 school year, approximately \$5,054 per pupil. Rental Assistance are paid by NYCDOE to a charter school in the same manner as federal or state aid attributable to a student with a disability is paid pursuant to the Charter Schools Act (i.e., in six (6) substantially equal bi-monthly installments each year beginning on the first business day of July and every two (2) months thereafter). See also “APPENDIX B—SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW” in this Limited Offering Memorandum.

The Charter School currently receives and is anticipated to receive Rental Assistance throughout the term of the Sublease.

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 (2) 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: (a) “Total Aidable Pupil Units” and (b) “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: (a) 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, and (b) 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: (a) determining the number of religious holidays which fall on a school day within a school year according to regulations established by the Commissioner; (b) deducting the aggregate attendance on such religious holidays from the total aggregate attendance, by grade level; (c) deducting such religious holidays from the total number of days of session, by grade level; and (d) 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 K–12, including children in ungraded programs, as registered on the date prior to November 1 that is specified by the Commissioner as the enrollment reporting date. “Public School District Enrollment” means the sum of: (a) the number of children on a regular enrollment register of a public school district on such date; (b) the number of children eligible to receive home instruction in the school district on such date; (c) the number of children for whom Equivalent Attendance must be computed on such date; (d) 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; (e) the number of children eligible to receive educational services on such date but not claimed for aid; and (f) 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: (a) the attendance of summer session pupils multiplied by 12%, and (b) the “Weighted Pupils With Special Educational Needs.” Weighted Pupils With Special Educational Needs is calculated by multiplying the number of 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:

(a) 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 sixty (60) days, or special services or programs for more than 60% of the school day, the special services weighting is 170%;

(b) for placement for 30% or more of the school week in a resource room or special services or programs including related services required for 30% 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 (5) 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 (2) 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 Charter School, the NYCDOE on behalf of CSD 6) 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: (a) “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 (b) 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: (a) excess cost aid per pupil calculated pursuant to the New York Education Law; (b) 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 (c) 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:

(a) 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 December 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

(b) 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 December 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 (6) substantially equal installments each year beginning on the first business day of July and every two (2) months thereafter. See “APPENDIX B—SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW—Financing of Charter Schools” in this Limited Offering Memorandum.

THE SERIES 2022 BONDS

Interest; Maturity; Payment

Generally. The Series 2022 Bonds will bear interest from their date, all as set forth on the inside front cover hereof. Interest on the Series 2022 Bonds will be payable semi-annually on January 1 and July 1 (each an “**Interest Payment Date**”) of each year, commencing on January 1, 2023. Interest on the Series 2022 Bonds will be calculated on the basis of a 360-day year with twelve (12) months of thirty (30) days.

The Series 2022 Bonds will be issued in the form of fully registered bonds without coupons in Authorized Denominations. The principal of, Sinking Fund Installments for, interest on, and redemption premium, if any, on the Series 2022 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, Sinking Fund Installments, interest and redemption premium, if any, to Participants, which Participants will in turn remit such principal, Sinking Fund Installments, interest and redemption premium, if any, to the Beneficial Owners of the Series 2022 Bonds as described in this Limited Offering Memorandum. See “APPENDIX H—BOOK—ENTRY ONLY SYSTEM” in this Limited Offering Memorandum.

In the event the Series 2022 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 Redemption Price of the Series 2022 Bonds will be payable by check or draft or wire transfer to the persons in whose names such Bonds are registered on the registration books maintained by the Trustee as Bond Registrar at the maturity or redemption thereof, or with respect to any payment in full of any Series 2022 Bond either at final maturity or upon redemption in whole, only at the designated corporate trust office of the Trustee, as described in the Indenture. Interest payable on each Series 2022 Bond on any Interest Payment Date will be paid by the Trustee to the registered owner of such Series 2022 Bond as shown on the bond registration books of the Trustee at the close of business on the regular Record Date for such interest, by check or draft mailed to such registered owner at his or her 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 if such Series 2022 Bonds are held by a Securities Depository or, at the written request addressed to the Trustee by any registered owner of Series 2022 Bonds in the aggregate principal amount of at least \$1,000,000, 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 Regular Record Date for any interest payment.

Payment Default. Interest on any Series 2022 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 2022 Bond on the relevant regular Record Date and shall be payable to the owner in whose name such Series 2022 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.

Mandatory Taxability Redemption. Upon the occurrence of a Determination of Taxability, then the Series 2022 Bonds will 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 100% of the principal amount thereof, together with accrued interest at the Default Rate from the occurrence of the Event of Taxability to the date of redemption. The Series 2022 Bonds shall be redeemed in whole unless redemption of a portion of the Series 2022A Bonds Outstanding would have the result that interest payable on the Series 2022A Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of such Series 2022A Bonds. In such event, the Series 2022A Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

Redemption of Series 2022 Bonds

General Optional Redemption.

Series 2022A Bonds. The Series 2022A Bonds are subject to redemption, on or after July 1, 2032 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 Borrower of its intention to prepay loan payments due under the Loan Agreement pursuant to Section 4.3(c) thereof), at the Redemption Price of 100% of the principal amount of the Series 2022A Bonds or portions thereof to be redeemed, plus accrued interest to the date of redemption.

Series 2022B Bonds. The Series 2022B Bonds are not subject to optional redemption.

Mandatory Sinking Fund Installment Redemption.

Series 2022A Bonds. The Series 2022A Bonds maturing on July 1, 2042 are subject to mandatory sinking fund redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest to the date of redemption, 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 (July 1)	Sinking Fund Installment
2033	\$ 685,000
2034	730,000
2035	780,000
2036	830,000
2037	885,000
2038	940,000
2039	1,005,000
2040	1,070,000
2041	1,140,000
2042 ¹	1,210,000

¹ Scheduled maturity.

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The Series 2022A Bonds maturing on July 1, 2052 are subject to mandatory sinking fund redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest to the date of redemption, 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 (July 1)	Sinking Fund Installment
2043	\$1,290,000
2044	1,375,000
2045	1,465,000
2046	1,560,000
2047	1,660,000
2048	1,770,000
2049	1,885,000
2050	2,005,000
2051	2,135,000
2052 ¹	2,275,000

¹ Scheduled maturity.

The Series 2022A Bonds maturing on July 1, 2057 are subject to mandatory sinking fund redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest to the date of redemption, 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 (July 1)	Sinking Fund Installment
2053	\$2,420,000
2054	2,580,000
2055	2,745,000
2056	2,925,000
2057 ¹	3,115,000

¹ Scheduled maturity.

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Series 2022B Bonds. The Series 2022B Bonds maturing on July 1, 2032 are subject to mandatory sinking fund redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest to the date of redemption, 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 (July 1)	Sinking Fund Installment
2026	\$365,000
2027	400,000
2028	440,000
2029	480,000
2030	530,000
2031	580,000
2032 ¹	275,000

¹ Final scheduled maturity.

Extraordinary Optional Redemption. The Series 2022 Bonds are subject to redemption prior to maturity, at the option of the Issuer exercised at the direction of the Borrower (which option shall be exercised only upon the giving of notice by the Borrower 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 equal to 100% of the unpaid principal amount thereof plus accrued interest to the date of redemption, if one or more of the following events shall have occurred:

(a) 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, (i) 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, (ii) the Borrower or the Charter School 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 (iii) 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

(b) 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 Borrower 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

(c) 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 Borrower, 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 Borrower by reason of the operation of the Facility.

If the Series 2022 Bonds are to be redeemed in whole as a result of the occurrence of any of the events described above, the Borrower shall deliver to the Issuer and the Trustee a certificate of an

Authorized Representative of the Borrower stating that, as a result of the occurrence of the event giving rise to such redemption, the Borrower 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 2022 Bonds are subject to mandatory redemption prior to maturity, at the option of the Issuer, as a whole only, in the event (a) the Issuer shall determine that (i) the Borrower 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, (ii) the Borrower, any Principal of the Borrower or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Borrower has committed a material violation of a material Legal Requirement, (iii) 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, or (b) the Borrower 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 (a) or (b) above, the Borrower 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 Borrower of written notice of such default or failure from the Issuer and a demand by the Issuer on the Borrower 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 100% of the unpaid principal amount of the Series 2022 Bonds, together with interest accrued thereon to the date of redemption.

Purchase in Lieu of Optional Redemption Series 2022A Bonds. In lieu of calling the Series 2022A Bonds for optional redemption and subject to the Loan Agreement, the Series 2022A Bonds are subject to mandatory tender for purchase at the direction of the Issuer, upon the direction of the Borrower, in whole or in part (and, if in part, in such manner as determined by the Borrower) on any date on or after July 1, 2032, at a Purchase Price equal to the applicable Redemption Price for any optional redemption of such Series 2022A Bonds as provided in the Indenture, plus accrued interest to the purchase date. Purchases of tendered Series 2022A Bonds may be made without regard to any provision of the Indenture relating to the selection of Series 2022A Bonds in a partial optional redemption. The Series 2022A 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 Borrower, 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 2022A Bonds in a partial redemption.

Purchases in lieu of an optional redemption are permitted in the Indenture, with the consent of the Issuer, upon the delivery to the Issuer and the Trustee of (a) an opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee substantially to the effect that (i) such purchases in lieu of optional redemption comply with the provisions of the Indenture and (ii) 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 2022A Bonds for purposes of federal income taxation, and (b) such other opinions, certificates or documentation as the Issuer or the Trustee (acting with the advice of its counsel) may require.

Mandatory Redemption from Excess Proceeds and Certain Other Amounts. The Series 2022 Bonds (or such Series of the Series 2022 Bonds) shall be redeemed at any time in whole or in part by lot prior to maturity in the event and to the extent (a) excess Series 2022A Bond proceeds shall remain after the completion of the Project shall be used to redeem only Series 2022A Bonds, (b) excess title insurance or property insurance proceeds or condemnation awards shall remain after the application thereof pursuant to the Loan Agreement and the Indenture, (c) excess proceeds shall remain after the release or substitution

of Facility Realty or Facility Personalty, or (d) certain funds received by the Borrower pursuant to any capital campaign which are earmarked for specific Project Costs shall remain with the Borrower and shall not be required for completion of the Series 2022 Project or related Project Costs; in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Series 2022 Bonds (or such specified Series of Series 2022 Bonds) to be redeemed, together with interest accrued thereon to the date of redemption.

Mandatory Taxability Redemption. Upon the occurrence of a Determination of Taxability, the Series 2022 Bonds will be redeemed prior to maturity on any date within 120 days following such Determination of Taxability, at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest at the Default Rate from the occurrence of the Event of Taxability to the date of redemption. The Series 2022 Bonds shall be redeemed in whole unless redemption of a portion of the Series 2022A Bonds Outstanding would have the result that interest payable on the Series 2022A Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of such Series 2022A Bonds. In such event, the Series 2022A Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

Notice of Redemption. When redemption of any Series 2022 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, Series 2022 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 2022 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 2022 Bonds or portions thereof to be payable and, if less than all of the Series 2022 Bonds of any maturity are to be redeemed, the numbers of such Series 2022 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 2022 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, (a) 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 2022 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 2022 Bonds with respect to which proper mailing was effected; and (b) provide such notice to DTC and to the national information service that disseminates redemption notices, currently the Electronic Municipal Market Access (“**EMMA**”). Any notice mailed as described in this paragraph 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 Series 2022 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 2022 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 2022 Bonds. Further, if any Holders of Bonds shall constitute registered depositories, the notice of redemption described in the first sentence of this paragraph 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 Series 2022 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 Series 2022 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 Series 2022 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 Series 2022 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 Series 2022 Bonds of such Series so called for redemption at the place or places of payment, such Series of Series 2022 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 the Indenture.

So long as the Securities Depository is affecting book entry transfers of the Series 2022 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 part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Series 2022 Bond (having been mailed notice from the Trustee, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Series 2022 Bond so affected, shall not affect the validity of the redemption of such Series 2022 Bond.

Payment of Redeemed Series 2022 Bonds. Notice having been given in the manner provided in the Indenture, the Series 2022 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 2022 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, (a) interest on the Series 2022 Bonds or portions thereof so called for redemption shall cease to accrue and become payable, (b) the Series 2022 Bonds or portions thereof so called for redemption shall cease to be entitled to any lien, benefit or security under the Indenture, and (c) the Holders of the Series 2022 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 2022 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.

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 Series 2022 Bonds for cancellation and exchange as provided in the Indenture; provided, however, that any Holder of at least \$1,000,000 in original aggregate principal amount of the Series 2022 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 Series 2022 Bonds in federal funds at such wire transfer address as the owner shall specify to the Trustee in such written request.

Selection of Series 2022 Bonds for Redemption. In the event of redemption of less than all the Outstanding Series 2022 Bonds of the same Series and maturity, the particular Series 2022 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 (a) the Series 2022 Bonds to be redeemed from Sinking Fund Installments shall be redeemed by lot, and (b) to the extent practicable, the Trustee shall select the Series 2022 Bonds for redemption such that no Series 2022 Bond shall be of a denomination of less than the Authorized Denomination for such Series 2022 Bonds. In the event of redemption of less than all the Outstanding Series 2022 Bonds of the same Series stated to mature on different dates, the principal amount of such Series of Series 2022 Bonds to be redeemed shall be applied ratably by maturity and then by lot within a maturity. The portion of the Series 2022 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 2022 Bonds for redemption, the Trustee shall treat each such Series 2022 Bond as representing that number of Series 2022 Bonds of such Series which is obtained by dividing the principal amount of such registered Series 2022 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 2022 Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Holder of such Series 2022 Bond shall forthwith surrender such Series 2022 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 2022 Bond or Series 2022 Bonds in the aggregate unpaid principal amount of the unredeemed balance of the principal amount of such Series 2022 Bond. New Series 2022 Bonds of a maturity representing the unredeemed balance of the principal amount of such Series 2022 Bond shall be issued to the registered Holder thereof, without charge therefor. If the Holder of any such Series 2022 Bond of a denomination greater than a unit shall fail to present such Series 2022 Bond to the Trustee for payment and exchange as aforesaid, such Series 2022 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).

Purchase and Transfer Restrictions on Series 2022 Bonds

THE SERIES 2022 BONDS ARE BEING OFFERED ONLY TO, AND MAY BE TRANSFERRED ONLY TO A PERSON CONSTITUTING A “QUALIFIED INSTITUTIONAL BUYER” WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT, OR (2) TO AN “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501 OF REGULATION D UNDER THE SECURITIES ACT.

SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2022 BONDS

Special Limited Revenue Obligations

THE SERIES 2022 BONDS ARE SPECIAL LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE AS TO PRINCIPAL, SINKING FUND INSTALLMENTS, 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, SINKING FUND INSTALLMENTS FOR, OR INTEREST ON, THE SERIES 2022 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 2022 BONDS. THE SERIES 2022 BONDS WILL NOT BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE SERIES 2022 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, SINKING FUND INSTALLMENTS FOR, OR INTEREST ON, THE SERIES 2022 BONDS AGAINST ANY MEMBER, OFFICER, DIRECTOR, EMPLOYEE, AGENT OR REPRESENTATIVE OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

General

Under the Loan Agreement, the Issuer agrees to issue the Series 2022 Bonds and to lend the proceeds thereof to the Borrower to finance the Series 2022 Project, and the Borrower 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, Sinking Fund Installments for, redemption premium, if any, and interest on the Series 2022 Bonds when due (whether by maturity, mandatory sinking fund redemption or acceleration) and to perform certain other obligations set forth therein. Among other things, the Borrower will covenant not to grant any liens (other than the lien effected by the Loan Agreement and Permitted Encumbrances) on all or any portion of the Facility. The obligation of the Borrower to make Loan Payments under the Loan Agreement and the Promissory Notes sufficient to pay the Series 2022 Bonds is an absolute and unconditional obligation of the Borrower; provided, however, that the ability of the Borrower to generate additional revenues is limited in the event payments of the Rents by the Charter School under the Sublease are insufficient for the Borrower to make Loan Payments. Under the Loan Agreement, Loan Payment Dates are each January 5, March 5, May 5, July 5, September 5 and November 5. See “APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE—Form of Loan Agreement” in this Limited Offering Memorandum.

Pursuant to the terms of the Leasehold Mortgages, the Borrower will grant to the Issuer and the Trustee Leasehold Mortgages liens on and security interests in the Facility, subject to Permitted Encumbrances, which Leasehold Mortgages will be assigned by the Issuer to the Trustee pursuant to the terms of the Assignment of Leasehold Mortgages. The liens and security interests created by the Indenture and the Leasehold Mortgages are for the equal and ratable benefit of the owners of the Series 2022 Bonds. The Loan Agreement and the Leasehold Mortgages contain the general liability insurance and property insurance requirements for the Borrower. See “RISK FACTORS” in this Limited Offering Memorandum for a discussion of certain limitations on the enforceability of the security for the Series 2022 Bonds.

Lease

The Borrower has entered into the Lease for the Facility. The forty-eight (48)-year term of the Lease (the “**Term**”) will commence no later than the day which is the first day of the first full month which is 60 days after the issuance of the Series 2022 Bonds (the “**Commencement Date**”). Commencing on the Commencement Date, the Borrower is to pay to the Landlord \$840,000 per year in equal monthly payments of \$70,000, subject to periodic increases during the 6th year, 11th year, 16th year, 21st year, 26th year, 31st year and 36th year during the Term in an amount equal to the greater of (i) 10% of the then-payable rent and (ii) the percentage increase in per pupil funding from the New York City Department of Education over the prior five year period. The rent payable by the Borrower to the Landlord from the 41st year through the 48th year is to be equal to the then fair market rental value for the Facility, determined in accordance with the procedure described in the Lease First Amendment. Upon termination of the Lease, ownership of the Facility vests in the Landlord. The Borrower has entered into the Sublease with the Charter School pursuant to which the Borrower will sublease the Facility to the Charter School subject to the terms and conditions of the Lease, with a term that will commence simultaneously with the Lease.

The Lease is a “triple net lease” and Borrower, during the Term (and during any extension of the Term and/or period in which Borrower holds over after expiration of the Term), Borrower shall be responsible for any and all costs and expenses in maintaining, repairing and if necessary replacing the

Facility and maintaining, repairing and if necessary replacing portions of the Facility (including the sidewalks contiguous to the Facility).

See “APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE—Form of Lease” in this Limited Offering Memorandum.

Sublease

The Borrower has entered into a Sublease with the Charter School dated as of June 15, 2021 (the “**Original Sublease**”), as amended by that certain First Amended and Restated Sublease Agreement prior to the issuance of the Series 2022 Bonds (the “**A & R Sublease**” and, together with the Original Sublease and any current or future amendments thereto, the “**Sublease**”), pursuant to which the Borrower will sublease the Facility to the Charter School subject to the terms and conditions of the Lease, with a term that will commence simultaneously with the Lease. The amounts payable by the Charter School under the Sublease (the “**Rents**”) will be in amounts totaling not less than the debt service on the Series 2022 Bonds as the same become due and payable, but without acceleration, amounts due under the Lease as well as such other facilities-operational expenses as may be agreed to between Borrower and the Charter School from time to time. The Borrower will enter into a Deposit Agreement, dated as of June 1, 2022 (the “**Depositary Agreement**”), by and between the Borrower and The Bank of New York Mellon as depositary bank (the “**Depositary Bank**”) for the creation of a deposit account (the “**Borrower Account**”) for the deposit of certain funds received by the Borrower, including but not limited to Rents under the Sublease from the Charter School. Pursuant to the terms of the Deposit Account Control Agreement (the “**Borrower DACA**”) dated as of June 1, 2022, by and among the Trustee, as secured party thereunder, the Borrower and the Depositary Bank, the Borrower will grant a security interest in the Borrower Account to the Trustee and authorize the Trustee to transfer the amounts required under the Indenture and the Loan Agreement to the Revenue Fund established under the Indenture. Rents are to be paid by the Charter School from Gross Revenues to the Depositary Bank into the Borrower Account created under the Depositary Agreement. Upon an Event of Default, the Trustee may exercise control of and have the right to make withdrawals from the Borrower Account subject to the Borrower DACA pursuant to the terms thereof.

All obligations of the Charter School due under the Sublease are payable from the Gross Revenues of the Charter School. Gross Revenue is defined in the Covenant Agreement as all funds, money, grants, donations, or other distributions received by the Charter School from the State, City or any other sources, together with all other revenues, income or receipts of any kind whatsoever (collectively, “**Gross Revenues**”). The term (the “**Term**”) of this Sublease shall be for approximately forty-eight (48) years, commencing on Commencement Date (as defined in the Lease), and shall terminate on the date the Lease shall terminate, to wit: on the last day of the month immediately prior to the forty-eighth (48th) anniversary of the Commencement Date.

The Rents due under the Sublease are planned to be sufficient to pay debt service on the Series 2022 Bonds, the Lease Payment Reserve Requirement, Repair and Replacement Fund Requirement, as well as such other facilities-operational expenses as may be agreed to between Borrower and the Charter School from time to time.

See “APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE—Form of Sublease” in this Limited Offering Memorandum” for a more complete description of the Sublease. The form of Sublease contains a Rents schedule that is preliminary and subject to change.

Leasehold Mortgages; Pledge and Security Agreement

The Series 2022 Bonds will also be secured by (a) a lien on and security interests in the Borrower's leasehold interest in the Facility pursuant to (i) a Leasehold Mortgage and Security Agreement (Building Loan) and (ii) a Leasehold Mortgage and Security Agreement (Indirect Loan), recorded against the Facility (collectively, the "**Leasehold Mortgages**"); each dated as of June 1, 2022 and each from the Borrower to the Issuer and the Trustee; as assigned by the Issuer to the Trustee under the terms of (b) (i) an Assignment of Leasehold Mortgage and Security Agreement (Building Loan) and (ii) an Assignment of Leasehold Mortgage and Security Agreement (Indirect Loan), with respect to the Leasehold Mortgages; each dated as of June 1, 2022 (collectively, the "**Assignment of Leasehold Mortgages**"). The Series 2022 Bonds are further secured by a lien and security interest in the Pledged Collateral of the Borrower pursuant to, and as defined in a certain Pledge and Security Agreement, dated as of June 1, 2022 (the "**Pledge and Security Agreement**") from the Borrower to the Trustee. Pledged Collateral is defined in the Pledge and Security Agreement as (a) all accounts, investment property, payment intangibles, general intangibles, monies, receipts, earnings (inclusive of any investment income), revenues, rentals, income, insurance proceeds, lease payments fees, gifts, donations, contributions, charges and other moneys received or receivable by or on behalf of the Borrower, including, but without limiting the generality of the foregoing, (i) fees and charges of the Borrower including lease payments fees or charges derived from the ownership or operation of the Facility, and all rights to receive any of the above, whether in the form of accounts, payment intangibles, contract rights, general intangibles or other rights, and the proceeds of such rights, whether now owned or held or hereafter coming into existence; and (ii) gifts, grants, bequests, donations and contributions heretofore or hereafter made to the Borrower, but excluding (y) the Unrestricted Investments Fund of the Borrower and (z) Restricted Gifts, and further including all income, distributions, dividends, earnings and revenues (y) derived from and deposited in the Unrestricted Investment Fund; and (z) derived from Restricted Gifts (unless otherwise prohibited by the terms of a Restricted Gift) (collectively, "**Pledged Revenues**"); (b) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action, and all cash (or evidences of cash or of rights to cash) or other property or rights thereto relating to such claims or causes of action; and (c) all Proceeds (including, without limitation, insurance proceeds and condemnation awards), whether cash or non-cash, of any of the above (collectively "**Pledged Collateral**").

Covenants of the Charter School; Additional Indebtedness

Covenant as to Cash on Hand. In the Covenant Agreement, the Charter School agrees to maintain unrestricted Cash on Hand in its operations fund sufficient to cover at least forty (40) days of its Operating Expenses, interest expenses and facility lease payments. The Cash on Hand is to be tested on June 30 of each year, commencing June 30 2023, and the Charter School is to provide a certificate and supporting calculations to the Dissemination Agent (as that term is defined in the Continuing Disclosure Agreement), within sixty (60) days of the end of each Fiscal Year evidencing that the Charter School's Cash on Hand met the requirements set forth in the Covenant Agreement. Amounts on deposit in such operation fund may be used for any lawful purpose. The foregoing is subject to the qualification that if applicable state or federal laws or regulations, or the rules and regulations of agencies having jurisdiction, do not permit the Charter School to maintain such level of Cash on Hand, then the Charter School is to, in conformity with the then prevailing laws, rules or regulations, maintain its Cash on Hand equal to the maximum permissible level.

If the Cash on Hand for any testing date is less than forty (40) days of the Charter School's Operating Expenses, interest expenses and facility lease payments for the prior Fiscal Year, then the Charter School will promptly employ an Independent Consultant to review and analyze the operations and administration of the Charter School, inspect the Facility, and submit to the Charter School and written reports, and make such recommendations as to the operation and administration of the Charter School's

charter school as such Independent Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The reports shall be made available to Bondholders at their written request. The Charter School agrees to consider any recommendations by the Independent Consultant and, to the fullest extent practicable, provided such recommendations are consistent with the Charter Schools Act and the Charter Contract, to adopt and carry out such recommendations.

Under the Covenant Agreement, it constitutes an Event of Default if the Cash on Hand is less than forty (40) days on the June 30 testing date for two (2) consecutive Fiscal Years.

Under the Covenant Agreement, “**Cash on Hand**” means the sum of unrestricted cash, unrestricted cash equivalents, unrestricted liquid investments and unrestricted marketable securities (valued at the lower of cost or market) of the Charter School. Cash on Hand shall not include any Trustee-held funds or proceeds of Indebtedness.

Under the Covenant Agreement, “**Operating Expenses**” means all reasonable and necessary expenses of the Charter School paid or accrued, to operate a public school and provide educational services, including without limitation (a) salaries and administrative expenses, (b) the cost of instructional supplies and materials, (c) insurance premiums, and (d) professional services; provided however, there shall be excluded from Operating Expenses: (i) any allowance for depreciation, (ii) expenses incurred in connection with Capital Improvements, (iii) deposits to and expenses paid from the Repair and Replacement Fund and the Lease Payment Reserve Fund, (iv) expenses paid from grants from state, federal or local sources, or from any Person, which were included as part of Gross Revenues, (v) expenses paid from the proceeds of any insurance or condemnation awards, and (vi) to the extent it is considered an Operating Expense, amortization of debt service costs on the Series 2022 Bonds.

Coverage Ratio Covenant. The Charter School covenants in the Covenant Agreement to maintain Net Income Available for Debt Service in an amount equal to at least 1.10 times Annual Debt Service Requirements for the applicable Fiscal Year on all Indebtedness then outstanding. Such covenant will be tested annually based upon the results of the annual audited financial statements of the Charter School, commencing with the audit for the Fiscal Year ending June 30, 2025.

In the event that the Charter School’s Net Income Available for Debt Service is less than 1.10 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date, the Charter School is to engage, at the Charter School’s expense, an Independent Consultant to review and analyze the operations and administration of the Charter School, inspect the Facility, and submit to the Charter School written reports, and make such recommendations as to the operation and administration of the Charter School’s charter school as such Independent Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The Charter School agrees to consider any recommendations by the Independent Consultant and, to the fullest extent practicable, provided such recommendations are consistent with the Charter Schools Act and the Charter Contract, to adopt and carry out such recommendations.

So long as the Charter School is otherwise in full compliance with its obligations under the Covenant Agreement, including following, to the fullest extent practicable, the recommendations of the Independent Consultant, it does not constitute a default if the Charter School’s Net Income Available for Debt Service is less than 1.10 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date as described above. Notwithstanding the foregoing, in the event that the Charter School’s Net Income Available for Debt Service is less than (a) 1.10 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date for two (2) consecutive years; or (b) 1.0 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date, an Event of Default is to be deemed to have occurred under the Covenant Agreement.

Under the Covenant Agreement, “**Net Income Available for Debt Service**” means, for any period of determination thereof, Gross Revenues for such period minus its total Operating Expenses for such period.

Under the Covenant Agreement, “**Annual Debt Service Requirements**” means of any specified Person means, for any Fiscal Year, the principal of (and premium, if any) and interest and other debt service charges (which include for purposes hereof, any fees or premiums for any letter of credit, surety bond, policy of insurance, bond purchase agreement, or any similar credit or liquidity support secured in connection therewith payable in such Fiscal Year) on all Indebtedness of such Person coming due during such Fiscal Year, and, for such purposes, any one or more of the following rules shall apply:

(a) In the case of Balloon Debt that bears interest at a variable rate, then for the purpose of calculating what future annual debt service requirements will be, the weighted average rate of interest borne by such variable rate Balloon Debt during the ninety (90) day period ending on the date prior to the date of calculation shall be presumed to apply for all future dates and, any installment of principal of (and premium, if any) and interest and other debt service charges on such Balloon Debt shall be evenly allocated over the life of the Balloon Debt with equal principal payments plus the calculated rate of interest deemed due each year;

(b) Principal of (and premium, if any) and interest and other debt service charges on Indebtedness, or portions thereof, shall not be included in the computation of the Annual Debt Service Requirements for any Fiscal Year for which such principal, premium, interest, or other debt service charges are payable from funds irrevocably deposited or set aside in trust for the payment thereof at the time of such calculations (including without limitation capitalized interest, amounts held in a reserve fund, and accrued interest so deposited or set aside in trust or escrowed with the Trustee, or any Independent Person approved by the Trustee);

(c) As to any Indebtedness other than Balloon Debt that bears interest at a variable interest rate, then for the purpose of calculating what future annual debt service requirements will be, an interest rate equal to the weighted average rate of interest born by such Indebtedness during the preceding ninety (90) day period ending on the date prior to the date of calculation shall be presumed to apply for all future dates and the principal shall be amortized based upon the established payment schedule for such variable rate Indebtedness; and

(d) In the case of any guarantees or other Indebtedness described in clause (c) of the definition of Indebtedness, the principal of (and premium, if any) and interest and other debt service charges on such Indebtedness for any Fiscal Year shall be deemed to be 25% of the principal of (and premium, if any) and interest and other debt service charges on the Indebtedness guaranteed due in such Fiscal Year; provided, however, that if the Charter School is actually required to make any payment in respect of such Indebtedness, the total amount payable by the Charter School in respect of such guarantee or other obligation in such Fiscal Year shall be included in any computation of the Annual Debt Service Requirements of the Charter School for such year and the amount payable by the Charter School in respect of such guarantee or other obligation in any future Fiscal Year shall be included in any computation of the estimated Annual Debt Service Requirements for such Fiscal Year.

Limitations on Indebtedness. The Charter School agrees in the Covenant Agreement that it will not incur, assume, or otherwise become liable for any capital or operational lease obligations or cause any additional Indebtedness secured in whole or in part by the Facility, to be issued for its benefit, other than as follows (collectively, “**Permitted Indebtedness**”):

Additional Indebtedness. Indebtedness issued upon satisfaction of the following:

(a) No Default. A certificate signed by an Authorized Representative of the Charter School stating that no Event of Default is then existing under the Security Documents or any debt outstanding or any agreement entered into by the Charter School in conjunction with such debt; and

(b) Historical Coverage on Outstanding Indebtedness. A certificate signed by an Authorized Representative of the Charter School stating that, for the Charter School's most recently completed Fiscal Year immediately preceding the issuance of the Permitted Indebtedness, the Charter School's Net Income Available for Debt Service was equal to at least 1.10 times Annual Debt Service Requirements; and

(c) Projected Coverage for Additional Indebtedness. Delivery of a report of an Accountant stating that the estimated Maximum Annual Debt Service for all Indebtedness then outstanding, including the proposed Indebtedness to be incurred, is less than (ii) twenty percent of estimated Gross Revenue for the most recent fiscal year for which a budget has been adopted. The report shall take into account (i) the audited results of operations and verified enrollment of the Series 2022 Project for the most recently completed Fiscal Year and (ii) the projected enrollment for the Fiscal Year immediately following the completion of the planned Capital Improvements Project, and shall assume that the proposed additional Indebtedness shall have been outstanding for the entire year.

Alternate Coverage for Additional Indebtedness. In lieu of the requirements described above, the Charter School may deliver a certificate of an Authorized Representative of the Charter School stating that, based on the audited results of the operations for the most recently completed Fiscal Year, the Charter School's Net Income Available for Debt Service equals at least 1.10 times Maximum Annual Debt Service on the aggregate of all parity Indebtedness then Outstanding plus the proposed additional Indebtedness.

Refunding Indebtedness. If additional Indebtedness is being issued for the purpose of refunding any Outstanding Indebtedness, the reports required by paragraphs (a)(ii) and (a)(iii) above to be delivered shall not apply so long as both the total debt service requirements and Maximum Annual Debt Service Requirements on all Outstanding Indebtedness after issuance of the additional Indebtedness will not exceed both the total debt service requirements and the Maximum Annual Debt Service Requirements on all Outstanding Indebtedness prior to the issuance of such additional Indebtedness.

Filing of Financial Statements and Other Information

Audits; Financial Statements; Reports; Annual Certificate. The Charter School agrees that it will have its books and records audited annually, in accordance with State law as soon as practicable after the close of each Fiscal Year and no later than the requirement set forth in the Continuing Disclosure Agreement, and is to furnish to the Trustee no later than December 1 of each year, a copy (which may be sent electronically) of the annual audited financial report (together with any management letter delivered by the auditors).

The Charter School agrees that it will maintain and make available to the Issuer, the Beneficial Owners, and the Trustee proper books of records and accounts of all of its operations with full, true and correct entries of all of its dealings substantially in accordance with practices generally used for not-for-profit education corporations and such other data and information as may reasonably be requested by the Issuer, the Beneficial Owners and the Trustee from time to time. The recipients of such books and records shall not further reproduce or distribute such books and records.

The Charter School shall provide to the Trustee, acting as dissemination agent, the following information:

- (a) a copy (which may be sent electronically) of Charter School's adopted annual budget for the present Fiscal Year no later than June 1 of each year and a copy of revisions, if any, to Charter School's annual budget as approved by its Board of Trustees;
- (b) within sixty (60) days following the end of each quarter, unaudited financial statements for the previous quarter reflecting revenues and expenses in comparative form with Charter School's operating budget submitted by Charter School to its governing board (which may be sent electronically);
- (c) within ten (10) days from the end of each calendar month, a copy (which may be by electronic transfer) of each report on enrollment by grade, headcount, membership, attendance and any other similar reports as requested in writing.

Investor Calls. Within thirty (30) days following receipt by the Dissemination Agent of the audited financial statements of the Charter School for the fiscal year ended June 30, 2023 and within thirty (30) days following receipt by the Dissemination Agent of the audited financial statements for each fiscal year thereafter, the Charter School is to organize and schedule a conference call for the benefit of the Beneficial Owners of the Series 2022 Bonds. The Charter School is to cause notice of such conference calls setting forth the date, time and call-in information of such conference calls to be given to the Dissemination Agent, the Issuer, the then current Beneficial Owners of the Series 2022 Bonds and to the public in general and is to provide or cause the Dissemination Agent to provide notice of such conference calls to be posted on the Municipal Securities Rulemaking Board's ("MSRB's") Electronic Municipal Market Access ("EMMA") website in a timely manner but in no event less than ten (10) Business Days prior to the dates set for such conference calls.

Certain Defined Terms

See "APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE" for certain definitions used in this Limited Offering Memorandum relating to the Covenant Agreement, the Indenture, the Lease, the Sublease, the Loan Agreement, and the Pledge and Security Agreement.

The Indenture

The Series 2022 Bonds are to be issued pursuant to the Indenture and will be equally and ratably secured thereby. As security for the Series 2022 Bonds, the Issuer has pledged and assigned to the Trustee the Trust Estate, which includes: (a) 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); (b) all right, title and interest of the Issuer in and to the Promissory Notes; and (c) all moneys and securities from time to time held by the Trustee under the Indenture (other than the Rebate Fund). The Indenture provides that all Series 2022 Bonds issued thereunder shall be special limited revenue obligations of the Issuer, payable solely from and secured solely by the Trust Estate. Pursuant to the Leasehold Mortgages, the Borrower will grant Leasehold Mortgage liens on and security interests in the Facility to the Trustee and the Issuer, and the Issuer will assign its interest in the Leasehold Mortgages to the Trustee. In the Loan Agreement, the Borrower will covenant not to further encumber the Facility other than for certain Permitted Encumbrances without the prior written consent of the Issuer and the Trustee. See "APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT,

USE AGREEMENT, LEASE, AND SUBLEASE—Form of Indenture of Trust” in this Limited Offering Memorandum.

Revenue Fund

Pursuant to the terms of the Indenture, there is created a Revenue Fund. Unless otherwise provided in the Indenture, the Trustee shall promptly deposit all amounts received from the Charter School or the Borrower on behalf of the Charter School, or transferred pursuant to the Borrower DACA, the Sublease, or the Loan Agreement into the Revenue Fund.

Amounts in the Revenue Fund shall be transferred by the Trustee on each Loan Payment Date commencing on the September 5, 2022 Loan Payment Date, to the following Funds and Accounts in the following manner and in the order of priority indicated, provided that in the event funds in on any Loan Payment Date are insufficient to make any one or more of such transfers, any and all of such deficiencies will be remedied prior to making any transfers to any subordinated funds (based on the following order of priority) on any future Loan Payment Date:

- (a) First, to the Bond Fund:
 - (i) For deposit into the Interest Account of the Bond Fund, an amount equal (i) to one-third (1/3) (or such other pro-rated amount, adjusted as necessary) of the amount of interest that will become due on the Bonds on the next Interest Payment Date, including default interest (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 Bonds on such next succeeding Interest Payment Date); and
 - (ii) commencing on that Loan Payment Date as shall precede the first principal payment date (including such principal as shall become due as a mandatory Sinking Fund Installment payment) by one-sixth (1/6) Loan Payment Dates, for deposit into the Principal Account of the Bond Fund, an amount equal to at least one-sixth (1/6) (or such other pro-rated amount, adjusted as necessary) of the amount of the principal payment or Sinking Fund Installment of the Bonds Outstanding becoming due;
- (b) Second, an amount equal to replenish any deficiencies in the Debt Service Reserve Fund, if any;
- (c) Third, to the Rebate Fund to pay any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement;
- (d) Fourth, to the Lease Payment Reserve Fund, an amount required to fund the monthly amount of the Lease Payment Reserve Requirement (or such other pro-rated amount, adjusted as necessary) of the amount equal to the Lease Payment Reserve Requirement;
- (e) Fifth, to the Repair and Replacement Reserve Fund beginning on July 5, 2027, an amount required to fund the annual amount of the Repair and Replacement Fund Requirement (or

such other pro-rated amount, adjusted as necessary) of the amount equal to the Repair and Replacement Fund Requirement; and

(f) Sixth, all remaining funds shall be paid to the Borrower and used for any authorized purpose.

Bond Fund

Pursuant to the terms of the Indenture, there is created a Bond Fund, including the following subaccounts within such Bond Fund:

(a) a Principal Account, and within such Principal Account, a Series 2022A subaccount and a Series 2022B subaccount;

(b) an Interest Account, and within such Interest Account, a Series 2022A subaccount and a Series 2022B subaccount;

(c) a Sinking Fund Installment Account, and within such Sinking Fund Installment Account, a Series 2022A subaccount and a Series 2022B subaccount; and

(d) a Redemption Account, and within such Redemption Account, a Series 2022A subaccount and a Series 2022B subaccount.

The Trustee is required under the Indenture to 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 respective Interest Account of the Bond Fund and applied to the payment of interest on such Series of Bonds.

(b) Amounts disbursed from the Project Fund for the payment of interest on the Bonds during the period of Project Work, which shall be credited to the Series 2022A Bonds Subaccount and the Series 2022B Bonds Subaccount of the Interest Account of the Bond Fund and applied to the payment of interest on the Series 2022 Bonds;

(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 the Indenture, or to the subaccounts of the Debt Service Reserve Fund to the extent of any deficiency therein) (i) in the applicable subaccount of the Redemption Account of the Bond Fund, which shall be kept segregated from any other moneys within such Account, or (ii) in the applicable subaccounts of the accounts of the Bond Fund.

(d) Loan payments received by the Trustee pursuant to the Loan Agreement or transfers from the Revenue Fund, which shall be deposited in and credited, to the extent necessary pro rata, first to the subaccounts of the Interest Account, second to the subaccounts of the Principal Account, and third to the subaccounts of the Sinking Fund Installment Account of the Bond Fund.

(e) Advance loan payments received by the Trustee pursuant to the Loan Agreement, which shall be deposited in and credited to the applicable subaccounts of the Redemption Account of the Bond Fund.

(f) Any amounts transferred from the Project Fund pursuant to the Indenture, which shall be deposited in and credited pro rata to the applicable subaccounts of the Interest Account of the Bond Fund.

(g) The excess amounts referred to in Redemption Account, 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 the Indenture, which shall be deposited to the applicable subaccounts of 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 the Indenture or by the Leasehold Mortgages 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 the Indenture or to the subaccounts of the Debt Service Reserve Fund to the extent of any deficiency therein) to the applicable subaccounts of the Redemption Account of the Bond Fund.

(j) All other receipts when and if required by the Loan Agreement or by the Indenture or by any other Security Document to be paid into the Bond Fund, which shall be credited to the Redemption Account of the Bond Fund.

(k) Any amounts transferred from the subaccounts of the Debt Service Reserve Fund pursuant to the Indenture, which shall be deposited in and credited to the respective subaccounts of the Interest Account, the Principal Account, the Sinking Fund Installment Account, or the Redemption Account, as the case may be, of the Bond Fund.

Application of Moneys in the Bond Fund

Moneys in the Bond Fund shall be applied as follows pursuant to the terms of the Indenture:

The Trustee shall (a) on each Interest Payment Date pay or cause to be paid out of the applicable subaccount of the Interest Account in the Bond Fund the interest due on the Bonds, and (b) further pay out of the applicable subaccounts 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.

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 applicable subaccounts 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.

There shall be paid from the applicable subaccounts of 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 applicable subaccounts of 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 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.

Amounts in the subaccounts of the Redemption Account of the Bond Fund shall be applied, at the written direction of the Borrower, 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 date of redemption. Any amount in the subaccounts of 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 subaccounts of 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 applicable subaccount of 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 the Indenture. The Bonds to be purchased or redeemed shall be selected by the Trustee in the manner provided in the Indenture. Amounts in the subaccounts of 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.

In connection with purchases of Bonds out of the Bond Fund as provided in the Indenture, the Borrower 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 Borrower. The payment of the purchase price shall be made out of the moneys deposited in the related subaccount of the Redemption Account of the Bond Fund and the payment of accrued interest shall be made out of moneys deposited in the related subaccount of the Interest Account of the Bond Fund.

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 Borrower to the Trustee on or before the 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 the Indenture or otherwise). Each Bond so delivered, cancelled or previously purchased or redeemed shall be credited by the Trustee at 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 subaccounts of the Sinking Fund Installment Account on the due date of such Sinking Fund Installment shall be reduced 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.

The Borrower shall on or before the 45th day next preceding each Sinking Fund Installment payment date furnish the Trustee with the certificate of an Authorized Representative of the Borrower indicating whether or not and to what extent the provisions of the Indenture 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.

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.

Project Fund Draws

Pursuant to the terms of the Indenture, the Trustee is to 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 Borrower or the Issuer, of Project Costs (excluding interest on the Bonds during the period of Project construction and renovation) to the extent requisitioned under the following paragraph. The Trustee is required to (a) automatically transfer amounts on deposit in the Series 2022A Bonds Capitalized Interest Account of the Project Fund to the Series 2022A subaccount of the Interest Account of the Bond Fund in an amount up to the amount of interest due and payable on the Series 2022A Bonds on the next succeeding Interest Payment Date on or prior to such Interest Payment Date and (b) amounts on deposit in the Series 2022B Bonds Capitalized Interest Account of the Project Fund to the Series 2022B subaccount of the Interest Account of the Bond Fund in an amount up to the amount of interest due and payable on the Series 2022B Bonds on the next succeeding Interest Payment Date on or prior to such Interest Payment Date.

The Trustee is 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 Borrower, make wire transfers) for each disbursement from the Project Fund for the Project Costs, upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Borrower and approved by the Project Development Consultant; 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 Series 2022 Bonds or (ii) \$500,000, until an Authorized Representative of the Borrower is to have delivered the completion certificate and other documents required by the Loan Agreement.

The requisition from the Project Fund is to 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 Borrower), 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 Borrower of the Reimbursement Resolution for the Series 2022 Project. Such requisition is to be as set forth in Exhibit D — “Form of Requisition from the Project Fund” attached to the Indenture and is to be submitted to the Trustee. The Trustee is to disburse amounts from the Project Fund not later than five (5) Business Days following the receipt of the executed requisition and accompanying bills or invoices, except that any such requisition and accompanying bills or invoices submitted on the Closing Date is to have disbursements made by the Trustee on such Closing Date. The Trustee is to 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 for costs of construction, improving and/or renovating the Facility Realty is to be accompanied by a notice of title continuation or an endorsement to the title insurance policies theretofore delivered pursuant to 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 notice or endorsement is to contain no exception for inchoate mechanic’s liens (and such affirmative insurance relating thereto as the Issuer and/or the Trustee is to require) and is to 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 Trustee is to keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom and is to furnish copies of same to the Issuer or the Borrower upon reasonable written request.

The Trustee is to on written request furnish to the Issuer and the Borrower 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.

The completion of the Series 2022 Project is to be evidenced as set forth in the Loan Agreement including the filing of the certificate of an Authorized Representative of the Borrower 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 Series 2022 Project, is to, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and the Indenture, be deposited by the Trustee in the Redemption Account of the Bond Fund for the Series 2022A Bonds, pro rata. Upon payment of all the costs and expenses incident to the completion of the Facility, any balance of such remaining amount in the Project Fund, shall, after making any such transfer to the Rebate Fund, and after depositing in the subaccounts of 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 Series 2022A Bonds, at the earliest practicable date. The Trustee is to promptly notify the Borrower of any amounts so deposited in the Redemption Account of the Bond Fund pursuant to Indenture as described under this heading.

In the event the Borrower is to be required to or is to elect to cause the Bonds to be redeemed in whole pursuant to the Loan Agreement, the balance in the Project Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Regulatory Agreement and the Indenture) and in the subaccounts of the Debt Service Reserve Fund is to be deposited in the respective subaccounts of the Redemption Account of the Bond Fund for each Series of Bonds. In the event the unpaid principal amount of the Bonds is to be accelerated upon the occurrence of an Event of Default in the Indenture, the balance in the Project Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Regulatory Agreement and the Indenture) and in the subaccounts of the Debt Service Reserve Fund is to be deposited in the respective subaccounts of the Bond Fund as provided in the Indenture.

Except as described in “—Bond Fund” above, all earnings on amounts held in the Project Fund (a) prior to the Project Completion Date, shall remain in the Project Fund, and (b) after the Project Completion Date, shall be transferred by the Trustee and deposited in the Series 2022A Interest Subaccount of the Interest Account of the Bond Fund.

Events of Default under the Indenture

Each of the following events constitutes an “Event of Default” under the Indenture:

- (a) Failure in the payment of the interest on any Bond when the same shall become due and payable;
- (b) Failure in the payment of the principal 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 date of redemption after notice of redemption therefor or otherwise;

(c) Failure of the Issuer to observe or perform any covenant, condition or agreement in the Bonds or under the Indenture on its part to be performed (except as set forth in (a) or (b) above) and (i) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Issuer and the Borrower specifying the nature of same from the Trustee or the Holders of more than 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 Issuer or the Borrower 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

(d) The occurrence of an “Event of Default” under the Loan Agreement (as described below under the heading “—Events of Default under the Loan Agreement” or any other Security Document.

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 Borrower) or the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding (by notice in writing to the Issuer, the Borrower 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 the Indenture or in any of the Bonds contained to the contrary notwithstanding.

If there shall occur an Event of Default under 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.

The right of the Trustee or of the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding to make any such declaration as aforesaid, however, is subject to the condition that if, at any time before such declaration, all overdue installments of principal of and 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 Article VIII of the Indenture, 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.

Pursuant to the Loan Agreement, the Issuer has granted to the Borrower 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 Borrower to constitute a default under the Indenture, 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 Borrower as performance by the Issuer.

Pursuant to the Borrower DACA, upon the happening and continuance of any Event of Default, the Trustee, as Secured Party under the Borrower DACA, shall withdraw any funds on deposit in the Accounts (as defined in the Borrower DACA, but subject to the limitations in the Indenture) which are required to pay, and such funds shall be applied to pay, principal, Purchase Price or Redemption Price of, Sinking Fund Installments for, and interest on the Bonds.

Events of Default under the Loan Agreement

Any one or more of the following events shall constitute an “Event of Default” under the Loan Agreement:

(a) Failure of the Borrower to pay any loan payment that has become due and payable by the terms of the Loan Agreement which results in an Event of Default under the Indenture;

(b) Failure of the Borrower to pay any amount (except as set forth in subsection (a) above) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under the Loan Agreement and continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Borrower specifying the nature of such failure by the Issuer or the Trustee or the Holders of more than 25% in aggregate principal amount of the Bonds Outstanding;

(c) Failure of the Borrower to observe and perform any covenant, condition or agreement under the Loan Agreement on its part to be performed (except as set forth in subsection (a) and (b) above and (i) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Borrower specifying the nature of same by the Issuer or the Trustee or the Holders of more than 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 Borrower 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;

(d) The Borrower 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;

(e) A proceeding or case shall be commenced, without the application or consent of the Borrower, 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 Borrower 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 Borrower shall be entered in an involuntary case under such Bankruptcy Code; the terms “dissolution” or “liquidation” of the Borrower as used above shall not be construed to prohibit any action otherwise permitted by the Loan Agreement;

(f) Any representation or warranty made by the Borrower (i) in the application and related materials submitted to the Issuer or the Underwriter of the Bonds for approval of the Series 2022 Project or its financing, or (ii) herein or in any other Project Document, or (iii) in the Letter of Representation and Indemnity Agreement dated the Closing Date and delivered to the Issuer, the Trustee and the Underwriter of the Bonds, or (iv) in the Tax Regulatory Agreement, or (v) by or on behalf of the Borrower or any other Person in any Required Disclosure Statement, or (vi) 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;

(g) The commencement of proceedings to appoint a receiver or to foreclose any mortgage lien on or security interest in the Facility including the Leasehold Mortgage;

(h) An “Event of Default” under the Indenture as described above under the heading “—Events of Default under the Indenture” or under any other Security Document shall occur and be continuing;

(i) The occurrence of LW Event of Default;

(j) Failure of the Borrower to pay the amount required of it under the Loan Agreement when required thereunder;

(k) Termination of the Lease or the Sublease; or

(l) Revocation, loss, or non-renewal of the Charter School’s Charter.

Acceleration

Upon the occurrence of certain events, on the conditions, in the manner and with the effect set forth in the Indenture and the Loan Agreement, payment of the principal of and accrued interest on the Series 2022 Bonds and Additional Bonds may be accelerated under the Indenture and the Loan Agreement. See “RISK FACTORS,” “APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE—Form of Loan Agreement—*Events of Default*,” and “—Remedies on Default,” and “APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE—Form of Indenture of Trust—*Events of Default; Acceleration of Due Date*” in this Limited Offering Memorandum.

Debt Service Reserve Fund

The Indenture creates the Debt Service Reserve Fund for the benefit of the Series 2022 Bonds and within such Debt Service Reserve Fund, a Series 2022A subaccount and a Series 2022B subaccount. The Debt Service Reserve Fund Requirement for the Debt Service Reserve Fund is computed as follows:

(a) with respect to the Series 2022 Bonds, as of any particular date of computation, an amount (which amount may take the form of cash, Qualified Investments or any combination thereof) equal to the lesser of:

(i) 10% of the Stated Principal Amount (as defined in the Tax Regulatory Agreement) of the Series 2022 Bonds;

(ii) 100% of the greatest amount required in the then current or any future calendar year to pay the sum of the scheduled principal and interest payable on the Series 2022 Bonds; or

(iii) 125% of the average annual amount required in the then current or any future calendar year to pay the sum of scheduled principal and interest on the Series 2022 Bonds.

(b) with respect to any Series of Additional Bonds, such amount as shall be set forth in the Supplemental Indenture entered into in connection with the issuance of such Additional Bonds.

If on any Interest Payment Date or Redemption Date on the Series 2022 Bonds, the amount in the respective Interest Account of the Bond Fund (after taking into account amounts available to be transferred to the Interest Account of the Bond Fund from the Project Fund) shall be less than the amount of interest then due and payable on the Series 2022 Bonds, or if on any principal payment date on the Series 2022 Bonds the amount in the respective Principal Account of the Bond Fund shall be less than the amount of principal of the Series 2022 Bonds then due and payable, or if on any Sinking Fund Installment payment date for the Series 2022 Bonds the amount in the respective 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 Series 2022 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 Borrower or the Issuer on account of such interest, principal or Sinking Fund Installment, the Trustee shall transfer moneys from the subaccounts of the Debt Service Reserve Fund, first, to the respective subaccount of such Interest Account, second, to the respective subaccount of the Principal Account, and third, to the respective subaccount of the Sinking Fund Installment Account, all to the extent necessary to make good any such deficiency. Amounts held in the Debt Service Reserve Fund may be applied to the final principal payment of the Series 2022A Bonds at maturity or upon redemption in full, but not in part, or to defease the Series 2022 Bonds in accordance with the terms of the Indenture.

Lease Payment Reserve Fund

The Lease Payment Reserve Fund is a special trust fund so designated, established pursuant to the Indenture.

Lease Payment Reserve Requirement shall mean a total amount equal to \$1,263,111.24, payable in twelve (12) equal installments of \$105,259.27, beginning July 5, 2023. The sizing of the Lease Payment Reserve Requirement is based on the maximum Lease Rent payment under the Lease, while the Series 2022 Bonds are Outstanding, of \$1,488,111.24 (assuming 10% incremental increases under the Lease), minus the \$225,000 security deposit held with the Landlord. Such payments are included as Rent payable by the Charter School to the Borrower Account pursuant to the terms of the Sublease. Such monthly payments will be transferred to the Trustee pursuant to the Depositary Agreement.

There shall be deposited into the Lease Payment Reserve Fund as and when received (a) all payments by the Institution pursuant to the Loan Agreement and all transfers received pursuant to the Indenture, (b) all other moneys deposited into the Lease Payment Reserve Fund pursuant to the Loan Agreement or the Indenture, and (c) all other moneys received by the Trustee when accompanied by directions not inconsistent with the Loan Agreement or this Indenture that such moneys are to be paid into the Lease Payment Reserve Fund. There shall also be retained in the Lease Payment Reserve Fund, interest and other income received on investment of moneys in the Lease Payment Reserve Fund.

The Lease Payment Reserve Fund shall be in the custody of the Trustee, and, absent an Event of Default, the Trustee is authorized and directed to make each disbursement and to issue its checks if any amounts due and payable under the Lease are not made when due. The Trustee shall keep and maintain adequate records pertaining to the Lease Payment Reserve Fund and all disbursements therefrom and shall annually file an accounting thereof with the Issuer and the Institution.

Payments shall be made from the Lease Payment Reserve Fund upon receipt by the Trustee of a written requisition from an Authorized Representative of the Institution setting forth the amount and the payee for the purpose of paying rent or other amounts due under the Lease.

Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Lease Payment Reserve Fund shall be credited to the Lease Payment Reserve Fund.

Notwithstanding any provision hereof to the contrary, during the occurrence and continuance of an Event of Default, the Trustee may use any moneys on deposit in the Lease Payment Reserve Fund for payment of its fees and expenses as provided in the Indenture.

Repair and Replacement Fund

The Repair and Replacement Fund is a special trust fund so designated, established pursuant to the Indenture. The Repair and Replacement Fund Requirement, means a total amount equal to \$200,000, payable in five equal annual installments of \$40,000 beginning July 5, 2027 and continuing annually for five (5) consecutive years, such amount is subject to change pursuant to the Covenant Agreement, the Loan Agreement and the Indenture, provided that such amount shall not be decreased so long as the Bonds are Outstanding.

There shall be deposited into the Repair and Replacement Fund as and when received (a) all payments by the Borrower pursuant to the Loan Agreement and all transfers received pursuant to the Indenture, (b) all other moneys deposited into the Repair and Replacement Fund pursuant to the Loan Agreement or the Indenture, and (c) all other moneys received by the Trustee when accompanied by directions not inconsistent with the Loan Agreement or the Indenture that such moneys are to be paid into the Repair and Replacement Fund. There shall also be retained in the Repair and Replacement Fund, interest and other income received on investment of moneys in the Repair and Replacement Fund to the extent provided in the Indenture.

The Repair and Replacement Fund shall be in the custody of the Trustee, and, absent an Event of Default under the Indenture, the Trustee is authorized and directed to make each disbursement authorized or required by the provisions of the Indenture and to issue its checks therefor. The Trustee shall keep and maintain adequate records pertaining to the Repair and Replacement Fund and all disbursements therefrom and shall annually file an accounting thereof with the Issuer and the Borrower.

Payments shall be made from the Repair and Replacement Fund upon receipt by the Trustee of a written requisition from an Authorized Representative of the Borrower setting forth the amount and the payee for the purpose of paying the cost of maintenance and replacements which may be required to keep each Facility in sound condition, including but not limited to replacement of equipment, replacement of any roof or other structural component, painting, carpeting, flooring, and the repair or replacement of heating, air conditioning, plumbing and electrical equipment.

Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Repair and Replacement Fund shall be credited to the Repair and Replacement Fund.

Notwithstanding any provision of the Indenture to the contrary, during the occurrence and continuance of an Event of Default, the Trustee may use any moneys on deposit in the Repair and Replacement Fund for payment of its fees and expenses as provided in the Indenture.

In the Covenant Agreement, the Charter School agrees to cause a Facilities Consultant to complete a capital needs assessment of the Charter School projecting the Charter School's capital needs for the Facility and the total cost thereof for the five-year period commencing on the immediately following July 5 (each a "**Capital Needs Assessment**") no later than June 30, 2032, and every fifth anniversary thereafter as long as the Bonds are Outstanding. The total cost set forth in a Capital Needs Assessment less the amount then on deposit in the Repair and Replacement Funds, divided by 30, shall be the "**Repair and Replacement Fund Requirement**" for such five-year period; provided, however, that the Repair and Replacement Fund Requirement for any future period shall not be less than the initial Repair and Replacement Fund Requirement of \$200,000. The Repair and Replacement Fund Requirement for each future period shall be at least the amount provided for in the definition of Repair and Replacement Fund Requirement for the Facility.

The Borrower covenants to cause to be deposited into the Repair and Replacement Fund, a portion of the Rents due under the Sublease to fund the Repair and Replacement Fund on the dates set forth therein, until the annual amount of such deposits total the Repair and Replacement Fund Requirement for such year. The Borrower shall replenish any draws made on the Repair and Replacement Fund by paying or causing to be paid to the Trustee for deposit in the Repair and Replacement Fund in thirty (30) equal bi-monthly amounts as required by the Indenture and Loan Agreement until the Repair and Replacement Fund Requirement is met; provided, however, if amounts on deposit in the Repair and Replacement Fund are in excess of the Repair and Replacement Fund Requirement, the Borrower shall not be required to replenish draws on the Repair and Replacement Fund; and, provided, further, however, nothing contained in the Loan Agreement, shall prohibit the Borrower from depositing amounts into the Repair and Replacement Fund in excess of the Repair and Replacement Fund Requirement.

Defeasance

Upon certain terms and conditions specified in the Indenture, including provision for the payment of such Bonds, the Series 2022 Bonds or portions thereof will be deemed to be paid and the security provided in the Indenture, the Leasehold Mortgages and the other Security Documents may be discharged prior to maturity or redemption of the Series 2022 Bonds. In that case, the Series 2022 Bonds will be secured solely by the cash and securities deposited with the Trustee for such purpose. See "APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE—Form of Indenture of Trust" in this Limited Offering Memorandum.

Waivers of Default

Pursuant to the terms of the Indenture, the Trustee shall waive any default thereunder 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 Borrower, the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights under the Indenture, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Issuer Approval of Certain Remedies

Notwithstanding any provision of the Indenture or of any other Security Document, upon the occurrence of an Event of Default, no such remedy or other action (whether exercised by the Trustee, the Majority Holders or the Holders of the Bonds) shall have the effect of (a) continuing the exemption from the mortgage recording tax of the Leasehold Mortgages upon any restructuring of the underlying indebtedness secured by the Leasehold Mortgages (a “**Mortgages Restructuring**”), (b) amending or terminating any Security Document (other than through a forbearance) to which the Issuer is a party (a “**Security Document Action**”) or (c) substituting for the Borrower and/or the Charter School, as applicable, a new Entity to either be a counterparty to the Issuer under the Loan Agreement or as a user or lessee of all or a portion of the Facility (a “**Substitute Entity**”), unless, in either case, a reasonable description of such Mortgage Restructuring, Security Document Action and/or Substitute Entity shall have been set forth in a writing delivered to the Issuer together with a request for approval (the “**Notice**”) and (a) the Mortgage Restructuring, Security Document Action and/or Substitute Entity shall be approved in writing by the Issuer, such approval not to be unreasonably withheld or delayed (and which approval may, in the sole discretion of the Issuer, be subject to action by the Issuer’s Board of Directors), and (b) there shall be delivered to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such Mortgages Restructuring, Security Document Action and/or Substitute Entity shall not cause the interest on any Outstanding Series 2022A Bonds to become subject to federal income taxation by reason of any such Mortgages Restructuring, Security Document Action and/or Substitute Entity. No Issuer consent is required for the entry into a forbearance agreement by the Trustee, the commencement of a foreclosure action under the Leasehold Mortgage or the appointment of a receiver over the Borrower or any collateral for the Bonds. In connection with the retirement or surrender for cancellation of all of the Outstanding Bonds (other than as a result of the payment in full of all Outstanding Bonds), the Trustee agrees to provide written notice to the Issuer of such retirement or cancellation no later than fourteen (14) Business Days after the occurrence of the earlier of: (a) the Trustee’s receipt of direction to effectuate such retirement or cancellation, and (b) the Trustee’s receipt of surrendered Bonds for cancellation.

TRANSFER RESTRICTIONS

The Series 2022 Bonds are to be offered and sold (including in secondary market transactions) 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.

RISK FACTORS

No person should purchase any Series 2022 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 2022 BONDS ARE SPECIAL LIMITED REVENUE OBLIGATIONS OF THE ISSUER, PAYABLE AS TO PRINCIPAL, SINKING FUND INSTALLMENTS, 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, SINKING FUND INSTALLMENTS FOR, OR INTEREST ON, THE SERIES 2022 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 2022 BONDS. THE SERIES 2022 BONDS WILL NOT BE PAYABLE OUT OF ANY FUNDS OF THE ISSUER OTHER THAN THOSE PLEDGED THEREFOR PURSUANT TO THE INDENTURE. THE SERIES 2022 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, SINKING FUND INSTALLMENTS FOR, OR INTEREST ON, THE SERIES 2022 BONDS AGAINST ANY MEMBER, OFFICER, DIRECTOR, EMPLOYEE, AGENT OR REPRESENTATIVE OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

Speculative Investment

Purchase of the Series 2022 Bonds involves a high degree of risk and the Series 2022 Bonds are a speculative investment. The Series 2022 Bonds have not been rated. Such securities may exhibit price fluctuations due to changes in the interest rate or bond yield levels. As a result, the value of the Series 2022 Bonds may fluctuate significantly in the short-term. Further, such securities have a less liquid resale market. As a result, potential investors may have difficulty selling or disposing of the Series 2022 Bonds. The Series 2022 Bonds should not be purchased by any potential investor who, because of financial condition, investment policies or otherwise, does not desire to assume, or have the ability to bear, the risks inherent in an investment in the Series 2022 Bonds.

Dependence on Borrower's Ability to Pay Loan Payments; Ability of School to Pay the Rents

Payment of principal of, redemption premium, if any, and interest on, the Series 2022 Bonds is intended to be made from Loan Payments made by the Borrower under the Loan Agreement and the Promissory Notes, except to the extent payment is intended to be made from other amounts held under the Indenture such as Series 2022 Bond proceeds or investment earnings. The Borrower has no significant assets or business other than the assets and business related to the Facility. The ability of the Borrower to make Loan Payments will depend on the Borrower's ability to generate revenues sufficient to pay the Loan Payments, which will primarily depend on the ability of the Charter School to make payments under the Sublease. See "APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL" and "APPENDIX C—BUDGET PROJECTION" in this Limited Offering Memorandum.

The Charter School's general revenues are a combination of state payments provided under several State and federal programs, including the Education Aid payments and Rental Assistance. See "CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK" in this Limited Offering Memorandum. Rental Assistance alone will likely be insufficient to make the total payments due under the Sublease. Prior enrollment history of the Charter School is no guaranty of future enrollment and revenues. See "APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL" and "APPENDIX C—BUDGET PROJECTION" in this Limited Offering Memorandum.

The amounts and the timing of future revenues of the Charter School cannot be determined with assurance. Prior revenues and expenditures of the Charter School are no guaranty as to future revenues and expenditures of the Charter School. Any event that would cause a delay, reduction or elimination of Education Aid or Rental Assistance would have a material adverse effect on the ability of the Charter School to pay the Rents under the Sublease and therefore on the ability of the Borrower to make payments under the Loan Agreement and the Promissory Notes representing debt service on the Series 2022 Bonds.

Impact of COVID-19 on the Charter School

In late 2019, a novel strain of coronavirus (“**COVID-19**”) emerged in Wuhan, Hubei Province, China. COVID-19 has spread throughout the world, including to the United States, resulting in the World Health Organization proclaiming COVID-19 to be a pandemic and former President Trump declaring a national emergency. On March 1, 2020, the first case of COVID-19 was confirmed in the State. In response, New York Governor Andrew M. Cuomo declared a State of Emergency due to the COVID-19 pandemic on March 7, 2020. On March 16, 2020, Governor Cuomo issued Executive Order 202.4, which required all K–12 schools to temporarily close. Subsequent Executive Orders 202.11, 202.14, 202.18, and 202.28 extended such closure and ordered schools to remain in a remote learning stance for the remainder of the 2019–2020 academic school year. On June 5, 2020, Governor Cuomo issued Executive Order 202.37, allowing in-person special education services and instruction during the summer term, provided that any district offering such services follow state and federal guidance.

In September 2020, the New York State Education Department’s (“**NYSED**” or the “**Department**”) released reopening guidance entitled “*Recovering, Rebuilding, and Renewing: The Spirit of New York’s Schools*,” which required the Boards of Cooperative Education Services (“**BOCES**”), school districts, and charter schools to create comprehensive reopening plans with a schedule that includes in-person instruction, remote instruction or a hybrid of both in-person and remote.

On October 9, 2020, the New York State Department of Health issued Interim Guidance for In-Person Instruction at Pre-K to Grade 12 Schools During the COVID-19 Public Health Emergency, which was amended on April 9, 2021 (“**Interim Guidance**”). Schools may reopen if they follow guidelines that require mass testing in schools before they reopen followed by vigilant symptom and exposure screening conducted daily. For more information, see <https://forward.ny.gov/phase-four-industries>.

For the 2020–2021 school year, the Charter School opened fully remote and in March 2021 transitioned to a hybrid model for the remainder of the school year. Approximately 50% of the Charter School’s students remained remote for the 2020–2021 school year. The Charter School provided Chromebooks and WiFi hotspots for students learning remotely. Teachers and students were required to wear masks for in-person learning.

For the 2021–2022 school year, the Charter School has operated fully in-person to date. Teachers and students were required to wear masks for in-person learning. Teachers are required to be vaccinated and 100% of the Charter School’s teachers are vaccinated.

Operations are governed by a Hybrid Reopening Plan, which was most recently updated in April 2021 (the “**COVID Plan**”). The COVID Plan prioritizes (a) the creation and implementation of a trauma-informed plan for students, families, and staff; (b) providing health and safety procedures for staff, students, and families; (c) maintaining high academic standards and rigor; (d) maintaining warm school culture; and (e) building community.

The Coronavirus Aid, Relief, and Economic Security Act (CARES), was signed into law on March 27, 2020 and provided \$13.5 billion for the Elementary and Secondary School Emergency Relief

Fund (“**ESSER I Fund**”). The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA), was signed into law on December 27, 2020 and provided an additional \$54.3 billion for the Elementary and Secondary School Emergency Relief Fund (“**ESSER II Fund**”). The American Rescue Plan (“**ESSER III Fund**”) was signed into law on March 11, 2021 and provided support for K-12 schools with a total of nearly \$122 billion to states and school districts. During the 2020-2021 fiscal year, the Charter School received \$60,387 of funding from ESSER grants.

COVID-19 has caused significant disruptions to the global, national, and State economies. The extent to which COVID-19 impacts the Charter School and its financial condition moving forward will depend on future developments, which are highly uncertain and cannot be predicted by the Charter School or the Borrower, including the duration of the outbreak and measures taken to address the outbreak. The degree of any such impact to the Charter School’s or the Borrower’s operations and finances is extremely difficult to predict due to the dynamic nature of the COVID-19 outbreak, including uncertainties relating to its (a) duration, (b) severity and (c) ultimate geographic spread, as well as with regard to what actions may be taken by governmental authorities to contain or mitigate its impact. Nonetheless, there can be no assurances that the spread of COVID-19 will not materially adversely impact the financial condition of the Charter School or the Borrower.

Material adverse effects to the State’s finances due to the continued spread of COVID-19 could affect the amount or timing of State aid appropriated to school districts, including charter schools such as the Charter School. In addition, while highly unlikely given the Charter School’s high market demand, the spread of COVID-19 could have an adverse effect on future enrollment. For example, if it is perceived that competitors of the Charter School, including traditional public schools or other charter schools, are better equipped to handle the spread of COVID-19 or similar future outbreaks or to provide virtual learning, it could lead to lower enrollment in the future.

No Acceleration of Rents Upon an Acceleration of the Series 2022 Bonds

The Rental payable by the Charter School under the Sublease are scheduled to pay amounts due under the Loan Agreement with respect to the regularly scheduled principal of and interest on the Series 2022 Bonds, but the Rental is not subject to acceleration even if there has been an acceleration of the principal of the Series 2022 Bonds.

No Taxing Authority; Dependence on Education Aid Payments and Rental Assistance

The Borrower and the Charter School do not possess any taxing authority and the Charter School is substantially dependent upon the State to continue to provide funding for public charter schools. The obligation of the State under the Charter and State law to fund the Charter School 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 Charter School for any reason, even a reason that is ultimately determined to be invalid or unlawful, it is likely that the Charter School would be forced to cease operations.

Failure of New York City Department of Education to Make Education Aid Payments or Rental Assistance to the Charter School

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 NYCDOE on behalf of the New York City Geographic District No. 6 (“**CSD 6**”) with respect to the Charter School) fails to make a required bi-monthly payment of Education Aid to a charter school such as the Charter School. 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 NYCDOE on behalf of CSD 6 with respect to the Charter School) and instead will be paid directly by the Comptroller to the Charter School. There can be no assurance of the timing of receipt of any such amounts so paid by the Comptroller. The regulations that refer to payments required by Section 2856 of the Charter Schools Act (Charter School Basic Tuition and federal/state aid attributable to students with disabilities) do not directly address Rental Assistance that are described in Section 2853 of the Charter Schools Act. The NYCDOE letter notifying the Charter School that it will receive Rental Assistance stated that the Rental Assistance will be paid consistently with the bi-monthly basis outlined in Section 2856(1)(b) of the Charter Schools Act.

Delay in or Termination or Reduction of Education Aid or Rental Assistance

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 or Rental Assistance. 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 or Rental Assistance 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 Charter School to make the Rents required under the Sublease.

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.

Budget Projection

The Budget Projection prepared by the Charter School and contained in “APPENDIX C—BUDGET PROJECTION” is based upon certain assumptions made by the Charter School. No assurance can be given that the results described in the Budget Projection will be achieved. The Charter School does not intend to issue an additional Budget Projection and, accordingly, there are risks inherent in using the Budget Projection in the future as the Budget Projection becomes outdated. The Budget Projection is only for fiscal years ending June 30, 2023 through June 30, 2028, and does not cover the entire period during which the Series 2022 Bonds may be outstanding. See “APPENDIX C—BUDGET PROJECTION” in this Limited Offering Memorandum.

No guaranty can be made that the Budget Projection will correspond with the results actually achieved in the future by the Charter School because there is no assurance that actual events will correspond with the assumptions made by the Charter School. For example, the Budget Projection makes certain assumptions as to continued demand for educational facilities such as the Facility and future enrollment at the Charter School. Actual operating results of the Charter School 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 Budget Projection, which appears in “APPENDIX C—BUDGET PROJECTION” in this Limited Offering Memorandum, should be read in its entirety.

Non-Renewal or Revocation of Charter

The Charter may be terminated by the Authorizer for the grounds set forth in the Charter Schools Act. The Charter also provides that it may be terminated 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—WHIN MUSIC COMMUNITY CHARTER SCHOOL—WHIN MUSIC COMMUNITY CHARTER SCHOOL—CHARTER CONTRACT,” and “APPENDIX B—SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW” in this Limited Offering Memorandum.

While representatives of the Charter School believe that it is in good standing with the Authorizer and is in material compliance with the Charter, no assurance can be given that the Charter School will be able to maintain such good standing in the future. In addition, even though the Charter School does not anticipate any non-renewal or revocation of its Charter, there can be no assurance that the Authorizer will not revoke or not renew the Charter in the future.

No Pledge of Revenues by the Charter School

Under New York law, the Charter School may not legally assign or pledge any interest in public education aid payable to the Charter School pursuant to the Charter Schools Act to secure its obligations under the Sublease.

Factors Associated with Education

There are a number of factors affecting schools in general, including the Charter School, that could have an adverse effect on the Charter School’s financial position and its ability to make the payments required under the Sublease, and therefore on the ability of the Borrower to make Loan Payments under the Loan Agreement. These factors include, but are not limited to (a) the ability to attract a sufficient number of students; (b) future legislation and regulations affecting charter schools and the educational system in general; (c) 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; (d) increased costs of attracting and retaining or a decreased availability of a sufficient number of teachers, including as related to any unionization of the Charter School’s work force with consequent impact on wage scales and operating costs of the Charter School; (e) cost and availability of insurance for charter schools in the State; and (f) changes in existing statutes pertaining to the powers of the Charter School and legislation or regulations which may affect program funding. The Charter School cannot assess or predict the ultimate effect of these factors on its operations or the financial results of operations.

Competition for Students

The Charter School competes for students primarily within the geographic area of CSD 6, as well as other surrounding CSDs, and with other public schools and charter schools within the Manhattan area. There are currently approximately 10 charter schools serving a combination of grades kindergarten through 12th grade within CSD 6. Charter schools within a close proximity to the Facility are in competition with the Charter School for students, including, but not limited to Amber Charter School Inwood, Equity Project Charter School, Inwood Academy for Leadership Charter School, KIPP NYC Washington Heights Academy Charter School, New Heights Academy Charter School, School in the Square Public Charter School, Success Academy Charter School – Washington Heights and Zeta Charter Schools – Inwood 1. In the view of the Charter School, these schools are representative of the schools with which the Charter

School competes for students. One of the many impacts of the COVID-19 pandemic on education has been a national trend of decreased enrollment of students, particularly those in lower grades, such as kindergarten. The decrease in enrollment will increase competition for students among schools. See “APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL—THE CHARTER SCHOOL—Service Area” and “—Competing Schools” in this Limited Offering Memorandum. No assurance can be given that the Charter School 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 2022 Bonds, or that additional schools will not be created in or near the Charter School’s service area.

Litigation

Educational institutions like the Charter School are often subject to litigation. Educator’s professional liability and other actions alleging wrongful conduct and seeking punitive damages are often filed against education providers such as the Charter School. Litigation may also arise from the corporation and operational activities of the Charter School or from employee-related matters. As with education’s professional liability, many of these risks are covered by insurance but some are not.

For example, some contract disputes and worker’s compensation claims are not covered by insurance or other sources, and may be a liability of the Charter School if determined or settled adversely. Although the Charter School maintains insurance policies covering educator’s professional and general liability, management of the Charter School is unable to predict the availability, cost or adequacy of such insurance in the future. Any inability of the Charter School in the future to secure affordable, adequate insurance may expose the Charter School to litigation risks that may adversely affect the Charter School’s ability to generate adequate funds to pay debt service on the Series 2022 Bonds.

Cybersecurity

The Charter School, like many other public and private entities, relies on a technology environment to conduct its operations. As a recipient and provider of personal, private, or sensitive information, the Charter School is subject to multiple cyber threats including, but not limited to, hacking, viruses, malware, and other attacks on computer and other sensitive digital networks and systems. Entities or individuals may attempt to gain unauthorized access to the Charter School’s digital systems for the purpose of misappropriating assets or information or causing operational disruption and damage. No assurances can be given that the Charter School’s efforts to manage cyber threats and attacks will be successful or that any such attack will not materially impact the operations or finances of the Charter School.

Foreclosure Delays and Deficiency

Should Loan Payments be insufficient to pay the principal of and interest on the Series 2022 Bonds, the Trustee may seek to foreclose each of the Leasehold Mortgages as provided in the Indenture and subject to the provisions set forth above, and sell the Facility securing the Series 2022 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 2022 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 Borrower and the Charter School in the event of any default or dispute under the Loan Agreement.

Effect of Federal Bankruptcy Laws on Security for the Series 2022 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 2022 Bonds.

Furthermore, if the security for the Series 2022 Bonds is inadequate for payment in full of the Series 2022 Bonds, bankruptcy proceedings and equity principles may also limit any attempt by the Trustee to seek payment from other property of the Borrower, if any. See “ENFORCEABILITY OF OBLIGATIONS” in this Limited Offering Memorandum. 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 2022 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 (a) substitute other security subject to the lien of the Bondholders, and (b) subordinate the lien of the Bondholders (i) to claims by persons supplying goods and services to the Borrower after bankruptcy and (ii) to the administrative expenses of the bankruptcy proceeding. The bankruptcy court may also have the power to invalidate certain provisions of the Leasehold Mortgages that make bankruptcy and related proceedings by the Borrower an event of default thereunder.

Reliance on Projections

The Charter School’s projections of revenue and expenditures for the fiscal year ending June 30, 2023 and the projections of future revenues and expenses contained in “APPENDIX C—BUDGET PROJECTION” herein were prepared by the Charter School and have not been independently verified by any other party. The projections are forward-looking statements and are subject to the general qualifications and limitations described under “RISK FACTORS” above. Neither the Underwriter nor the Issuer has independently verified such projections, and makes no representations nor gives any assurances that such projections, or the assumptions underlying them, are complete or correct. Further, the projections relate only to the Charter School’s fiscal years through 2028, and consequently do not cover the entire period that the Series 2022 Bonds will be outstanding.

The projections are derived from the Charter School’s assumptions about future student enrollment, revenues, and expenses. There can be no assurance that the actual enrollment and revenues and expenses for the Charter School will be consistent with the assumptions underlying such projections. Further, no guarantee can be made that such projections of revenues and expenses will correspond with the results actually achieved in the future, because there is no assurance that actual events will correspond with the assumptions made by the Charter School, and the ongoing effects of the COVID-19 pandemic have added greater uncertainties about future prospects. Actual operating results may be affected by many factors, including, but not limited to, the failure to complete construction of the Facility, increased costs, lower than anticipated revenues (as a result of insufficient enrollment, reduced State of New York funding, or otherwise), employee relations, changes in applicable government regulation, changes in demographic trends, changes in education competition, changes in State or local economic conditions, and other effects of the COVID-19 pandemic that cannot be predicted or guaranteed at this time. Refer to “APPENDIX C—BUDGET PROJECTION” to review certain information relevant to the projections and to consider the various factors that could cause actual results to differ significantly from projected results. Refer to “RISK FACTORS,” above, for qualifications and limitations applicable to forward-looking statements.

NO GUARANTEE CAN BE MADE THAT THE PROJECTED INFORMATION CONTAINED HEREIN WILL CORRESPOND WITH THE RESULTS ACTUALLY ACHIEVED IN THE FUTURE BECAUSE THERE CAN BE NO ASSURANCE THAT ACTUAL EVENTS WILL CORRESPOND WITH THE ASSUMPTIONS UNDERLYING SUCH PROJECTIONS. ACTUAL OPERATING RESULTS MAY BE AFFECTED BY MANY FACTORS, INCLUDING, BUT NOT LIMITED TO, CHANGES IN THE STATE’S FUNDING SYSTEM, UNANTICIPATED INCREASES IN COSTS, LOWER THAN ANTICIPATED REVENUES (AS A RESULT OF INSUFFICIENT ENROLLMENT, REDUCED STATE OR FEDERAL AID PAYMENTS, OR OTHERWISE), THE COVID-19 PANDEMIC, EMPLOYEE RELATIONS, CHANGES IN TAXES, CHANGES IN APPLICABLE

GOVERNMENTAL REGULATION, CHANGES IN DEMOGRAPHIC TRENDS, CHANGES IN EDUCATION COMPETITION AND LOCAL OR GENERAL ECONOMIC CONDITIONS.

Key Personnel

The Charter School's mission, curriculum, educational philosophy, and day-to-day operations reflect the vision and commitment of the individuals who serve on the Charter School's Board of Trustees and as the Charter School's senior leadership (the "**Key Personnel**"). The loss of any Key Personnel could adversely affect the Charter School's operations, its ability to attract and retain students and ultimately its financial results. For more information regarding the Charter School's Key Personnel, see "APPENDIX A—WHIN MUSIC COMMUNITY CHARTER SCHOOL—CHARTER SCHOOL GOVERNANCE, ADMINISTRATION AND TEACHERS" in this Limited Offering Memorandum.

Potential Unionization

The teachers and staff at the Charter School are not unionized, although no assurance can be given that they will not unionize or attempt to unionize in the future.

Additional Indebtedness

Pursuant to the Covenant Agreement, the Charter School will covenant that it will only incur Indebtedness in accordance with the restrictions imposed by the Covenant Agreement. No assurance can be given that the Issuer will not issue Additional Bonds for the benefit of the Borrower or the Charter School will not incur Additional Indebtedness in the future. See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2022 BONDS—Covenants of the Charter School; Additional Indebtedness—Limitations on Indebtedness" and "APPENDIX J—FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE AGREEMENT, LEASE, AND SUBLEASE—Form of Indenture of Trust" 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 Charter School's operations and expectations regarding student enrollment, future operations, revenues, capital resources, and expenditures for capital projects. Although the representatives of the Borrower and the Charter School believe 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 Borrower and the Charter School involve risks and uncertainties, many of which are outside the control of the Borrower and the Charter School and any one of which, or a combination of which, could materially affect the results of the Borrower's or the Charter School'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 are located; the willingness of the State to fund charter school operations at present or increased levels; competitive conditions within the Charter School's market, including the acceptance of the education services offered by the Charter School; lower enrollments than projected; unanticipated

expenses; the capabilities of the Charter School'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 BUDGET PROJECTION CONTAINED IN APPENDIX C ATTACHED TO THIS LIMITED OFFERING MEMORANDUM IS NOT A HISTORICAL STATEMENT OF FINANCIAL PERFORMANCE OF THE CHARTER SCHOOL, BUT IS A FORWARD-LOOKING FORECAST OF FUTURE, PROJECTED FINANCIAL PERFORMANCE OF THE CHARTER SCHOOL.

No representation or assurance can be given that the Charter School will realize revenues in an amount sufficient to make the required payments under the Sublease or, therefore, that the Borrower will realize revenues in amounts sufficient to make the required payments under the Loan Agreement. No market study or demand analysis has been prepared for the Charter School to analyze the existing or future demand for enrollment in the Charter School. 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. Neither the Issuer nor the Underwriter makes any representation as to the accuracy of the projections contained herein or as to the assumptions on which the projections are based.

Real Property Tax Exemption

Under present State law and rulings, property owned by charter schools is exempt from real property taxes levied by political subdivisions of the State so long as such property is used for the exempt purpose of the Charter School, and real property owned by most not-for-profit corporations (such as the Borrower) with 501(c)(3) status are likewise exempt from real property taxes. To the extent real property taxes are levied against the Facility, the Borrower is required to pay real property taxes under the Lease, and such obligation is passed on to the Charter School through the Sublease. State law and the New York City Department of Finance ("NYCDOF") provide for the ability to convert a leasehold interest in excess of thirty (30) years as possessed by the Borrower under the Lease into a leasehold condominium form of ownership, which is then capable of receiving a real estate tax exemption. Borrower has filed an application for exemption from real property taxes based on this premise and will pursue such application to completion. Such application for exemption as granted by the NYCDOF is subject to annual renewal. Assuming such exemption is granted initially, such real property tax exemption will be retroactive to the Commencement Date. Therefore, subject to annual NYCDOF renewals, it is anticipated that from and after the Commencement Date, the Borrower will be exempt from real property taxes with respect to the Facility. Nevertheless, such laws, regulations, and rulings are subject to change (including without limitation NYCDOF's willingness to grant not-for-profit corporations real estate tax exemption), and no assurance can be given that any future change in exempt status would not have a material adverse effect on the Borrower and the Charter School. If the Borrower or the Charter School is required to pay real property taxes with respect to the Facility in the future, it would have a negative impact on the cashflow of the Borrower and the Charter School. The Charter School has assumed for purposes of the Budget Projection that the Borrower and School will be exempt from real property taxes with respect to the Facility; however, no assurance can be given that such exemption will be granted.

Tax-Exempt Status of the Borrower

The Borrower is a New York not-for-profit corporation 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 Borrower fails to meet the requirements necessary to preserve its status as a not-for-profit corporation and a tax-exempt charitable

organization under Section 501(c)(3) of the Code, the Borrower could experience expenses which are greater than those projected in “APPENDIX C—BUDGET PROJECTION” and revenues which are lower than those projected in “APPENDIX C—BUDGET PROJECTION”, which would adversely affect the Borrower’s ability in the future to pay the Loan Payments due under the Loan Agreement and the Promissory Notes. In addition, if the Borrower were to lose its status as a not-for-profit corporation and a tax-exempt organization, the tax-exempt status of the Series 2022A Bonds would also be adversely affected. The Borrower will covenant in the Tax Regulatory Agreement that it will not take any actions or fail to take any actions, the result of which would adversely affect the Borrower’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.

Tax-Exempt Status of the Charter School

The Charter School is a New York not-for-profit education corporation authorized to operate one public charter school pursuant to its Charter. The Charter School 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 Charter School 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 Charter School could experience expenses which are greater than those projected in “APPENDIX C—BUDGET PROJECTION” and revenues which are lower than those projected in “APPENDIX C—BUDGET PROJECTION”, which would adversely affect the Charter School’s ability in the future to pay the Rental Payment due under the Sublease with respect to Series 2022 Bonds. In addition, if the Charter School were to lose its status as a not-for-profit education corporation and a tax-exempt organization, the tax-exempt status of the Series 2022A Bonds would also be adversely affected. The Charter School will covenant in the Covenant Agreement that it will not take any actions or fail to take any actions, the result of which would adversely affect the Charter School’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. Bond Counsel will render an opinion with respect to the tax-exempt status of interest on the Series 2022A Bonds, as described under the caption “TAX MATTERS – SERIES 2022A BONDS” in this Limited Offering Memorandum. However, neither the Borrower nor the Charter School has sought and neither is expected to seek, a ruling from the Internal Revenue Service with respect to the tax-exempt status of the Series 2022A Bonds. No assurance can be given that the Internal Revenue Service will not examine the Series 2022A Bonds. If the Internal Revenue Service examines the Series 2022A Bonds, such examination may have an adverse impact on the marketability and price of the Series 2022A Bonds. See “TAX MATTERS – SERIES 2022A BONDS” in this Limited Offering Memorandum.

Tax-Exempt Status of the Series 2022A Bonds

The tax-exempt status of the interest on the Series 2022A Bonds is conditioned upon the Charter School and the Borrower complying with the requirements of the Code and applicable Treasury Regulations as they relate to the Series 2022A Bonds. Failure of the Borrower or the Charter School to comply with the terms and conditions of the Loan Agreement, the Tax Regulatory Agreement, the Indenture, the Sublease and other documents as described herein may result in the loss of the tax-exempt status of the interest on the Series 2022A Bonds retroactive to the date of issuance of the Series 2022A Bonds. If interest

on the Series 2022A Bonds should become includable in gross income for purposes of federal income taxation, the market for and value of the Series 2022A Bonds would be adversely affected. See “TAX MATTERS – SERIES 2022A BONDS” in this Limited Offering Memorandum.

Resale of Series 2022 Bonds/Lack of Secondary Market

There is no guarantee that a secondary trading market will develop for the Series 2022 Bonds. The Series 2022 Bonds may only be bought by or transferred to Accredited Investors or Qualified Institutional Buyers and must be sold to a broker-dealer of securities to be transferable only to Accredited Investors or Qualified Institutional Buyers. See “TRANSFER RESTRICTIONS” in this Limited Offering Memorandum. Consequently, prospective bond purchasers should be prepared to hold their Series 2022 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 Charter School and the Borrower and could adversely affect the security and sources of payment for the Series 2022 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 owners of the Series 2022 Bonds.

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

Construction Risk Relating to the Facility

Construction, equipping and furnishing of a new building such as the Facility are subject to the risks of cost overruns and delays due to a variety of factors. Any delay in completion of the Facility could have an adverse effect on the Charter School and the Charter School’s operations at the Facility.

The Facility is expected to be completed by the start of the 2024–2025 school year. Whether the Facility will be completed on schedule depends upon a large number of factors, many of which may be beyond the control of the Borrower and the Charter School for the Facility. These include, but are not limited to, financial difficulties of the general contractor and subcontractors, adverse weather, strikes, delays in the delivery of or shortages of materials, delays in the issuance of required building permits, environmental restrictions, the continuing effects of the COVID-19 pandemic or similar unknown or unforeseeable contingencies. Although construction work will be inspected periodically, there can be no assurance that the Facility will conform to construction specifications or state or local regulations. The occurrence of any of the foregoing could result in increases in construction costs or considerable delays, in, or the complete impossibility of, the completion of the Facility.

Additionally AIA Document A133-2019-Standard form of Agreement Between Owner and Construction Manager where the basis of payment is the cost of the Work plus a Fee with a Guaranteed Maximum Price contract, executed on March 7, 2022 (the “GMP Contract”), by and between the Borrower and the Contractor provides that the Contractor shall obtain a letter of credit as security in the event that

there is a default by Contractor under the GMP Contract requiring Borrower to engage a new contractor to complete construction on the Facility.

Permitting Risk Relating to the Facility

Prior to the issuance of the Series 2022A Bonds, the Borrower will not yet have obtained all requisite permits required for the construction of the Facility. There can be no assurances that the Borrower will receive all requisite permits to construct the Facility or that such permits will be issued in the timeline required for opening of the Facility in the fall of 2024. Significant delays in the permitting process could cause the Facility cost increases. If the Borrower is unable to obtain permits for construction of the Facility as planned, the Facility may not be built to final construction or altered significantly.

Damage or Destruction

The Loan Agreement, the Leasehold Mortgages, the Lease and the Sublease require that the Facility are 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 Borrower and the Charter School obtain insurance policies. Representatives of the Borrower and the Charter School each believe that the risks associated with its properties and its operations are adequately provided for through the insurance policies it maintains. The Borrower and the Charter School will provide property insurance on the Facility through a standard commercial insurance policy.

Access to the Facility

During construction of the Series 2022 Project, the Borrower and the Charter School will need access to the adjacent properties surrounding the Facility. The Borrower and the Charter School anticipate entering into access agreements with each such property owners prior to the sale of the Series 2022 Bonds. If disputes arise under the access agreements in place throughout the construction period, such disputes could result in construction delays and additional unforeseen expenses.

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 Borrower as sub-landlord 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.

Phase I Summary. PVE Engineering (“**PVE**”) was retained by the Charter School to conduct a Phase I Environmental Site Assessment, dated May 18, 2021 (the “**Phase I**”). The subject property is located at 528 West 162nd Street, New York, New York 10314 (as previously defined, the “**Facility**”). PVE identified two recognized environmental conditions (“**RECs**”) related to the Facility:

- (a) The first REC relates to the utilization of the Facility as an auto repair shop as early as 1923 and operation of underground petroleum storage tank(s) on site. No tank records were observed during the completion of the Phase I, and the tanks were not registered with the New York

State Department of Environmental Conservation (“**NYSDEC**”). Based on the lack of records, a release cannot be ruled out.

(b) The second REC relates to two current or historic dry cleaners that were identified 278 feet east and 399 feet east/southeast of the Facility. Chemicals used, and waste generated, at facilities such as these have the potential to adversely impact local soil, groundwater, and soil vapor quality at the Facility, creating a potential vapor encroachment condition.

The Phase I revealed no other evidence of RECs, controlled environmental conditions or historical RECs associated with the Facility.

Other Environmental Reports. Enviro-Pro UnLTD Corp. (“**Enviro-Pro**”) was retained by the Charter School to conduct a Limited Lead Based Paint Inspection, dated September 15, 2021 (the “**LBP Inspection**”) on the Facility. As provided in the LBP Inspection, detectable amounts of lead were found in some of the paint sampled and Enviro-Pro recommended that all contractors whose work will impact such surfaces and components be advised of the potential lead paint exposure hazard. Additionally, all contractors who work in areas where the potential exposure to lead exists will need to comply with the OSHA “Lead Exposure in Construction” standard set forth in 29 CFR Part 1926.62. Additionally, prior to disposal of any waste suspected of containing lead, representative waste stream sampling should be conducted as required by RCRA and analyzed using a Toxicity Characteristic Leaching Procedure. The Charter School plans to encapsulate lead where possible per NYS code and regulations.

Enviro-Pro was retained by the Charter School to conduct a Limited Polychlorinated Biphenyls (PCB) Report, dated September 15, 2021 (the “**PCB Report**”) on the Facility. As provided in the PCB Report, the sampling results confirmed caulks in the Facility to be non-PCBs containing.

Enviro-Pro was retained by the Charter School to conduct a Limited Asbestos Inspection Report, dated September 15, 2021 (the “**Asbestos Report**”) on the Facility. As provided in the Asbestos Report, Asbestos Containing Material (ACM) was identified and Enviro-Pro recommended that ACM be removed by a NYS DOL licensed asbestos contractor and to follow and comply with NYS DOL ICR 56 and NYC DEP Chapter one title 15 for such removal. The Charter School plans to remove all ACM during construction.

Enviro-Pro was retained by the Charter School to conduct a Limited Hazardous Waste Inventory Inspection Report, dated September 15, 2021 (the “**Hazardous Waste Report**”) on the Facility. As provided in the Hazardous Waste Report, universal and hazardous waste items were identified and any that will be impacted by the planned construction will need to be properly recycled or disposed of at a landfill permitted to accept such waste in accordance with applicable federal, state and local regulations.

Environmental Regulations and Permitting

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 can be imposed either through permitting or by audit, any of which could result in increased costs to the Charter School. While representatives of the Charter School believe that it is in material compliance with applicable environmental laws for the Facility, there is no assurance that the Charter School, either under construction or in operation as currently contemplated, is now or will always be in compliance with these regulations or be able to obtain all required construction or operating permits. In addition, the costs incurred by the Borrower 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.

Market Rent Study

The Charter School engaged Metropolitan Valuation Services, Inc. (the “**Appraiser**”) to conduct a market rent study of the Lease dated May 11, 2022 (the “**Market Rent Study**”). The purpose of the Market Rent Study is to provide the Appraiser’s opinion of the potential contract rent for the Lease, as if the Facility was completed as of September 1, 2024. In addition, the Market Rent Study includes a neighborhood analysis, site, zoning and tax analysis, and a discussion of trends within the charter school market. Based upon its investigation and analysis, the opinion of the Appraiser is that the contract rents under the Lease for the Facility appear market-oriented.

The Facility at any given time will be directly affected by market and financial conditions that are not in the control of the parties involved in this transaction. The Facility is designed for use as an educational facility, and there is nothing associated with the Facility that would suggest that its value would remain stable or would increase if the general values of properties in the Charter School’s service areas were to decline. The Facility will also require ongoing capital repairs and improvements and, although the Charter School intends to maintain the Facility in good condition, no assurance can be given that the Charter School will have sufficient revenue to maintain a regular capital improvements program for the Facility in the future. Potential purchasers of the Series 2022 Bonds should refer to the complete Market Rent Study for additional information. Copies of the Market Rent Study are available as described under “SUMMARY INFORMATION—Additional Information.”

Lease and Condominium

The Borrower has entered into the Lease with the Landlord relating to the Facility. The term of the Lease is 48 years, commencing no later than the date which is the first day of the first full month which is 60 days after the issuance of the Series 2022 Bonds. Pursuant to the Lease, the Landlord retains fee ownership of the Facility and leases such Facility to the Borrower. Upon the termination of the Lease, ownership of the Facility vests in the Landlord. The Borrower will retain a leasehold interest in the Facility for the term of the Lease. In the event the Charter School ceases to operate as a charter school, the ability of the Borrower to find alternative uses of the Facility is limited by the Landlord’s fee ownership of the Facility and the Borrower’s leasehold interest therein which is limited to the term of the Lease. There can be no assurances that such limitations would not adversely affect the ability of the Borrower to find alternative uses for the Facility that produce the revenue necessary to pay the debt service on the Series 2022 Bonds.

The Borrower intends to subject the leasehold interest created pursuant to the Lease to a leasehold condominium regime (the “**Condominium**”) by obtaining a No-Action Letter from the State Department of Law. Neither the Leasehold Mortgages nor the other Security Documents shall be subordinated to the Condominium and so long as the Condominium, together with the floor plans of the Condominium, by-laws of the Condominium and such other documents as shall be required to form the Condominium (collectively, the “**Condominium Documents**”) comply with the provisions of the Loan Agreement, none of the Trustee or the Issuer shall have approval over the Condominium Documents. Notwithstanding the foregoing, if requested by the Borrower, the Trustee shall subordinate the lien of the Leasehold Mortgages and the other Security Documents to the Condominium and the Condominium Documents provided that the Trustee shall have approved (with the consent of the Majority Holders) the form of the Condominium Documents, not to be unreasonably withheld, conditioned or delayed, so long as such Condominium Documents comply with the applicable provisions of the Loan Agreement.

Existing Mortgage

Pursuant to the Lease First Amendment, the Landlord agreed to obtain in favor of the Borrower from the holder of any current or future mortgages encumbering the Facility a Subordination, Nondisturbance and Attornment Agreement. In connection therewith, New York Community Bank, a New York banking corporation (the “**Mortgagee**”), is planned to execute a Subordination, Nondisturbance and Attornment Agreement prior to the issuance of the Series 2022 Bonds in favor of the Borrower (the “**SNDA**”) with respect to the Facility. The Mortgagee had previously made a loan to the Landlord and to secure such loan the Landlord encumbered the Facility by entering into a Mortgage, Consolidation, Modification and Extension Agreement, Assignment of Lease and Rents, and Security Agreement in favor of the Mortgagee (the “**Landlord Mortgage**”). Pursuant to the SNDA, the Lease shall be, and shall at all times remain, subject and subordinate to the Landlord Mortgage, the lien imposed by the Landlord Mortgage, and all advances made under the Landlord Mortgage. So long as the Lease has not been terminated on account of the Borrower’s default, the Mortgagee agreed to not name or join the Borrower as a defendant in any exercise of the Mortgagee’s rights and remedies arising upon a default under the Landlord Mortgage unless required by applicable law. Additionally, if the Lease has not been terminated on account of an event of default by the Borrower, if a successor landlord takes title to the Facility as the result of a foreclosure on the Landlord Mortgage, the successor landlord shall not terminate or disturb the Borrower’s possession of the Facility under the Lease and will be bound to the Borrower under all the terms and conditions of the Lease, which will continue in full force and effect.

No Ratings

No recognized credit ratings for the Series 2022 Bonds have been applied for and there can be no assurance that one or more credit ratings will ever be applied for or would be obtained if applied for. Typically, unrated bonds lack liquidity in the secondary market in comparison with rated bonds. As a result of the foregoing, the Series 2022 Bonds are believed to bear interest at higher rates than would prevail for bonds with comparable maturities and redemption provisions that have investment grade credit ratings. Consequently, the Series 2022 Bonds should not be purchased by any investor who, because of financial condition, investment policies or otherwise, does not desire to assume, or have the ability to bear, the risks inherent in an investment in the Series 2022 Bonds.

Enforcement of Remedies

The remedies available to the Trustee or the owners of the Series 2022 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 2022 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 Borrower and the Charter School 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**”). Neither the Borrower nor the Charter School has previously been subject to a continuing disclosure undertaking under the Rule. Failure by the Borrower or the Charter School to comply with the Continuing Disclosure Agreement and the Rule may adversely affect the

liquidity of the Series 2022 Bonds and their market price in the secondary market. See “CONTINUING DISCLOSURE” and “APPENDIX G—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. Such programs may have an impact on enrollment at the charter schools operated by the Charter School.

Redemption Prior to Maturity

The Series 2022 Bonds are subject to redemption at the option of the Borrower and in the event of certain occurrences. See “THE SERIES 2022 BONDS—Redemption of Series 2022 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 2022 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 CHARTER SCHOOL

The audited financial statements of the Charter School as of and for the fiscal years ended June 30, 2020 (with comparative totals for 2019) and June 30, 2021 (with comparative totals for 2020) (the “**Audited Financial Statements**”), are included in APPENDIX E and APPENDIX D, respectively, to this Limited Offering Memorandum. The Audited Financial Statements were audited by Mengel Metzger Barr & Co LLP, independent auditors, as stated in their report thereon. See “APPENDIX E—AUDITED FINANCIAL STATEMENTS, OTHER FINANCIAL INFORMATION AND INDEPENDENT AUDITOR’S REPORT OF THE CHARTER SCHOOL FOR THE FISCAL YEAR ENDED JUNE 30, 2020” and “APPENDIX D—AUDITED FINANCIAL STATEMENTS, OTHER FINANCIAL INFORMATION AND INDEPENDENT AUDITOR’S REPORT OF THE CHARTER SCHOOL FOR THE FISCAL YEAR ENDED JUNE 30, 2021” in this Limited Offering Memorandum.

THE BUDGET PROJECTION

The Charter School has prepared the Budget Projection and related assumptions included in APPENDIX C to this Limited Offering Memorandum. The Budget Projection is based on the assumptions made by management of the Charter School as to, among other things, future enrollment levels, future costs, and future revenues. The Budget Projection is for the six (6) fiscal years of the Charter School ending June 30, 2023 through June 30, 2028. **The Budget Projection (including the notes thereto) should be read in its entirety.**

The Budget Projection is based on various assumptions that represent only the beliefs of the Charter School’s management as to the most probable future events and are subject to material uncertainties. No assurances can be given that the Charter School will, in fact, be able to generate sufficient revenue and attain the enrollment levels as stated in the Budget Projection, and variations from the Budget Projection for each of such matters should be expected to occur. Accordingly, the operations and financial condition of the Charter School in the future will inevitably vary from those set forth in the Budget Projection, and

such variance may be material and adverse. See “RISK FACTORS—Budget Projection” in this Limited Offering Memorandum.

The Charter School has not assumed any responsibility to update the Budget Projection 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 Budget Projection is based and assume no responsibility therefor.

Mengel Metzger Barr & Co LLP has not performed any procedures relating to the Charter School’s Budget Projection.

TAX MATTERS – SERIES 2022A BONDS

Federal Income Taxes

The Code imposes certain requirements that must be met subsequent to the issuance and delivery of the Series 2022A Bonds for interest thereon to be and remain excluded from gross income for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Series 2022A Bonds to be included in gross income for federal income tax purposes retroactive to the date of issue of the Series 2022A Bonds. Pursuant to the Indenture, the Loan Agreement, the Use Agreement and the Tax Regulatory Agreement, by and between the Issuer, the Borrower, the Charter School and the Trustee (the “**Tax Certificate**”), the Issuer, the Borrower and the Charter School have covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Series 2022A Bonds from gross income for federal income tax purposes pursuant to Section 103 of the Code. In addition, the Issuer, the Borrower and the Charter School have made certain representations and certifications in the Indenture, the Loan Agreement, the Use Agreement and the Tax Certificate. Bond Counsel will also rely on the opinion of counsel to the Borrower and to the Charter School as to all matters concerning (a) the status of the Borrower and the Charter School as organizations described in Section 501(c)(3) of the Code and exempt from federal income tax under Section 501(a) of the Code, and (b) that the intended use of the facilities financed or refinanced with proceeds of Series 2022A Bonds will be in furtherance of the Borrower’s and the Charter School’s exempt purposes under Section 501(c)(3) of the Code. Bond Counsel will not independently verify the accuracy of those representations and certifications or those opinions.

In the opinion of Nixon Peabody LLP, Bond Counsel, under existing law and assuming compliance with the aforementioned covenants, and the accuracy of certain representations and certifications made by the Issuer, the Borrower and the Charter School described above, interest on the Series 2022A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code. Bond Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code.

State Taxes

Bond Counsel is also of the opinion that, under existing law, interest on the Series 2022A Bonds is exempt from personal income taxation imposed by the State of New York or any political subdivision of the State of New York, including The City of New York, assuming compliance with tax covenants and the accuracy of the representations and certifications described under the heading “Federal Income Taxes” above. Bond Counsel expresses no opinion as to other State of New York or local tax consequences arising with respect to the Series 2022A Bonds nor as to the taxability of the Series 2022A Bonds or the income therefrom under the laws of any state other than the State of New York.

Original Issue Premium

Series 2022A Bonds sold at prices in excess of their principal amounts are “**Premium Bonds**”. An initial purchaser with an initial adjusted basis in a Premium Bond in excess of its principal amount will have amortizable bond premium which offsets the amount of tax-exempt interest and is not deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year is determined actuarially on a constant interest rate basis over the term of each Premium Bond based on the purchaser’s yield to maturity (or, in the case of Premium Bonds callable prior to their maturity, over the period to the call date, based on the purchaser’s yield to the call date and giving effect to any call premium). For purposes of determining gain or loss on the sale or other disposition of a Premium Bond, an initial purchaser who acquires such obligation with an amortizable bond premium is required to decrease such purchaser’s adjusted basis in such Premium Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning such Series 2022A Bonds. Owners of the Premium Bonds are advised that they should consult with their own advisors with respect to the state and local tax consequences of owning such Premium Bonds.

Ancillary Tax Matters

Ownership of the Series 2022A Bonds may result in other federal tax consequences to certain taxpayers, including, without limitation, certain S corporations, foreign corporations with branches in the United States, property and casualty insurance companies, individuals receiving Social Security or Railroad Retirement benefits, individuals seeking to claim the earned income credit, and taxpayers (including banks, thrift institutions and other financial institutions) who may be deemed to have incurred or continued indebtedness to purchase or to carry the Series 2022A Bonds. Prospective investors are advised to consult their own tax advisors regarding these rules.

Interest paid on tax-exempt obligations such as the Series 2022A Bonds is subject to information reporting to the Internal Revenue Service (the “**IRS**”) in a manner similar to interest paid on taxable obligations. In addition, interest on the Series 2022A Bonds may be subject to backup withholding if such interest is paid to a registered owner that (a) fails to provide certain identifying information (such as the registered owner’s taxpayer identification number) in the manner required by the IRS, or (b) has been identified by the IRS as being subject to backup withholding.

Bond Counsel is not rendering any opinion as to any federal tax matters other than those described in the opinions attached as APPENDIX F. Prospective investors, particularly those who may be subject to special rules described above, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the Series 2022A Bonds, as well as any tax consequences arising under the laws of any state or other taxing jurisdiction.

Changes in Law and Post Issuance Events

Legislative or administrative actions and court decisions, at either the federal or state level, could have an adverse impact on the potential benefits of the exclusion from gross income of the interest on the Series 2022A Bonds for federal or state income tax purposes, and thus on the value or marketability of the Series 2022A Bonds. This could result from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), repeal of the exclusion of the interest on the Series 2022A Bonds from gross income for federal or state income tax purposes, or otherwise. It is not possible to predict whether any legislative or administrative actions or court decisions having an adverse impact on the federal or state income tax treatment of holders of the Series

2022A Bonds may occur. Prospective purchasers of the Series 2022A Bonds should consult their own tax advisors regarding the impact of any change in law on the Series 2022A Bonds.

Bond Counsel has not undertaken to advise in the future whether any events after the date of issuance and delivery of the Series 2022A Bonds may affect the tax status of interest on the Series 2022A Bonds. Bond Counsel expresses no opinion as to any federal, state or local tax law consequences with respect to the Series 2022A Bonds, or the interest thereon, if any action is taken with respect to the Series 2022A Bonds or the proceeds thereof upon the advice or approval of other counsel.

TAX MATTERS – SERIES 2022B BONDS

Federal Income Taxes

The following is a summary of certain anticipated United States federal income tax consequences of the purchase, ownership and disposition of the Series 2022B Bonds. The summary is based upon the provisions of the Code, the Treasury Regulations promulgated thereunder and the judicial and administrative rulings and decisions now in effect, all of which are subject to change. Such authorities may be repealed, revoked, or modified, possibly with retroactive effect, so as to result in United States federal income tax consequences different from those described below. The summary generally addresses Series 2022B Bonds held as capital assets within the meaning of Section 1221 of the Code and does not purport to address all aspects of federal income taxation that may affect particular investors in light of their individual circumstances or certain types of investors subject to special treatment under the federal income tax laws, including but not limited to financial institutions, insurance companies, dealers in securities or currencies, persons holding such Series 2022B Bonds as a hedge against currency risks or as a position in a “straddle,” “hedge,” “constructive sale transaction” or “conversion transaction” for tax purposes, or persons whose functional currency is not the United States dollar. It also does not deal with holders other than original purchasers that acquire Series 2022B Bonds at their initial issue price except where otherwise specifically noted. Potential purchasers of the Series 2022B Bonds should consult their own tax advisors in determining the federal, state, local, foreign and other tax consequences to them of the purchase, holding and disposition of the Series 2022B Bonds.

The Issuer has not sought and will not seek any rulings from the Internal Revenue Service with respect to any matter discussed herein. No assurance can be given that the Internal Revenue Service would not assert, or that a court would not sustain, a position contrary to any of the tax characterizations and tax consequences set forth below.

U.S. Holders

As used herein, the term “**U.S. Holder**” means a beneficial owner of Series 2022B Bonds that is (a) an individual citizen or resident of the United States for federal income tax purposes, (b) a corporation, including an entity treated as a corporation for federal income tax purposes, created or organized in or under the laws of the United States or any State thereof (including the District of Columbia), (c) an estate whose income is subject to federal income taxation regardless of its source, or (d) a trust if a court within the United States can exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust. Notwithstanding clause (d) of the preceding sentence, to the extent provided in Treasury regulations, certain trusts in existence on August 20, 1996, and treated as United States persons prior to that date that elect to continue to be treated as United States persons also will be U.S. Holders. In addition, if a partnership (or other entity or arrangement treated as a partnership for federal income tax purposes) holds Series 2022B Bonds, the tax treatment of a partner in the partnership generally will depend upon the status of the partner and the activities of the partnership. If a U.S. Holder is a partner in a partnership (or other entity or arrangement

treated as a partnership for federal income tax purposes) that holds Series 2022B Bonds, the U.S. Holder is urged to consult its own tax advisor regarding the specific tax consequences of the purchase, ownership and dispositions of the Series 2022B Bonds.

Taxation of Interest Generally

Interest on the Series 2022B Bonds is not excluded from gross income for federal income tax purposes under Section 103 of the Code and so will be fully subject to federal income taxation. Purchasers will be subject to federal income tax accounting rules affecting the timing and/or characterization of payments received with respect to such Series 2022B Bonds. In general, interest paid on the Series 2022B Bonds and recovery of any accrued original issue discount and market discount will be treated as ordinary income to a bondholder, and after adjustment for the foregoing, principal payments will be treated as a return of capital to the extent of the U.S. Holder's adjusted tax basis in the Series 2022B Bonds and capital gain to the extent of any excess received over such basis.

Recognition of Income Generally

Section 451(b) of the Code provides that purchasers using an accrual method of accounting for U.S. federal income tax purposes may be required to include certain amounts in income no later than the time such amounts are reflected on certain financial statements of such purchaser. In this regard, Treasury Regulations provide that, with the exception of certain fees, the rule in section 451(b) will generally not apply to the timing rules for original issue discount and market discount, or to the timing rules for de minimis original issue discount and market discount. Prospective purchasers of the Series 2022B Bonds should consult their own tax advisors regarding any potential applicability of these rules and their impact on the timing of the recognition of income related to the Series 2022B Bonds under the Code.

Original Issue Discount

The following summary is a general discussion of certain federal income tax consequences of the purchase, ownership and disposition of Series 2022B Bonds issued with original issue discount ("**Taxable Discount Bonds**"). A Series 2022B Bond will be treated as having been issued with an original issue discount if the excess of its "stated redemption price at maturity" (defined below) over its issue price (defined as the initial offering price to the public at which a substantial amount of the Series 2022B Bonds of the same maturity have first been sold to the public, excluding bond houses and brokers) equals or exceeds one quarter of one percent of such Series 2022B Bond's stated redemption price at maturity multiplied by the number of complete years to its maturity (or, in the case of an installment obligation, its weighted average maturity).

A Series 2022B Bond's "stated redemption price at maturity" is the total of all payments provided by the Series 2022B Bond that are not payments of "qualified stated interest." Generally, the term "qualified stated interest" includes stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer) at least annually at a single fixed rate or certain floating rates.

In general, the amount of original issue discount includible in income by the initial holder of a Taxable Discount Bond is the sum of the "daily portions" of original issue discount with respect to such Taxable Discount Bond for each day during the taxable year in which such holder held such Series 2022B Bond. The daily portion of original issue discount on any Taxable Discount Bond is determined by allocating to each day in any "accrual period" a ratable portion of the original issue discount allocable to that accrual period.

An accrual period may be of any length, and may vary in length over the term of a Taxable Discount Bond, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs at the end of an accrual period. The amount of original issue discount allocable to each accrual period is equal to the difference between (a) the product of the Taxable Discount Bond's adjusted issue price at the beginning of such accrual period and its yield to maturity (determined on the basis of compounding at the close of each accrual period and appropriately adjusted to take into account the length of the particular accrual period) and (b) the amount of any qualified stated interest payments allocable to such accrual period. The "adjusted issue price" of a Taxable Discount Bond at the beginning of any accrual period is the sum of the issue price of the Taxable Discount Bond plus the amount of original issue discount allocable to all prior accrual periods minus the amount of any prior payments on the Taxable Discount Bond that were not qualified stated interest payments. Under these rules, holders generally will have to include in income increasingly greater amounts of original issue discount in successive accrual periods.

Holders utilizing the accrual method of accounting may generally, upon election, include in gross income all interest (including stated interest, acquisition discount, original issue discount, de minimis original issue discount, market discount, de minimis market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium) on a Series 2022B Bond by using the constant yield method applicable to original issue discount, subject to certain limitations and exceptions.

Market Discount

A holder who purchases a Series 2022B Bond at a price which includes market discount (i.e., at a purchase price that is less than its adjusted issue price in the hands of an original owner) in excess of a prescribed de minimis amount will be required to re-characterize all or a portion of the gain as ordinary income upon receipt of each scheduled or unscheduled principal payment or upon other disposition. In particular, such holder will generally be required either (a) to allocate each such principal payment to accrued market discount not previously included in income and to recognize ordinary income to that extent and to treat any gain upon sale or other disposition of such a Series 2022B Bond as ordinary income to the extent of any remaining accrued market discount or (b) to elect to include such market discount in income currently as it accrues on all market discount instruments acquired by such holder on or after the first day of the taxable year to which such election applies.

The Code authorizes the Treasury Department to issue regulations providing for the method for accruing market discount on debt instruments the principal of which is payable in more than one installment. Until such time as regulations are issued by the Treasury Department, certain rules described in the legislative history of the Tax Reform Act of 1986 will apply. Under those rules, market discount will be included in income either (a) on a constant interest basis or (b) in proportion to the accrual of stated interest.

A holder of a Series 2022B Bond who acquires such Series 2022B Bond at a market discount also may be required to defer, until the maturity date of such Series 2022B Bond or the earlier disposition in a taxable transaction, the deduction of a portion of the amount of interest that the holder paid or accrued during the taxable year on indebtedness incurred or maintained to purchase or carry a Series 2022B Bond in excess of the aggregate amount of interest (including original issue discount) includable in such holder's gross income for the taxable year with respect to such Series 2022B Bond. The amount of such net interest expense deferred in a taxable year may not exceed the amount of market discount accrued on the Series 2022B Bond for the days during the taxable year on which the holder held the Series 2022B Bond and, in general, would be deductible when such market discount is includable in income. The amount of any remaining deferred deduction is to be taken into account in the taxable year in which the Series 2022B Bond matures or is disposed of in a taxable transaction. In the case of a disposition in which gain or loss is not recognized in whole or in part, any remaining deferred deduction will be allowed to the extent gain is

recognized on the disposition. This deferral rule does not apply if the bondholder elects to include such market discount in income currently as described above.

Bond Premium

A holder of a Series 2022B Bond who purchases such Series 2022B Bond at a cost greater than its remaining redemption amount will have amortizable bond premium. If the holder elects to amortize this premium under Section 171 of the Code (which election will apply to all Series 2022B Bonds held by the holder on the first day of the taxable year to which the election applies and to all Series 2022B Bonds thereafter acquired by the holder), such a holder must amortize the premium using constant yield principles based on the holder's yield to maturity. Amortizable bond premium is generally treated as an offset to interest income, and a reduction in basis is required for amortizable bond premium that is applied to reduce interest payments. Purchasers of Series 2022B Bonds who acquire such Series 2022B Bonds at a premium should consult with their own tax advisors with respect to federal, state and local tax consequences of owning such Series 2022B Bonds.

Surtax on Unearned Income

Section 1411 of the Code generally imposes a tax of 3.8% on the "net investment income" of certain individuals, trusts and estates. Among other items, net investment income generally includes gross income from interest and net gain attributable to the disposition of certain property, less certain deductions. U.S. Holders should consult their own tax advisors regarding the possible implications of this provision in their particular circumstances.

Sale or Redemption of Bonds

A bondholder's adjusted tax basis for a Series 2022B Bond is the price such holder pays for the Series 2022B Bond plus the amount of original issue discount and market discount previously included in income and reduced on account of any payments received on such Series 2022B Bond other than "qualified stated interest" and any amortized bond premium. Gain or loss recognized on a sale, exchange or redemption of a Series 2022B Bond, measured by the difference between the amount realized and the bondholder's tax basis as so adjusted, will generally give rise to capital gain or loss if the Series 2022B Bond is held as a capital asset (except in the case of Series 2022B Bonds acquired at a market discount, in which case a portion of the gain will be characterized as interest and therefore ordinary income).

If the terms of a Series 2022B Bond are materially modified, in certain circumstances, a new debt obligation would be deemed "reissued", or created and exchanged for the prior obligation in a taxable transaction. Among the modifications which may be treated as material are those related to the redemption provisions and, in the case of a nonrecourse obligation, those which involve the substitution of collateral. In addition, the defeasance of a Series 2022B Bond under the defeasance provisions of the Indenture could result in a deemed sale or exchange of such Series 2022B Bond.

EACH POTENTIAL HOLDER OF SERIES 2022B BONDS SHOULD CONSULT ITS OWN TAX ADVISOR CONCERNING (1) THE TREATMENT OF GAIN OR LOSS ON SALE, REDEMPTION OR DEFEASANCE OF THE SERIES 2022B BONDS, AND (2) THE CIRCUMSTANCES IN WHICH SERIES 2022B BONDS WOULD BE DEEMED REISSUED AND THE LIKELY EFFECTS, IF ANY, OF SUCH REISSUANCE.

Non-U.S. Holders

The following is a general discussion of certain United States federal income tax consequences resulting from the beneficial ownership of Series 2022B Bonds by a person other than a U.S. Holder, a former United States citizen or resident, or a partnership or entity treated as a partnership for United States federal income tax purposes (a “**Non-U.S. Holder**”).

Subject to the discussion of backup withholding and the Foreign Account Tax Compliance Act (“**FATCA**”), payments of principal by the Issuer or any of its agents (acting in its capacity as agent) to any Non-U.S. Holder will not be subject to federal withholding tax. In the case of payments of interest to any Non-U.S. Holder, however, federal withholding tax will apply unless the Non-U.S. Holder (1) does not own (actually or constructively) 10 percent or more of the voting equity interests of the Issuer, (2) is not a controlled foreign corporation for United States tax purposes that is related to the Issuer (directly or indirectly) through stock ownership, and (3) is not a bank receiving interest in the manner described in Section 881(c)(3)(A) of the Code. In addition, either (1) the Non-U.S. Holder must certify on the applicable IRS Form W-8 (series) (or successor form) to the Issuer, its agents or paying agents or a broker under penalties of perjury that it is not a U.S. person and must provide its name and address, or (2) a securities clearing organization, bank or other financial institution, that holds customers’ securities in the ordinary course of its trade or business and that also holds the Series 2022B Bonds must certify to the Issuer or its agent under penalties of perjury that such statement on the applicable IRS Form W-8 (series) (or successor form) has been received from the Non-U.S. Holder by it or by another financial institution and must furnish the interest payor with a copy.

Interest payments may also be exempt from federal withholding tax depending on the terms of an existing federal income tax treaty, if any, in force between the U.S. and the resident country of the Non-U.S. Holder. The U.S. has entered into an income tax treaty with a limited number of countries. In addition, the terms of each treaty differ in their treatment of interest and original issue discount payments. Non-U.S. Holders are urged to consult their own tax advisor regarding the specific tax consequences of the receipt of interest payments, including original issue discount. A Non-U.S. Holder that does not qualify for exemption from withholding as described above must provide the Issuer or its agent with documentation as to his, her, or its identity to avoid the U.S. backup withholding tax on the amount allocable to a Non-U.S. Holder. The documentation may require that the Non-U.S. Holder provide a U.S. tax identification number.

If a Non-U.S. Holder is engaged in a trade or business in the United States and interest on a Series 2022B Bond held by such holder is effectively connected with the conduct of such trade or business, the Non-U.S. Holder, although exempt from the withholding tax discussed above (provided that such holder timely furnishes the required certification to claim such exemption), may be subject to United States federal income tax on such interest in the same manner as if it were a U.S. Holder. In addition, if the Non-U.S. Holder is a foreign corporation, it may be subject to a branch profits tax equal to 30% (subject to a reduced rate under an applicable treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments. For purposes of the branch profits tax, interest on a Series 2022B Bond will be included in the earnings and profits of the holder if the interest is effectively connected with the conduct by the holder of a trade or business in the United States. Such a holder must provide the payor with a properly executed IRS Form W-8ECI (or successor form) to claim an exemption from United States federal withholding tax.

Generally, any capital gain realized on the sale, exchange, retirement or other disposition of a Series 2022B Bond by a Non-U.S. Holder will not be subject to United States federal income or withholding taxes if (1) the gain is not effectively connected with a United States trade or business of the Non-U.S. Holder, and (2) in the case of an individual, the Non-U.S. Holder is not present in the United States for 183 days or

more in the taxable year of the sale, exchange, retirement or other disposition, and certain other conditions are met.

For newly issued or reissued obligations, such as the Series 2022B Bonds, FATCA imposes U.S. withholding tax on interest payments and, for dispositions after December 31, 2018, gross proceeds of the sale of the Series 2022B Bonds paid to certain foreign financial institutions (which is broadly defined for this purpose to generally include non-U.S. investment funds) and certain other non-U.S. entities if certain disclosure and due diligence requirements related to U.S. accounts or ownership are not satisfied, unless an exemption applies. An intergovernmental agreement between the United States and an applicable non-U.S. country may modify these requirements. In any event, bondholders or beneficial owners of the Series 2022B Bonds shall have no recourse against the Issuer, nor will the Issuer be obligated to pay any additional amounts to “gross up” payments to such persons, as a result of any withholding or deduction for, or on account of, any present or future taxes, duties, assessments or government charges with respect to payments in respect of the Series 2022B Bonds. However, it should be noted that on December 13, 2018, the IRS issued Proposed Treasury Regulation Section 1.1473-1(a)(1) which proposes to remove gross proceeds from the definition of “withholdable payment” for this purpose.

Non-U.S. Holders should consult their own tax advisors with respect to the possible applicability of federal withholding and other taxes upon income realized in respect of the Series 2022B Bonds.

Information Reporting and Backup Withholding

For each calendar year in which the Series 2022B Bonds are outstanding, the Issuer, its agents or paying agents or a broker is required to provide the IRS with certain information, including a holder’s name, address and taxpayer identification number (either the holder’s Social Security number or its employer identification number, as the case may be), the aggregate amount of principal and interest paid to that holder during the calendar year and the amount of tax withheld, if any. This obligation, however, does not apply with respect to certain U.S. Holders, including corporations, tax-exempt organizations, qualified pension and profit sharing trusts, and individual retirement accounts and annuities.

If a U.S. Holder subject to the reporting requirements described above fails to supply its correct taxpayer identification number in the manner required by applicable law or under-reports its tax liability, the Issuer, its agents or paying agents or a broker may be required to make “backup” withholding of tax on each payment of interest or principal on the Series 2022B Bonds. This backup withholding is not an additional tax and may be credited against the U.S. Holder’s federal income tax liability, provided that the U.S. Holder furnishes the required information to the IRS.

Under current Treasury Regulations, backup withholding and information reporting will not apply to payments of interest made by the Issuer, its agents (in their capacity as such) or paying agents or a broker to a Non-U.S. Holder if such holder has provided the required certification that it is not a U.S. person (as set forth in the second paragraph under “Non-U.S. Holders” above), or has otherwise established an exemption (provided that neither the Issuer nor its agent has actual knowledge that the holder is a U.S. person or that the conditions of an exemption are not in fact satisfied).

Payments of the proceeds from the sale of a Series 2022B Bond to or through a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, information reporting (but not backup withholding) may apply to those payments if the broker is one of the following: (i) a U.S. person; (ii) a controlled foreign corporation for U.S. tax purposes; (iii) a foreign person 50-percent or more of whose gross income from all sources for the three-year period ending with the close of its taxable year preceding the payment was effectively connected with a United States trade or business; or (iv) a foreign partnership with certain connections to the United States.

Payment of the proceeds from a sale of a Series 2022B Bond to or through the United States office of a broker is subject to information reporting and backup withholding unless the holder or beneficial owner certifies as to its taxpayer identification number or otherwise establishes an exemption from information reporting and backup withholding.

The preceding federal income tax discussion is included for general information only and may not be applicable depending upon a holder's particular situation. Holders should consult their tax advisors with respect to the tax consequences to them of the purchase, ownership and disposition of the Series 2022B Bonds, including the tax consequences under federal, state, local, foreign and other tax laws and the possible effects of changes in those tax laws.

State Taxes

Interest on the Series 2022B Bonds is not exempt from personal income taxes of the State of New York and its political subdivisions, including The City of New York. Bond Counsel expresses no opinion as to other state or local tax law consequences arising with respect to the Series 2022B Bonds nor as to the taxability of the Series 2022B Bonds or the income derived therefrom under the laws of any jurisdiction other than the State of New York.

Changes in Law and Post Issuance Events

Legislative or administrative actions and court decisions, at either the federal or state level, could have an impact on the inclusion in gross income of interest on the Series 2022B Bonds for federal or state income tax purposes, and thus on the value or marketability of the Series 2022B Bonds. This could result from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), or otherwise. It is not possible to predict whether any such legislative or administrative actions or court decisions will occur or have an adverse impact on the federal or state income tax treatment of holders of the Series 2022B Bonds. Prospective purchasers of the Series 2022B Bonds should consult their own tax advisors regarding the impact of any change in law or proposed change in law on the Series 2022B Bonds.

IN ALL EVENTS, ALL INVESTORS SHOULD CONSULT THEIR OWN TAX ADVISORS IN DETERMINING THE FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES TO THEM OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE SERIES 2022B BONDS.

CONSIDERATIONS FOR ERISA AND OTHER U.S. BENEFIT PLAN INVESTORS

The Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), imposes certain fiduciary obligations and prohibited transaction restrictions on employee pension and welfare benefit plans subject to Title I of ERISA ("**ERISA Plans**"). Section 4975 of the Code imposes essentially the same prohibited transaction restrictions on tax-qualified retirement plans described in Section 401(a) and 403(a) of the Code, which are exempt from tax under Section 501(a) of the Code, other than governmental and church plans as defined herein ("**Qualified Retirement Plans**"), and on Individual Retirement Accounts ("**IRAs**") described in Section 408(b) of the Code (collectively, "**Tax-Favored Plans**"). Certain employee benefit plans such as governmental plans (as defined in Section 3(32) of ERISA) ("**Governmental Plans**"), and, if no election has been made under Section 410(d) of the Code, church plans (as defined in Section 3(33) of ERISA) ("**Church Plans**"), are not subject to ERISA requirements. Additionally, such Governmental and Church Plans are not subject to the requirements of Section 4975 of the Code but may be subject to applicable federal, state or local law ("**Similar Laws**") which is, to a material extent, similar to the foregoing provisions of ERISA or the Code. Accordingly, assets of such plans may be invested in the

Series 2022 Bonds without regard to the ERISA and Code considerations described below, subject to the provisions of Similar Laws.

In addition to the imposition of general fiduciary obligations, including those of investment prudence and diversification and the requirement that a plan's investment be made in accordance with the documents governing the plan, Section 406 of ERISA and Section 4975 of the Code prohibit a broad range of transactions involving assets of ERISA Plans and Tax-Favored Plans and entities whose underlying assets include plan assets by reason of ERISA Plans or Tax-Favored Plans investing in such entities (collectively, "**Benefit Plans**") and persons who have certain specified relationships to the Benefit Plans ("**Parties In Interest**" or "**Disqualified Persons**"), unless a statutory or administrative exemption is available. The definitions of "Party in Interest" and "Disqualified Person" are expansive. While other entities may be encompassed by these definitions, they include, most notably: (1) fiduciary with respect to a plan; (2) a person providing services to a plan; (3) an employer or employee organization any of whose employees or members are covered by the plan; and (4) the owner of an IRA. Certain Parties in Interest (or Disqualified Persons) that participate in a prohibited transaction may be subject to a penalty (or an excise tax) imposed pursuant to Section 502(i) of ERISA (or Section 4975 of the Code) unless a statutory or administrative exemption is available. Without an exemption an IRA owner may disqualify his or her IRA.

Certain transactions involving the purchase, holding or transfer of the Series 2022 Bonds might be deemed to constitute prohibited transactions under ERISA and Section 4975 of the Code if assets of the Issuer, the Borrower or the Charter School were deemed to be assets of a Benefit Plan. Under final regulations issued by the United States Department of Labor (the "Plan Assets Regulation"), the assets of the Issuer, the Borrower or the Charter School would be treated as plan assets of a Benefit Plan for the purposes of ERISA and Section 4975 only of the Code if the Benefit Plan acquires an "equity interest" in the Issuer, the Borrower or the Charter School and none of the exceptions contained in the Plan Assets Regulation is applicable. An equity interest is defined under the Plan Assets Regulation as an interest in an entity other than an instrument which is treated as indebtedness under applicable local law and which has no substantial equity features. Although there is little guidance on this matter, it appears that the Series 2022 Bonds should be treated as debt without substantial equity features for purposes of the Plan Assets Regulation. This determination is based upon the traditional debt features of the Series 2022 Bonds, including the reasonable expectation of purchasers of Series 2022 Bonds that the Series 2022 Bonds will be repaid when due, traditional default remedies, as well as the absence of conversion rights, warrants and other typical equity features.

However, without regard to whether the Series 2022 Bonds are treated as an equity interest for such purposes, though, the acquisition or holding of Series 2022 Bonds by or on behalf of a Benefit Plan could be considered to give rise to a prohibited transaction if the Issuer, the Borrower, the Charter School, the Trustee, the Underwriter or any of their respective affiliates, is or becomes a Party in Interest or a Disqualified Person with respect to such Benefit Plan.

Most notably, ERISA and the Code generally prohibit the lending of money or other extension of credit between an ERISA Plan or Tax-Favored Plan and a Party in Interest or a Disqualified Person, and the acquisition of any of the Series 2022 Bonds by a Benefit Plan would involve the lending of money or extension of credit by the Benefit Plan. In such a case, however, certain exemptions from the prohibited transaction rules could be applicable depending on the type and circumstances of the plan fiduciary making the decision to acquire a Series 2022 Bond. Included among these exemptions are: Prohibited Transaction Class Exemption ("**PTCE**") 96-23, regarding transactions effected by certain "in-house asset managers"; PTCE 90-1, regarding investments by insurance company pooled separate accounts; PTCE 95-60, regarding transactions effected by "insurance company general accounts"; PTCE 91-38, regarding investments by bank collective investment funds; and PTCE 84-14, regarding transactions effected by "qualified

professional asset managers.” Further, the statutory exemption in Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code provides for an exemption for transactions involving “adequate consideration” with persons who are Parties in Interest or Disqualified Persons solely by reason of their (or their affiliate’s) status as a service provider to the Benefit Plan involved and none of whom is a fiduciary with respect to the Benefit Plan assets involved (or an affiliate of such a fiduciary). There can be no assurance that any class or other exemption will be available with respect to any particular transaction involving the Series 2022 Bonds, or that, if available, the exemption would cover all possible prohibited transactions.

By acquiring a Series 2022 Bond (or interest therein), each purchaser and transferee (and if the purchaser or transferee is a plan, its fiduciary) is deemed to represent and warrant that either (i) it is not acquiring the Series 2022 Bond (or interest therein) with the assets of a Benefit Plan, Governmental plan or Church plan; or (ii) the acquisition and holding of the Series 2022 Bond (or interest therein) will not give rise to a nonexempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or Similar Laws. A purchaser or transferee who acquires Series 2022 Bonds with assets of a Benefit Plan represents that such purchaser or transferee has considered the fiduciary requirements of ERISA, the Code or Similar Laws and has consulted with counsel with regard to the purchase or transfer.

Because the Issuer, the Borrower, the Charter School, the Trustee, the Underwriter or any of their respective affiliates may receive certain benefits in connection with the sale of the Series 2022 Bonds, the purchase of the Series 2022 Bonds using plan assets of a Benefit Plan over which any of such parties has investment authority or provides investment advice for a direct or indirect fee may be deemed to be a violation of the prohibited transaction rules of ERISA or Section 4975 of the Code or Similar Laws for which no exemption may be available. Accordingly, any investor considering a purchase of Series 2022 Bonds using plan assets of a Benefit Plan should consult with its counsel if the Issuer, the Borrower, the Charter School, the Trustee, the Underwriter or any of their respective affiliates has investment authority or provides investment advice for a direct or indirect fee with respect to such assets or is an employer maintaining or contributing to the Benefit Plan.

Any ERISA Plan fiduciary considering whether to purchase the Series 2022 Bonds on behalf of an ERISA Plan should consult with its counsel regarding the applicability of the fiduciary responsibility and prohibited transaction provisions of ERISA and Section 4975 of the Code to such an investment and the availability of any of the exemptions referred to above. Persons responsible for investing the assets of Tax-Favored Plans that are not ERISA Plans should seek similar counsel with respect to the prohibited transaction provisions of the Code and the applicability of Similar Laws.

ENFORCEABILITY OF OBLIGATIONS

On the date of delivery of the Series 2022 Bonds, Nixon Peabody LLP, New York, New York, Bond Counsel to the Issuer, will deliver its opinion, dated the date of delivery, that the Series 2022 Bonds, the Loan Agreement, the Bond Purchase Agreement and the Indenture are valid and legally binding obligations of the Issuer. Cohen Schneider Law, P.C., New York, New York, as counsel to the Charter School, will deliver its opinion that the various documents to which the Charter School is a party are valid and legally binding agreements of the Charter School, each enforceable in accordance with its respective terms. Cohen Schneider Law, P.C., New York, New York, as counsel to the Borrower, will deliver its opinions that the various documents to which the Borrower is a party are valid and legally binding agreements of the Borrower, each enforceable in accordance with its respective terms. Paparone Law PLLC as counsel for the Trustee, will deliver its opinion that the various documents to which the Trustee is a party are valid and legally binding agreements of the Trustee, each enforceable in accordance with its respective terms. The foregoing opinions will be generally qualified to the extent that the enforceability of the respective instruments may be limited by laws, decisions and equitable principles affecting remedies and

by bankruptcy or insolvency or other laws, decisions, and equitable principles affecting creditors' rights generally.

While the Series 2022 Bonds are secured or payable pursuant to the Sublease, the Loan Agreement, the Promissory Notes, the Pledge and Security Agreement, the Indenture, the Covenant Agreement, the Use Agreement, the Project Development Consulting Agreement, the Tax Regulatory Agreement, the Building Loan Agreement, the Leasehold Mortgages and the Assignment of Leasehold Mortgages, the practical realization of payment from any security will depend upon the exercise of various remedies specified in the respective instruments. These and other remedies are dependent in many respects upon judicial action, which is subject to discretion and delay. Accordingly, the remedies specified in the above documents may not be readily available or may be limited.

LEGAL MATTERS

Certain legal matters incident to the issuance and sale of the Series 2022 Bonds and with regard to the tax-exempt status of interest on Series 2022A Bonds under existing laws are subject to the legal opinion of Nixon Peabody 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 Charter School by its counsel, Cohen Schneider Law, P.C., New York, New York, for the Borrower by its counsel, Cohen Schneider Law, P.C., New York, New York and for the Trustee by its counsel Paparone Law PLLC, New York, New York. Ballard Spahr LLP, New York, New York, represents the Underwriter in this transaction.

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 Borrower and the Charter School have entered into a Continuing Disclosure Agreement, dated the Closing Date, between the Borrower, the Charter School, and Dissemination Agent. Neither the Borrower nor the Charter School has been subject to any prior continuing disclosure undertakings under Rule 15c2-12. See "APPENDIX G—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 Borrower or the Charter School with the terms of the Continuing Disclosure Agreement.

NO RATINGS

No ratings have been applied for with respect to the Series 2022 Bonds. No representation can be made that ratings with respect to the Series 2022 Bonds, if applied for, could be obtained.

RELATIONSHIPS AMONG THE PARTIES

In connection with the issuance of the Series 2022 Bonds, the Issuer, the Borrower, the Charter School and the Underwriter are being represented by the attorneys or law firms identified above under the heading "LEGAL MATTERS." In other transactions not related to the Series 2022 Bonds, each of these attorneys or law firms may have acted as bond counsel or represented the Issuer, the Borrower, the Charter School or the Underwriter or their affiliates, in capacities different from those described under "LEGAL MATTERS," and there will be no limitations imposed as a result of the issuance of the Series 2022 Bonds on the ability of any of these firms or attorneys to act as bond counsel or represent any of these parties in

any future transactions. Potential purchasers of the Series 2022 Bonds should not assume that the Issuer, the Borrower, the Charter School and the Underwriter or their respective counsel or Bond Counsel have not previously engaged in or will not after the issuance of the Series 2022 Bonds engage in, other transactions with each other or with any affiliates of any of them, and no assurances can be given that there are or will be no past or future relationship or transactions between or among any of these parties or these attorneys or law firms.

ABSENCE OF MATERIAL LITIGATION

The Issuer

There is no action, suit, proceeding or investigation at law or in equity by or before any court, public board or body pending against the Issuer of which the Issuer has notice, or, to the Issuer's knowledge, overtly threatened against the Issuer, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Indenture or the Loan Agreement.

The Borrower

No litigation, investigations or proceedings are now pending or, to the best knowledge of the Borrower, are any threatened against the Borrower which would have a materially adverse effect on the financial condition or operations of the Borrower or in any manner challenge or adversely affect the existence or power of the Borrower to enter into and carry out the transactions described in or contemplated by, or the execution, delivery, validity or performance by the Borrower under the Loan Agreement, the Leasehold Mortgages, the Lease, the Pledge and Security Agreement, the Assignment of Leasehold Mortgages, the Sublease, the Continuing Disclosure Agreement, the Tax Regulatory Agreement, or the Bond Purchase Agreement, or any other Project Document to which the Borrower is a party.

The Charter School

No litigation, investigations or proceedings are now pending or, to the best knowledge of the Charter School, are any threatened against the Charter School which would have a materially adverse effect on the financial condition or operations of the Charter School or in any manner challenge or adversely affect the existence or power of the Charter School to enter into and carry out the transactions described in or contemplated by, or the execution, delivery, validity or performance by the Charter School under the Sublease, the Continuing Disclosure Agreement, the Tax Regulatory Agreement, the Covenant Agreement, the Use Agreement, the Bond Purchase Agreement, or any other Project Document to which the Charter School is a party.

UNDERWRITING

D.A. Davidson & Co. (the "**Underwriter**") intends to offer the Series 2022 Bonds in a limited offering at the offering prices set forth on the inside cover page of this Limited Offering Memorandum, less an underwriter's discount of \$658,650.00, which offering prices may be subsequently changed from time to time by the Underwriter without any requirement of prior notice. The Underwriter will receive no fee (other than the underwriter's discount described in the preceding sentence) from the Issuer, the Borrower, or the Charter School for underwriting the Series 2022 Bonds. The Underwriter has reserved the right to permit other securities dealers who are members of the Financial Industry Regulatory Authority to assist in selling the Series 2022 Bonds. The Underwriter may offer and sell the Series 2022 Bonds to certain dealers (including dealers depositing Series 2022 Bonds into investment trusts) at prices lower than the public offering prices set forth on the inside cover page of this Limited Offering Memorandum or otherwise allow concessions to such dealers who may re-allow concessions to other dealers. Any discounts or commissions

that may be received by such dealers in connection with the sale of the Series 2022 Bonds will be deducted from the Underwriter's underwriting discount.

THE TRUSTEE

The Issuer has appointed The Bank of New York Mellon to serve as Trustee, Bond Registrar, and Paying Agent. The Trustee is a national banking corporation organized and existing under the laws of the United States of America, having all of the powers of a bank, including fiduciary powers, and is a member of the Federal Deposit Insurance Corporation and the Federal Reserve System. The Trustee is to carry out those duties assignable to it under the Indenture and the other Security Documents. Except for the contents of this section, the Trustee has not reviewed or participated in the preparation of this Limited Offering Memorandum and assumes no responsibility for the nature, contents, accuracy, fairness or completeness of the information set forth in this Limited Offering Memorandum or for the recitals contained in the Indenture or the Series 2022 Bonds (other than the Trustee's certificate of authentication), or for the validity, sufficiency, or legal effect of any of such documents.

Furthermore, the Trustee has no oversight responsibility, and is not accountable, for the use or application by the Issuer of any of the Series 2022 Bonds authenticated or delivered pursuant to the Indenture or for the use or application of the proceeds of such Series 2022 Bonds by the Borrower. The Trustee has not evaluated the risks, benefits, or propriety of any investment in the Series 2022 Bonds and makes no representation, and has reached no conclusions, regarding the value or condition of any assets or revenues pledged or assigned as security for the Series 2022 Bonds, or the investment quality of the Series 2022 Bonds, about all of which the Trustee expresses no opinion and expressly disclaims the expertise to evaluate.

The mailing address of the Trustee is 240 Greenwich Street, Floor 7E, New York, New York 10286, Attention: Corporate Trust Administration. Additional information about the Trustee may be found at its website at <https://www.bnymellon.com/>. The Bank of New York Mellon website is not incorporated into this Limited Offering Memorandum by such reference and is not a part hereof.

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 2022 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 New York, New York 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, along with information regarding the Forecast and projected debt service coverage under the caption "SUMMARY INFORMATION," has been provided by the Borrower or the Charter School or been derived from information provided by the Borrower or the Charter School. Neither the Issuer nor the Underwriter makes any representations or warranties as to the accuracy or completeness of the information in any of the Appendices.

No Registration of the Series 2022 Bonds

Registration or qualification of the offer and sale of the Series 2022 Bonds (as distinguished from registration of the ownership of the Series 2022 Bonds) is not required under the Securities Act. **THE ISSUER ASSUMES NO RESPONSIBILITY FOR QUALIFICATION OR REGISTRATION OF THE SERIES 2022 BONDS FOR SALE UNDER THE SECURITIES LAWS OF ANY JURISDICTION IN**

WHICH THE SERIES 2022 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 counsels to the Borrower and the Charter School, counsel to the Underwriter, the Trustee, counsel to the Trustee, and the Underwriter are contingent upon the sale and delivery of the Series 2022 Bonds.

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Limited Offering Memorandum Certification

The Borrower, the Charter School and the Issuer (but only with respect to the information under the caption “THE ISSUER” and “ABSENCE OF MATERIAL LITIGATION—The Issuer” in this Limited Offering Memorandum) 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 “ABSENCE OF MATERIAL LITIGATION—The Issuer” in this Limited Offering Memorandum.

The preparation of this Limited Offering Memorandum and its distribution has been authorized by the Borrower and the Charter School. This Limited Offering Memorandum is not to be construed as an agreement or contract between the Borrower or the Charter School and any purchaser, owner or holder of any Series 2022 Bond.

FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC., a New York not-for-
profit corporation

By: /s/ Arnold Adlin
Title: Chairperson

WHIN MUSIC COMMUNITY CHARTER
SCHOOL, a New York not-for-profit and education
corporation

By: /s/ Gregory David
Title: Chair

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APPENDIX A

WHIN MUSIC COMMUNITY CHARTER SCHOOL

INTRODUCTION

Capitalized terms used but not otherwise defined in this APPENDIX A shall have the meanings set forth in the Limited Offering Memorandum to which this APPENDIX A is appended.

General

WHIN Music Community Charter School, (the “**Charter School**”) is an education corporation within the boundaries of New York City Community School District No. 6 (“**CSD 6**”), in Manhattan, located in the City of New York (the “**City**”) in the State of New York (the “**State**”).

The Charter School 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 Code. The Charter School currently operates within the boundaries of CSD 6 in the City, offering kindergarten through grade 5. The Charter School was authorized in 2016 by the Regents of the State of New York (the “**Regents**”) on behalf of the New York State Education Department (the “**Authorizer**”). The Charter School has received a renewal of its Charter through June 30, 2027 for the operation of a kindergarten through grade 8 school. The Charter School received a 501(c)(3) determination letter on March 17, 2017 with an effective date of June 14, 2016, from the Internal Revenue Service. See “THE CHARTER SCHOOL” and this APPENDIX A 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.

The Charter School will not be a borrower under the Loan Agreement or the Promissory Notes and will not be obligated to make payments under the Loan Agreement with respect to debt service on the Series 2022 Bonds. However, the Charter School will sublease the Facility from Friends of WHIN Music Community Charter School, Inc., a New York not-for-profit corporation (the “**Borrower**”), under the terms of the Sublease and amounts payable by the Charter School to the Borrower under the Sublease are scheduled to be sufficient to pay all scheduled debt service on the Series 2022 Bonds.

The Borrower

The Borrower is a New York not-for-profit that was organized pursuant to Section 803 of the New York State Not-for-Profit Corporation Law, and is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”). The Borrower was formed for the purposes of supporting, performing the functions of, or to carry out one or more of the purposes of the Charter School. The Borrower will use proceeds of the Series 2022 Bonds to construct the Addition and renovate the Existing Facility and will sublease the Facility to the Charter School pursuant to the Sublease.

The Charter

The Charter School operates pursuant to a charter agreement with the Authorizer for and on behalf of the Education Department of the State of New York (the “**Charter**”). The Charter governs such matters as the Charter School’s authority to operate, student performance, financial management, governance and operations. Pursuant to the Charter Schools Act, the term of a charter cannot exceed five (5) years and therefore must be renewed periodically while the Series 2022 Bonds are outstanding. The Charter School

was granted its first Charter in 2016, which was subsequently renewed and amended on March 14, 2022 to govern the Charter School's operations through June 30, 2027. The Charter gives the Charter School the authority to operate a kindergarten through 8th grade school.

Mission, Vision and Academic Program

Mission Statement. The Charter School provides the diverse student population with a rigorous academic instruction, intensive music education and a positive learning environment so that every student can thrive academically and socio-emotionally.

Vision Statement. The Charter School will provide a rigorous educational program incorporating a music infused curriculum, enriched by intensive daily music instruction. The program allows for innovative teaching methods, imbues students with a love of music and learning, and facilitates the development of a community of students and parents through music, academic, and social inclusion.

Academic Program. Along with a common core aligned curriculum, the Charter School has a rigorous and progressive academic program that equips students with the skills and knowledge to be well-rounded and successful. Aligned to national and state standards, the program is a balance of inquiry, cross-content, and differentiation in a joyful environment to engage and challenge each child.

PLAN OF FINANCE

Use of Proceeds of the Series 2022A Bonds

Proceeds of the Series 2022A Bonds will be used by the Borrower to: (a)(i) finance the renovation, furnishing and equipping of a three-story 29,880 square foot building located on a 9,992 square foot parcel of land located at 528 West 162nd Street, New York, New York (the “**Existing Facility**”), to serve as a new educational facility to be used by the Charter School as its school building, serving students in grade kindergarten through grade 5, eventually expanding to grade 8, and (ii) finance the construction, furnishing and equipping of an addition to the Existing Facility consisting of an approximately 25,000 square foot addition (the “**Addition**” and, together with the Existing Facility, the “**Facility**”); (b) fund a debt service reserve fund account for the benefit of the Series 2022A Bonds; (c) fund capitalized interest on the Series 2022A Bonds; and (d) pay for certain costs related to the issuance of the Series 2022A Bonds.

The Borrower has entered into a Lease for the Facility with 528 W 162 LLC (the “**Landlord**”). The forty-eight (48) year term of the Lease (the “**Term**”) will commence no later than the day which is the first day of the first full month which is 60 days after the issuance of the Series 2022 Bonds (the “**Commencement Date**”). Commencing on the Commencement Date, the Borrower is to pay to the Landlord \$840,000 per year in equal monthly payments of \$70,000, subject to periodic increases during the 6th year, 11th year, 16th year, 21st year, 26th year, 31st year and 36th year during the Term in an amount equal to the greater of (i) 10% of the then-payable rent and (ii) the percentage increase in per pupil funding from the New York City Department of Education over the prior five year period (“**Lease Rent**”). The rent payable by the Borrower to the Landlord from the 41st year through the 48th year is to be equal to the then fair market rental value for the Facility, determined in accordance with the procedure described in the Lease First Amendment. Upon termination of the Lease, ownership of the Facility vests in the Landlord. The Borrower has entered into the Sublease with the Charter School, pursuant to which the Borrower will sublease the Facility to the Charter School subject to the terms and conditions of the Lease, with a term that will commence simultaneously with the Lease.

Upon the issuance of the Series 2022 Bonds, the Existing Facility will be renovated to serve as an educational facility for the Charter School and such improvements are anticipated to be completed by July

of 2024. The Addition includes the construction of a five-story 25,015 square foot addition on the Existing Facility and the Addition is anticipated to be completed by July of 2024. The Existing Facility was constructed in 1914 as a three-story parking garage and has been used as a parking garage since its construction. Following completion of the renovations to the Existing Facility and the Addition, the Facility will house approximately 18 classrooms, a cafeteria, an auditorium, support spaces, gymnasium and a rooftop play area. As planned, the Facility will have no parking spaces. Upon completion of the renovation of the Existing Facility and the Addition, the total square footage of the Facility will be approximately 55,000 square feet. The Facility is planned to serve up to approximately 486 students in kindergarten through 8th grade.

See this APPENDIX A in this Limited Offering Memorandum. The approximate budget for the Facility is set forth below:

Project Budget	
Hard Costs ¹	\$26,400,000
Soft Costs ²	2,619,016
Contingency	1,800,000
Title Insurance	122,778
Other Project Costs	<u>811,823</u>
Total	<u>\$31,753,617</u>

¹ The budget for these components of the Series 2022 Project is included in the GMP Contract (as defined herein).

² Amount includes reimbursements to the Charter School in the amount of approximately \$304,539.

The Borrower has selected GLUCK+ Construction CMc, located in New York, New York (the “**Contractor**” or “**Construction Manager**”) as both the architect and the construction manager for the Series 2022 Project. The Contractor and Borrower entered into an AIA Document A133-2019 – Standard form of Agreement Between Owner and Construction Manager where the basis of payment is the Cost of the Work plus a Fee with a Guaranteed Maximum Price contract, executed on March 7, 2022 (the “**GMP Contract**”), pursuant to which the parties agreed to a Guaranteed Maximum Price of \$26,400,000 to complete the Series 2022 Project. Schoolhouse Project (the “**Project Development Consultant**”) will serve as the Project Development Consultant for the Series 2022 Project pursuant to the Construction Disbursement and Monitoring Agreement (the “**Project Development Consulting Agreement**”), by and among the Borrower and the Project Development Consultant.

Series 2022 Project costs in excess of the amount deposited into the Project Fund from Series 2022 Bond proceeds will need to be paid from legally available funds of the Charter School. See “RISK FACTORS—Construction Risk Relating to the Facility.”

Use of Proceeds of the Series 2022B Bonds

Proceeds of the Series 2022B Bonds will be used by the Borrower to (a)(i) finance the security deposit required under the Lease in the amount of \$225,000, (ii) finance payments due under the Lease for the first two years of the Lease in the amount of \$840,000, (iii) finance a proportionate share of the title insurance expenses in the amount of approximately \$9,229.38, and (iv) finance working capital in the approximate amount of \$783,566.36; (b) fund capitalized interest on the Series 2022 Bonds; (c) fund a debt

service reserve fund subaccount for the benefit of the Series 2022B Bonds; and (d) pay for certain costs related to the issuance of the Series 2022 Bonds.

Charter School Facilities and Rental Assistance

The Charter School is eligible to receive certain rental assistance payments from the New York City Department of Education.

The amount of Rental Assistance is determined pursuant to a formula set forth in the Charter Schools Act. The maximum amount of Rental Assistance available to eligible New York City charter schools for the 2021–2022 school year was 30% of the per pupil funding (approximately \$5,054), to the extent such amount does not exceed actual rental costs. See “CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK—Rental Assistance,” “APPENDIX C—BUDGET PROJECTION,” and “APPENDIX B—SUMMARY OF CERTAIN PROVISIONS OF NEW YORK EDUCATION LAW” in this Limited Offering Memorandum for a more detailed discussion of Rental Assistance.

Environmental Reports

See “RISK FACTORS—Environmental Risks” for a description of the environmental site assessments on the Facility, which are hereby incorporated into this APPENDIX A.

Market Rent Study

See “RISK FACTORS—Market Rent Study” for a description of the market rent study with respect to the Lease for the Facility, which is hereby incorporated into this APPENDIX A.

CHARTER SCHOOL GOVERNANCE, ADMINISTRATION AND TEACHERS

Board of Trustees

The Charter School is a not-for-profit education corporation and has no members. The Charter School is overseen by a Board of Trustees (the “**Board**”). Trustees have no power as individuals and only act through the Board. Under the Charter School’s Bylaws, the Board consists of not less than five nor more than 15 trustees. Trustees may be elected for successive terms.

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The individuals who currently serve as trustees and officers of the Board are as follows:

Name	Position	Initial Start Date	Current Term Expiration
Gregory David	Chair	2016	August 2022
Ivonne Norman	Secretary	2016	August 2022
Joshua Bederman	Treasurer	2020	February 2023
Robert Green	Member	2016	August 2022
Arnold Adlin	Member	2018	June 2022
Kenneth Grover	Member	2016	August 2022
Heidi Morales	Member	2021	July 2023
Cynthia Ivanick	Member	2018	November 2022
Lee Ann Norman	Member	2021	July 2023
Shewar Kahn	Member	2021	September 2023

Below are biographies of the members of the Board of Trustees.

Gregory David, Chair. Mr. David is currently a Fourth Grade Head Teacher at Bank Street School for Children, where he has taught for twelve years. He also co-founded JCC Manhattan’s Gift of Math, a free public-school after school math support program, and served as Founding Teacher for five years at two Upper West Side elementary schools. Prior to entering education, Mr. David spent seventeen years in business, as an entrepreneur, investment manager and financial journalist, and served on several non-for-profit Boards. He holds Masters Degrees from NYU in English and from Bank Street College in Childhood Special and General Education. He received a BS in Economics from the Wharton School, as well as BA in English, at the University of Pennsylvania, where he graduated cum laude in 1992.

Ivonne Norman, Secretary. Ms. Norman is a Senior Associate at Harris/Law in New York City. As a civil litigator she is dedicated to representing clients injured due to medical malpractice and general negligence. She is admitted to practice law in the State of New York and the United States District Court for the Eastern and Southern Districts of New York. Ms. Norman is a Board Finance Committee Member, and a founding Board Member and Secretary of the Board of Directors of Orchestrating Dreams, Inc. She is a native Spanish speaker who has continuously been a supporter of the social advancement of immigrant communities, particularly Hispanics in low-income neighborhoods. Ms. Norman has volunteered with the CUNY Citizenship Now! Program and participated in pro-bono events sponsored by AILA and the Justice Action Center at New York Law School. She has also served as member of the New York City Bar Association and the New York State Trial Lawyers Association. She received her Juris Doctor Degree from New York Law School.

Joshua Bederman, Treasurer. Mr. Bederman has spent twenty years in the investment management and capital markets businesses, analyzing and investing across corporate capital structures and in both private and public markets with a primary focus on real estate and related assets. Having managed his own firm for a number of years, he is now a Managing Director and Portfolio Manager at Westport Capital Partners. Over his career, Mr. Bederman has been intimately involved with complex businesses, restructurings and capital raising. He earned his BA (Honors) in Economics from McGill University in Montreal, Quebec and is a CFA Charterholder.

Robert Green, Member. Mr. Green has supported and worked in community organizations in Washington Heights for 20 years. He is a Board Member and Audit Committee Chair of Neighborhood Trust Federal Credit Union. Mr. Green has developed financial systems and led teams for Brown Brothers Harriman, New York Board of Education, Bankers Trust, Andersen Consulting, and others. He has an MBA

from Columbia University. His music education programs have been presented by Carnegie Hall Education/Weill Music Institute (1990-2008) and Lincoln Center Institute/Education (2002-2016).

Arnold Adlin, Member. Mr. Adlin has had a 43 year career that includes investments and financings in real estate with affiliates of Oppenheimer & Co., Inc. and discretionary investment management at AllianceBernstein as a financial advisor. He was a partner at Oppenheimer & Co. and a principal at Sanford Bernstein Global Wealth management. In addition, he is skilled at completing complex financial transactions with a wide variety of businesses. Mr. Adlin received his undergraduate degree and Masters degree in city planning from Hunter College.

Kenneth Grover, Member. Mr. Grover has been involved in education for more than 45 years in many different capacities. For the past 15 years, he has been an instructor, program director, and Chair of the Educational Leadership Department at Bank Street College. Prior to that he worked for more than 30 years in the New York City Department of Education as an Instructional Superintendent, Deputy Superintendent, principal, and teacher. Currently he is working with different organizations as an independent educational consultant focusing on leadership development. Mr. Grover received his Professional Diploma and a Certificate of Advanced Study in Educational Leadership from Hofstra University.

Heidi Morales, Member. Ms. Morales has held the position of Director of Intergovernmental Affairs at the Department of Investigation (DOI) since August 2021. Prior to that she served as Deputy Director of Intergovernmental Affairs and Director of Community Outreach for DOI's Office of the Inspector General for the NYPD where her mission was to help improve relations between the NYPD and the communities they serve. Ms. Morales joined DOI from the New York City Housing Authority (NYCHA) where she worked in Legislative Affairs and Communications. She previously worked as Director of Communications and Legislative Affairs for a NYC Councilmember. Ms. Morales has nearly 20 years of experience in media, legislative and public affairs in NYC government, community relations, and Spanish translation and interpretation. She received a Master of Science degree in Broadcast Journalism from the Medill School of Journalism at Northwestern University and a Bachelor of Arts degree in English and Rhetoric from Binghamton University of the State University of New York.

Cynthia Ivanick, Member. Ms. Ivanick has spent her professional career in investment management and client advisory. She has served as a trusted advisor for complex, sensitive client relationships and sophisticated financial asset portfolios. Ms. Ivanick has over 27 years of experience advising individuals and families, as a Vice President and Senior Portfolio Manager at Northern Trust in Chicago and, leading the advisory effort, as the Director of Investment Counseling for the Americas at MIO Partners in New York. She earned her BA in History from DePauw University.

Lee Ann Norman, Member. Ms. Norman is a cultural worker and writer whose work highlights her interest in cultivating spaces that allow people to learn about themselves and each other through the arts. She currently serves as Director, Leadership and Learning Programs for the League of American Orchestras where she manages the League's \$6.6 million signature re-granting programs. Her previous work includes positions with the Chicago Symphony Orchestra Association, ArtPlace America, Creative Capital, EmcArts, Chicago Theological Seminary, and the Chicago Park District's Arts and Culture division.

Shewar Kahn, Member. Ms. Khan is the Global Director Commercial Enablement and Strategic Engagement at S&P Global Platts where she leads a Sales transformation program, rolled out a new learning/development infrastructure and instituted operational excellence all while driving positive employee engagement. Prior to Platts, she worked at Reuters for close to a decade, managing cross-functional, global teams and large-scale projects, and began her professional career in investment banking

at Lazard in London. Throughout her career, she has championed diversity and promoted the rights of children, most recently as PTA President of a Blue Ribbon elementary school and through participating in multiple mentoring programs. Ms. Kahn holds a BSc (Hons.) degree in Economics from the London School of Economics.

Senior Leadership

Below are biographies of the Charter School's senior leadership.

Charles Ortiz, Executive Director. Mr. Ortiz joined the founding team of the Charter School in late 2015 and was instrumental in writing the final version of the charter application. Prior to joining the leadership team of the Charter School he served as the Director of Academics at the Harlem Children's Zone for three years where he oversaw HCZ's afterschool elementary, middle, and high school academic programs. Prior to HCZ Charles spent seven years teaching in public and charter schools in Brooklyn, Harlem, and his hometown of Philadelphia. While teaching Mr. Ortiz was asked to be Village Lead, served on school leadership teams working on such things as creating policies for a restorative school culture, interdisciplinary curriculum development, conducted Professional Development sessions for fellow teachers, and was a teacher mentor. He also created and maintained a contemporary band program growing it from serving twenty students in one grade to serving over 100 students in 6th – 12th grade. The program enjoyed large parental involvement, performances at the Kimmel Center in Philadelphia, and provided scholarships to students for additional study. Mr. Ortiz recently completed the Leadership New York fellowship at Coro where he received training in Adaptive Leadership, Intersectionality, and group leadership and uses these skills to fulfill his commitment to create educational equity for the students and families of New York City. Reporting directly to the Charter School Board, he is responsible for establishing and maintaining all aspects of the Charter School.

Annie Huynh, Principal. Ms. Huynh has recently resigned from her position as principal of the Charter School for personal reasons. She plans to finish the 2021-22 school year in her role as principal. The Charter School recruiting candidates to fill her role as principal through a variety of ways, including an education sourcing consultant.

Ms. Huynh joined the founding staff of the Charter School in the spring of 2017 as the Founding Director of Curriculum and Instruction-ELA and has been in the field of education for fourteen years. She holds a Masters in Elementary Education from Temple University.

Ivelisse Sosa, Director of Operations. Ms. Sosa joined the Charter School in the summer of 2019 as the Director of Operations. She began her career in school operations well over 8 years ago in the Bronx. As a product of her community, educated by New York City Public Charter Schools she has been motivated to pay it forward and provide service to inner city public schools providing streamlined systems and procedures, facilities construction management, and staff/student recruitment.

Dioffre Cruceta, Director of Student Culture. Mr. Cruceta currently serves as the Director of Student Culture at the Charter School where he ensures the Charter School is a safe, predictable, and responsive environment for all students. He is a key member of the school's leadership team who actively supports students, families, and staff members on how to build and maintain a positive school culture in support of a rigorous academic and music program. Mr. Cruceta is a product of Washington Heights and has served the neighborhood as a Youth Development Advocate for the past 15 years. He previously served as a Site Director for the B.E.L.L (Building Educated Leaders for Life) Foundation as well as multiple Dean of Culture roles at various charter schools throughout New York City. He has helped craft and manage

systems to reinforce explicit and high behavioral expectations for students, families, and staff by ensuring fidelity and accountability through clear and frequent communication.

Meryl Cullom, Director of Music. Ms. Cullom is a long time educator as well as a Professional Development and Arts Integration Specialist. She worked with Education Through Music (ETM) for many years as the designer/facilitator of PD sessions for music teachers, academic teachers, administrators, and families. At ETM, she also mentored music teachers and wrote nationally aligned music curriculum for grades K-8. She was the Director of Education for the metro Washington DC area's longest running children's theatre, Adventure Theatre and she has taught music, theatre, and elementary school in Brooklyn, Harlem, Maryland, and Seattle. In addition, Ms. Cullom was a professional performer for many years, singing, dancing, and acting around the world.

Teachers and Staff

The figures in the following table represents employees at the Charter School for the 2021-2022 school year.

Table 1 Charter School Employees		
	Full Time	Part Time
Administration	10	--
Teachers	29	3
Teacher Assistants	--	--
Other (operations)	<u>4</u>	<u>--</u>
Total	<u>43</u>	<u>3</u>

The Charter School's student teacher ratio is targeted to be 13:1 each year and is 12.4:1 for the 2021-2022 school year.

The following table shows the level of experience and education for teachers and teacher aides/assistants for the 2021-2022 school year at the Charter School.

Table 2 Teacher Experience and Education	
	2021-2022
0-5 Years' Experience	48%
5-10 Years' Experience	40
Over 10 Years' Experience	<u>12</u>
Total	<u>100%</u>
Bachelor's Degree	44%
Master's Degree	<u>56</u>
Total	<u>100%</u>

The following tables show historical teacher and associate teacher retention rates at the Charter School.

Table 3 Historical Teacher Retention Rates	
Year	Percent Retained ¹
From 2018 to 2019	36%
From 2019 to 2020	42
From 2020 to 2021	77

¹ Low teacher retention rates are due to hiring challenges.

Professional Development. Prior to the start of each school year, the Charter School hosts professional development for its teachers for two to three weeks. Additionally, teachers and staff participate in weekly instructional planning and support meetings. The Charter School plans for observation and lesson plan feedback on regular internals taking into account in-person and virtual teaching.

Services Agreement

The Charter School entered into a Professional Services Agreement effective as of July 1, 2021 (the “**Services Agreement**”) with Charter School Business Management (“**CSBM**”), pursuant to which CSBM agreed to provide certain financial and school business operations consulting services. The term of the Services Agreement ends June 30, 2022. The Charter School agreed to pay invoices for the services rendered by CSBM on a monthly basis and the estimated fee for such services during the term of the Services Agreement is approximately \$143,150. Representatives of the Charter School have stated that the Charter School anticipates renewing this Services Agreement for another year. CSBM has served in this role for at least the last five years.

CHARTER CONTRACT

General

New York Education Law, specifically Article 56, the New York Charter Schools Act of 1998, as amended, provides for the creation of public charter schools to provide educational opportunities for students, teachers, parents, and community members, and to establish and maintain schools that operate independently of existing schools and school districts in order to: (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 charter schools accountable for meeting measurable student achievement results.

Annual Reports

As part of the Charter, the Charter School is required to submit to the Regents an annual report stating the academic program and performance for the previous school year (the “**Annual Report**”). An Annual Report is to be submitted no later than August 1 for the preceding school year and is to be posted to the Charter School’s website, transmitted to local newspapers, and made available for distribution at Board of Trustee Meetings.

Charter Renewal

Under the terms of the Charter Schools Act, charters may be renewed, upon application for renewal, for a term of up to five years. In connection with charter renewal, the Charter Schools Act requires applicants such as the Charter School to submit: (a) a report of progress 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; (c) copies of each of the annual reports of the charter school required by the Charter and the Charter Schools Act, including charter school report cards and certified financial statements; (d) evidence of parent and student satisfaction; (e) the means by which each school will meet or exceed enrollment and retention targets; and (f) such other material and information as required by the Regents.

The Charter Schools Act requires that charter renewal applications be submitted to the charter entity, which in the case of the Charter School is the Regents, no later than July 1 of the calendar year prior to the expiration of a charter. The Charter states that if the Regents do not approve a renewal application, the parties to the Charter shall fulfill their respective obligations through the full term of the Charter.

The Charter School was granted its first Charter in 2016, which was subsequently renewed and extended on March 14, 2022 to include the Charter School's ability to serve students in grades 6-8. The Regents and the Charter School entered into the charter contract pursuant to which the Charter School is authorized to operate through June 30, 2027.

Charter Revocation

A charter may be terminated by the charter entity or the Authorizer or Regents upon any of the following statutory grounds: (a) if the charter school's outcome on student assessment measures adopted by the Board of Regents falls below the level that would allow the Commissioner of Education 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) if the New York Public Employment Relations Board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of subdivision one of § 209-A of the New York Civil Service Law involving interference with or discrimination against employee rights under Article 14 of the New York 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.

In addition to the statutory revocation provisions, the Charter provides that it may be terminated and revoked by mutual agreement of the parties.

The Charter Schools Act provides that notice of intent to revoke a charter must be provided to the board of trustees of a charter school at least 30 days prior to the effective date of the proposed revocation. Such notice must include a statement of reasons for the proposed revocation. The charter school must be given at least 30 days to correct the problems associated with the proposed revocation. Prior to revocation of the charter, a charter school must be provided an opportunity to be heard, consistent with the requirements of due process. Upon the termination of a charter, the charter school is required to proceed with dissolution pursuant to the procedures of the charter and direction of the authorizing entity and the Regents.

In addition, the charter entity or the Board of Regents may develop and require the Charter School to implement a corrective plan if a charter school falls within the provisions of (a) through (e) above. 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 Charter School's charter.

THE CHARTER SCHOOL

School Year and School Day Length

Breakfast is available in the cafeteria for all students at 7:50 a.m. each school day. The school day starts at 8:10 a.m. and ends at 4:00 p.m. Monday through Thursday, and 2:00 p.m. on Friday. There are at least 180 instructional school days. The school year begins in early September and ends at the end of June.

COVID-19 Related Changes

For the 2020–2021 school year, the Charter School opened fully remote and in March 2021 transitioned to a hybrid model for the remainder of the school year. Approximately 50% of the Charter School's students remained remote for the 2020-2021 school year. The Charter School provided Chromebooks and WiFi hotspots for students learning remotely. Teachers and students were required to wear masks for in-person learning.

For the 2021-22 school year, the Charter School has operated fully in-person to date. Teachers and students were required to wear masks for in-person learning. Teachers are required to be vaccinated and 100% of the Charter School's teachers are vaccinated.

Operations are governed by a Hybrid Reopening Plan, which was most recently updated in April 2021 (the "**COVID Plan**"). The COVID Plan prioritizes (a) the creation and implementation of a trauma-informed plan for students, families, and staff; (b) providing health and safety procedures for staff, students, and families; (c) maintaining high academic standards and rigor; (d) maintaining warm school culture; and (e) building community. See "RISK FACTORS—Impact of COVID-19 on the Charter School" for a more detailed description of the impact of COVID-19 on the Charter School.

Transportation

The Charter School receives NYC Department of Education transportation services as part of its transportation policy. Pursuant to Chancellor's Regulation A-801, transportation eligibility for students is determined on the basis of the student's grade level and distance between the student's residence and the Charter School. Children with Individualized Education Programs (IEP) may receive specialized transportation.

Grade	Distance to School from Residence	Service Provided
K-2	Less than ½ mile	Half-fare MetroCard
K-2	Greater than ½ mile	Yellow bus or free MetroCard
3-5	Less than ½ mile	No transportation provided
3-5	Between ½ mile and 1 mile	Half-fare MetroCard
3-5	Greater than 1 mile	Yellow bus or free MetroCard

Curriculum

In alignment with the New York State CCLS, including compliance with and successful completion of the New York State Testing Program assessments, the Charter School's enriched educational programs and curricula will ensure its diverse student population meets New York State CCLS. For these reasons, the Charter School provides a curriculum and instruction plan to meet and exceed 'achievement indicators for academic trends toward proficiency and high school graduation' as detailed in Benchmark of the NYSED Charter School Performance Framework.

The backbone of the Charter School's framework is the belief that students learn best when presented with a cross curricular, rigorous, inquiry-driven, and data-driven experience directly connected to Common Core State Standards, and differentiated for each learner's unique needs while developing his/her social-emotional and character skills.

The Charter School uses a school wide, sequential, and cross-curricular Understanding By Design (UbD) approach that promotes a rigorous, inquiry-driven, project-based academic curriculum. This framework will be overseen by the Directors of Curriculum and Instruction and developed in partnership with the schools teachers, and draws upon the successful data-supported curriculum of the Conservatory Lab Charter School.

English Language Arts.

The Charter School takes a balanced literacy approach and will use EL Education's K-5 English Language Arts curriculum, which is a comprehensive, standards-based core literacy program that engages teachers and students through compelling, real-world content.

Mathematics.

Students experience math through a lens of fun, exciting discovery. Math units are not taught in isolation, but rather multiple skills and standards are interwoven to create rich tasks and scenarios for learners, and standards are revisited throughout the year to ensure student mastery. Deep conceptual understanding is reached through concrete and hands-on experience.

El Sistema.

El Sistema is a unique social program that was founded in Venezuela over forty years ago by Jose Antonia Abreu. The goal is to effect social change through intensive daily ensemble music education. Working in an ensemble enables all children to experience being an asset to their community. The El Sistema philosophy engenders an ambitious pursuit of musical, academic, and life success through the following core values:

- Every human being has the right to a life of dignity and contribution, filled with beauty.
- Every child can learn to experience and express music and art deeply, can receive its many benefits, and can make different critical life choices as a result of this learning.
- Overcoming poverty and adversity is best done by strengthening the spirit, creating, as Dr. Abreu puts it, "an affluence of the spirit," and investing that affluence as a valued asset in a community endeavor to create excellence and beauty in music.

- Effective education is based on love, approval, joy, and consistently successful experiences within a high-functioning, aspiring, nurturing community. Every child has limitless possibilities and the ability to strive for excellence. “Trust the young,” informs every aspect of the work.
- Learning organizations never arrive but are always becoming—striving to include: more students, deeper impact, greater musical excellence, better teaching, improved tools, more joy. Thus, flexibility, experimentation, risk-taking, and collegial exchange are inherent aspects of every program.

Music.

The Charter School offers two periods of ensemble music a day, five days a week, for all students, based in El Sistema’s principles of music as a vehicle for inclusion and social change.

Science and Social Studies.

Science and Social Studies curriculum will be aligned with the New York State Learning Standards, including the standards of the New York State Testing Program for Science and Social Studies, the Common Core literacy standards for K-6 Science and Social studies strands, and the Next Generation Science Standards (NGSS).

Physical Education and Healthy Living.

Aligned with New York State standards the Physical Education curriculum will be part of a holistic and balanced physical, health, and wellness education. Teaching children how to respect, develop, and take care of their physical health is just as important as teaching academic content. The Charter School sees regular physical activity as well as learning about our bodies, wellness, and health as a way to live a healthy and balanced life. With this philosophy in mind all Charter School students will have 150 minutes of P.E. as well as 80 minutes of recess throughout the week.

Enrollment

Set forth below is a history of the Charter’s School enrollment.

Table 4 Historical and Current Enrollment					
Grade	2017– 2018	2018– 2019	2019– 2020	2020– 2021	2021– 2022 ¹
K	49	62	49	36	45
1 st	30	52	58	56	43
2 nd	--	24	54	50	51
3 rd	--	--	30	53	44
4 th	--	--	--	28	44
5 th	--	--	--	--	27
Total	<u>79</u>	<u>138</u>	<u>191</u>	<u>223</u>	<u>254</u>

¹ As of June 21, 2022.

Source: New York State Department of Education and the Charter School.

The following table shows projected student enrollment numbers at the Charter School by grade level for the next five school years.

Table 5 Projected Enrollment by Grade Level¹					
Grade	2022-2023 ²	2023-2024	2024-2025	2025-2026	2026-2027
K	40	54	54	54	54
1 st	60	54	54	54	54
2 nd	52	54	54	54	54
3 rd	60	54	54	54	54
4 th	54	54	54	54	54
5 th	46	54	54	54	54
6 th	28	54	54	54	54
7 th	--	27	54	54	54
8 th	--	--	27	54	54
Total Enrollment	<u>340</u>	<u>405</u>	<u>459</u>	<u>486</u>	<u>486</u>

¹ These total enrollment numbers are the Charter School's State approved enrollment number. The total enrollment numbers included in the budget projections set forth in "APPENDIX C—BUDGET PROJECTION" are more conservative.

² As of June 21, 2022.

Source: The Charter School.

Facility Capacity

Upon completion of Series 2022 Project and any additional improvements being constructed at the Facility, the student capacity at the Facility will be approximately 486 students.

Student Retention

Listed below is the historical student enrollment retention at the Charter School.

Table 6 Retention Rate by School Year	
School Year	Percent Retention from Previous School Year
From 2018 to 2019	96%
From 2019 to 2020	99
From 2020 to 2021	84 ¹
From 2021 to 2022	97

¹ The drop in the retention rate was related to COVID-19.

Source: The Charter School.

Lottery Admission Process

Under the Charter Schools Act, admission into charter schools is determined by a lottery process. Preference for the lottery will be given to students in CSD 6 and siblings of currently enrolled students. Students who are not admitted will be placed on a waiting list in the order that their lottery numbers were drawn. Additionally, the Charter School will use a weighted lottery system that gives slightly better chances of admission to students who are in the economically disadvantaged subgroup as evidenced by free and reduced lunch criteria.

Application and Wait List

Set forth below is the historical waitlist summary, listed by grade level for the Charter School.

Table 7 Historical Wait List Summary						
Grade	2017– 2018	2018– 2019	2019– 2020	2020– 2021	2021– 2022 ^{1,2}	2022– 2023 ¹
K	313	299	290	253	108	59
1 st	126	58	65	37	5	21
2 nd	--	58	69	36	5	13
3 rd	--	--	42	36	12	16
4 th	--	--	--	43	9	12
5 th	--	--	--	--	9	18
6 th	--	--	--	--	--	35
Total	<u>439</u>	<u>415</u>	<u>466</u>	<u>405</u>	<u>148</u>	<u>174</u>

¹ As of April 6, 2021 and April 6, 2022 for the respective school year, the day of the lottery after the first round of seats were offered.

² The drop in the wait list was related to COVID-19.

Source: The Charter School.

Vacancies are generally filled from the waitlist according to the lottery process, and if necessary, an additional wave of recruiting efforts to backfill any vacated seats is used.

For the 2022-23 School Year, representative of the Charter School have stated that, as of May 25, 2022, the Charter School has re-enrolled 245 of its existing 255 students, has enrolled 87 new students and received an additional 34 applications with 'registration in progress' and that the Charter School is continuing to receive and accept applications.

The Charter School has made additional enrollment efforts for the 2022-23 school year, including the hiring of additional staff members to reach out to parent community members for in person marketing of the Charter School. These marketing efforts include providing individuals with a machine-readable code consisting of an array of black and white squares, linked to the Charter School's website. The Charter School has also staffed a position with the role of helping families complete the registration process.

Academic Achievement Indicators

The Charter School assessment system will be “part of a learning system for both students and adults, connected to curriculum, instruction, and professional development,” following research-based assessment systems that use data to help improve the teaching and learning cycle. In alignment with New York State CCLS, grade level expectations, and grade span expectations, the assessment system will continuously provide high-quality information on student performance to ensure that all students are making appropriate progress towards achieving mastery of academic content and student college and career readiness. The Board will have access to the disaggregated data of the needs of individual students, cohorts, and the school as a whole.

The Charter School believes in a holistic approach towards data and assessment. Multiple sources of data about student progress will be used to help develop interventions and action plans. The participation of instructional leaders, coaches, and teachers in the assessment process will help creating a high-performing professional learning community that focuses on student improvement. The Directors of

Curriculum and Instruction (the “**DCIs**”) will be responsible for ensuring that all assessments are aligned with the Common Core State Standards, New York State Law, and the relevant policies of the Regents, including the New York State Testing Program and the various curricula and curricular frameworks used at the Charter School. The Dean of Special Programs (the “**DSP**”) will work with SPED and ESL teachers to ensure that all students with disabilities and English language learner students are appropriately assessed, receive individual accommodations, and fully participate in the testing programs so that they can be held to the highest possible academic standards in alignment with the Individuals with Disabilities Education Improvement Act (IDEA) and No Child Left Behind (NCLB). Instructional leaders will provide professional development sessions and meet regularly with teachers to select, design, and use performance assessments with fidelity.

The Charter School uses various developmentally appropriate diagnostic, formative, benchmark, and summative assessments aligned with the curriculum that will help capture a well-rounded academic picture of each student.

Diagnostic Assessment.

The goal of diagnostic assessments is to give a baseline for each student and to inform interventions or enrichment from the very beginning of the school year. When students are first enrolled, they will take the *BRIGANCE Early Childhood Screens III* and *Home Language Identification Survey (HLIS)*. The BRIGANCE provides an accurate description of students’ physical development, language, academic/cognitive, self-help, and social-emotional skills, which are critical predictors of school success. Kindergarten and first-grade students will be assessed again in December to assess their progress. Potential English Language Learners students will be assessed on the Language Assessment Battery-Revised to determine their language proficiency level.

Formative Assessments.

Teachers will use a variety of assessments throughout the year to obtain timely, accurate information about how successful students are at achieving the learning targets and use this data to immediately inform teaching and differentiated instructional strategies.

- **Teacher Observations and Students response to questioning/prompting:** Teachers will keep detailed notes of student performance and behavior during lessons, one-on-one conferencing, and small group interventions. They will also take notes while conducting conferences.
- **Performance-based Checklists and Expedition Learning Project Rubrics:** Teachers will use checklists and rubrics in all core academic and music subjects. Students’ mastery of science and social studies standards will be measured through rubrics specifically developed for the Expeditions. The DCI will develop these during Pre-Operations and Year 1.
- **Preventing Academic Failure Assessments:** For K-2 students, we will use the Preventing Academic Failure program to build their phonological and phonemic awareness, letter formation, and spelling. Their assessments will be used as part of the monitoring of development of literacy skills in grades K-2.
- **Computer based assessments:** The Charter School will use computer based assessments that afford teachers, students, and families with immediate data to inform teaching strategies.

- **El Sistema Assessments:** Aligned with the Music Blueprint and the New York State School Music Association, the Dean of Music will create in-house music assessments to monitor student progress in instrumental instruction and general music knowledge, respectively.

Benchmark Assessments.

Teachers use a variety of benchmark assessments to measure a student's progress toward specific goals throughout the year.

Summative Assessments.

Summative assessments measure the growth of students throughout the year. By accumulating this data over multiple years, summative assessments can track students and cohorts' growth throughout their K-5 careers.

- **New York State Exam:** All students in grades 3-5 will take these annual tests in ELA and Math. Students in grade 4 will also take the NYS Science exam. As a public school, the Charter School will follow the guidelines for these exams and make sure students have the proper accommodations as indicated upon their IEPs.
- **New York State English As A Second Language Achievement Test:** All English Language Learners will take this annual exam to test their progress in English language acquisition. The results of this assessment will be used to determine whether students qualify for English Language Learners services.
- **New York State Alternate Assessment:** The Committee on Special Education determines eligibility for this assessment, and the Charter School will comply with all IEP mandates. Students who qualify will be assessed annually on their progress toward mastery of learning standards through alternative grade-level measures.
- **Student Portfolios:** Assessment of student work (such as projects, essays, worksheets, and journal entries) is a powerful tool for tracking student progress and development. Beginning in kindergarten, teachers will guide students in the creation of portfolios that select the students' best work from throughout the year. Students will be encouraged to reflect on their growth and development by selecting the pieces they will showcase for their parents on Portfolio Days twice per year.
- **Grade 5 Capstone Project:** Students will complete their experience at the Charter School with a project on a topic of their own choosing, on which they will become experts and finally present for their class.

State Testing Performance. The following is a summary of student performance at the Charter School for the past year for which such data is available in ELA and mathematics. Performance on State assessments is reported in terms of mean scores and percentages of tested students scoring at or above Level 3 and 4. Level 3 is the "meets proficiency" standard that means students demonstrate an understanding of the subject and the knowledge and skills expected at their grade level. Spring 2020 standardized state assessments, including the June 2020 Regents examinations, were canceled and are, thus, not reported.

In an ordinary year, the percentage of students who participate in the tests is typically over 80%. Due to COVID-19, approximately 60% of students statewide did not take tests. Therefore, the 2021 grades

3-8 assessment results do not include State data, and should not be compared to that of previous school years, statewide or among subgroups of students.

Table 8 Percentage of students that scored at or above Level 3 in English Language Arts				
	2018-2019		2020-2021	
Grade	Charter School¹	State	Charter School	State ²
3 rd	n/a	29%	53%	n/a
4 th	n/a	29	67	n/a
5 th	n/a	22	--	n/a

¹ The Charter School did not have students in grades 3rd and above for the 2018-19 school year.

² Due to the extraordinary circumstances related to the COVID-19 pandemic, approximately 40% of enrolled students participated in state assessments in 2020-21. Because only 40% of students' results are available, state assessments are not representative of the state's student population and the results should not be compared statewide or by statewide subgroup, or with prior year's results and were not provided by the New York State Education Department.

Table 9 Percentage of students that scored at or above Level 3 in Mathematics				
	2018-2019		2020-2021	
Grade	Charter School ¹	State	Charter School	State ²
3 rd	n/a	31%	38%	n/a
4 th	n/a	23	8	n/a
5 th	n/a	23	--	n/a

¹ The Charter School did not have students in grades 3rd and above for the 2018-19 school year.

² Due to the extraordinary circumstances related to the COVID-19 pandemic, approximately 40% of enrolled students participated in state assessments in 2020-21. Because only 40% of students' results are available, state assessments are not representative of the state's student population and the results should not be compared statewide or by statewide subgroup, or with prior year's results and were not provided by the New York State Education Department.

School Safety

The Charter School contracts with Allied Universal Security Services for security services provided by unarmed security personnel from 7 a.m. to 7 p.m. Monday through Friday when school is in session. The Charter School has adopted a safety plan that is reviewed annually.

After School Program

After school care at the Charter School is provided by Learning Through an Extended Arts Program Inc. ("LEAP"), with a full-time elementary program director dedicated to the Charter School's program.

Service Area

The Charter School is located in New York County, in the City and State. According to U.S. Census data, New York County has an estimated population of 1,631,993 as of July 1, 2019. All students attending the Charter School reside in New York County. The Facility is located in CSD 6.

Approximately 79% of current students attending the Charter School qualify for the Federal free and reduced lunch program. Approximately 23% of current students attending the Charter School are current or former English Language Learners. Approximately 21% of current Charter School students are students with disabilities.

The average student population at the Charter School is approximately 69% Hispanic. For comparison, the racial demographics of New York County and the State, as presented in the U.S. Department of Commerce's 2020 Census, are also included.

New York County and State Racial Demographics		
Race	New York County	State
White	69.6%	64.6%
Black or African America	17.6	17.8
American Indian and Alaska Native	1.0	1.2
Asian	9.0	12.8
Native Hawaiian or Other Pacific Islander	0.1	0.2
Two or More Races	2.7	3.4
Hispanic or Latino	19.3	25.6
White, not Hispanic or Latino	55.3	47.2

Source: U.S. Census Bureau, Quick Facts, April 2020.

Population

The following table sets forth population statistics for New York County and the State of New York.

Comparative Population				
Year	New York County	Percent Change	State of New York	Percent Change
1990	1,487,073	--	18,020,784	--
2000	1,540,547	3.60%	19,001,780	5.44%
2010	1,589,041	3.15	19,399,956	2.10
2020	1,611,989	1.44	19,336,776	(0.33)

Source: US Department of Commerce, Bureau of Economic Analysis.

Median Age

According to the U.S. Census Bureau, 2015–2019 American Community Survey 5-Year Data Profile, the estimated median age for the residents of New York County was 37.5 years and for residents of the State was 38.8 years. (Source: U.S. Department of Commerce, Bureau of the Census.)

Income

The following table set forth per capita personal income for New York County, the State of New York, and the United States.

Per Capita Personal Income							
	2014	2015	2016	2017	2018	2019	2020
New York County	\$148,739	\$152,793	\$163,112	\$179,655	\$184,539	\$187,213	\$191,220
State of New York	\$56,270	\$58,743	\$60,833	\$64,964	\$67,357	\$69,951	\$74,472
United States	\$47,017	\$48,891	\$49,812	\$51,811	\$54,098	\$56,047	\$59,510

Source: US Department of Commerce, Bureau of Economic Analysis.

Competing Schools

The Charter School competes for students primarily within the geographic area of CSD 6 and other surrounding districts, and with other public schools and charter schools within the City area. There are currently approximately 10 charter schools serving grades K–12 within CSD 6. Charter schools within a close proximity to the Facility are in competition with the Charter School for students, including, but not limited to Amber Charter School Inwood, Education Unlimited Lyceum Charter School, The Equity Project Charter School, Inwood Academy for Leadership Charter School, KIPP NYC Washington Heights Academy Charter School, New Heights Academy Charter School, School in the Square Public Charter School, Success Academy Charter School – Washington Heights, and Zeta Charter Schools (Inwood 1).

The student population at the Charter School consists of students residing in the following zip codes, which are in New York County, Bronx County, and Westchester County, New York.

Table 10 Distribution of Students by Zip Code for 2021-2022 School Year					
Zip Code	Percentage of Students	Zip Code	Percentage of Students	Zip Code	Percentage of Students
10002	0.37%	10037	0.37%	10460	0.75%
10025	0.37	10039	4.49	10462	0.75
10026	0.75	10040	5.99	10463	2.62
10027	2.25	10128	0.37	10466	0.37
10029	0.75	10451	1.12	10467	1.87
10030	1.50	10452	4.49	10468	1.50
10031	8.99	10453	3.37	10469	0.75
10032	37.45	10456	0.37	10471	0.37
10033	6.37	10457	1.87	10472	0.37
10034	3.75	10458	1.50	10705	1.12
10035	0.37				

FINANCIAL DATA

Charter School Funding

Historic Per Pupil Funding Chart for New York City-based Charter Schools	
School Year	Per Pupil Funding ¹
2012–2013	\$13,527
2014–2015	\$13,777
2015–2016	\$13,877
2016–2017	\$14,027
2017–2018	\$14,527
2018–2019	\$15,308
2019–2020	\$16,150
2020–2021	\$16,112
2021–2022	\$16,845 ²

¹ Per pupil funding does not include supplemental aid which may have been available in any year.

² Estimated amount.

Source: The Charter School and
<https://www.nyccharterschools.org/sites/default/files/re-sources/Charter-Center-Memo-on-2019-State-Budget.pdf>.

New York State’s 2021–2022 annual fiscal budget includes the following items affecting all charter schools in New York City.

Increase in Per Pupil Funding. In addition to the statutory per-pupil funding, the Governor and Legislature may provide, as they have done so in the past, a one-time supplemental appropriation for New York City charter school students; the amount of supplemental aid is unknown at this time. The Charter School will receive approximately \$16,845 per student for the 2021–2022 school year. The Charter School is also eligible for ESSER II and ESSER III funds and ARP special funding.

Security in Schools. As of July 1, 2019 all district and charters school were required to define the roles and responsibilities of school security personnel in response to student misconduct. Specifically, schools that employ or contract with public or private security personnel (including law enforcement) must have a written contract or memorandum of understanding (“**MOU**”) that defines the roles and responsibilities of security personnel that is consistent with the school’s code of conduct and defines the relationship between the school, school personnel, students, visitors, law enforcement and the security personnel. The contract must also clearly delegate the role of school discipline to the school administration. In preparing the contract or MOU, the school must consult with stakeholders such as parents, students, school administrators, teachers, collective bargaining units, parent and student organizations, and community members, as well as probation officers, prosecutors, defense counsel and courts that are familiar with school discipline. Schools will also be required to submit any contract or MOU with school personnel with their school’s safety plan.

Budgeting of Funds and Reports

The Charter School prepares all required annual budgets and monthly cash flow projections reporting to the State no later than August 1st of each fiscal year, except that the Charter School need only

provide an annual budget and cash flow projections for the first full fiscal year after is has been incorporated if such budget or projections differ in any material respect from those set forth in the Charter Application.

On or before August 1st of each year, the Charter School will prepare and provide to NYSED a copy of the annual budget and monthly cash flow projection for each fiscal year. The budgeting process involves the administration personnel of the Charter School. The budget allocates general funds received from the New York City Department of Education, special education funds received from the New York City Department of Education and federal funds from the IDEA grant, and Title I and Title II federal grant funds.

The following table sets forth the budgeted financial data of the Charter School as compared to the financials for the Fiscal Year ending June 30, 2021 and the data for the Fiscal Year ending June 30, 2022.

Table 11 Charter School Budgeted and Actual Financial Data				
	2020-2021 Budget	2020-2021 Year End (audited)	2021-2022 Budget	2021-2022 Year-to- Date (unaudited)¹
Revenue and Support:				
State sources	\$4,169,554	\$4,232,750	\$5,511,836	\$4,679,129
Federal sources	127,473	--	--	--
Local and other sources	39,900	--	--	--
Government grants	--	234,532	542,061	395,184
Private grants	--	396,208	36,000	80,080
Other income	--	472	5,050	38
Total Revenue & Support	<u>4,336,927</u>	<u>4,863,962</u>	<u>6,094,947</u>	<u>5,154,431</u>
Expenses:				
Administrative staff	845,278	835,706	995,871	762,408
Instructional personnel	1,806,379	1,630,277	2,166,918	1,307,566
Payroll taxes and benefits	725,564	599,696	872,083	557,632
Contracted services	278,680	459,426	367,175	436,901
School operations	538,353	324,494	1,019,765	618,725
Facility operation and maintenance	37,516	75,997	458,379	490,253
Depreciation	90,050	80,787	113,137	49,266
Other	--	124,913	1,000	813
Total Expenses	<u>4,321,820</u>	<u>4,131,296</u>	<u>5,994,328</u>	<u>4,223,563</u>
Loss on impairment of construction-in-progress	--	(279,162)	--	--
Net Income	\$ <u>15,107</u>	\$ <u>453,504</u>	\$ <u>100,619</u>	\$ <u>930,867</u>

¹ Year to date unaudited financials through April 30, 2022.

² Includes \$160,000 of funds with donor restrictions.

Source: The Charter School.

Annual Financial Audit

The Charter School is required to have an annual audit conducted by an outside independent accounting firm. Financial audits are conducted in accordance with generally accepted auditing standards. Upon completion, audits are reviewed by Mengel Metzger Barr & Co. LLP before being submitted to the full Board for review. Mengel Metzger Barr & Co. LLP has been the Charter School's auditor since inception.

The audited financial statements of the Charter School for the fiscal years ended June 30, 2020 and June 30, 2021 are included in "APPENDIX E—AUDITED FINANCIAL STATEMENTS, OTHER FINANCIAL INFORMATION AND INDEPENDENT AUDITOR'S REPORT OF THE CHARTER SCHOOL FOR THE FISCAL YEAR ENDED JUNE 30, 2020" and "APPENDIX D—AUDITED FINANCIAL STATEMENTS, OTHER FINANCIAL INFORMATION AND INDEPENDENT AUDITOR'S REPORT OF THE CHARTER SCHOOL FOR THE FISCAL YEAR ENDED JUNE 30, 2021", respectively, in this Limited Offering Memorandum.

Historical Financial Data

The following financial data presents selected historical financial data of the Charter School, as shown in the Charter School's audited financial statements for the stated years.

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Table 12
Historical Schedule of Activities ¹

	2017–2018	2018–2019	2019–2020	2020–2021
Revenue				
State and local per pupil operating revenue	\$1,328,655	\$2,516,052	\$3,620,534	\$4,232,750
Governmental grants	600,179	420,285	135,888	234,532
Private grants	687,126	91,455	77,543	396,208
Other income	--	3,696	5,660	472
Total Revenue	<u>2,615,960</u>	<u>3,031,488</u>	<u>3,839,625</u>	<u>4,863,962</u>
Expenses				
Salaries and wages	1,285,793	1,735,844	2,212,412	2,465,983
Fringe benefits and payroll taxes	257,170	403,529	537,397	578,483
Retirement	5,274	13,582	19,071	21,213
Legal service	7,930	14,185	20,475	21,282
Accounting/audit services	109,178	188,064	205,244	216,381
Other purchased/professional/consulting services	57,478	119,000	118,996	221,763
Building and land rent/lease	675	--	--	--
Repairs and maintenance	98,376	425	12,951	441
Insurance	24,630	28,914	35,450	44,829
Supplies/materials	76,255	75,509	70,263	108,870
Equipment/furnishings	21,739	2,642	10,279	15,838
Staff development	91,170	52,995	74,347	98,661
Marketing/recruitment	34,226	51,991	25,655	39,580
Technology	69,884	68,674	66,405	72,285
Student services	1,173	36,276	141,769	5,098
Office expense	9,986	29,080	16,823	14,889
Depreciation	53,070	69,841	98,785	80,787
Other	871	5,352	104,556	124,913
Total Expenses	<u>2,204,878</u>	<u>2,895,903</u>	<u>3,770,878</u>	<u>4,131,296</u>
 Loss on impairment of construction in progress	 --	 --	 --	 (279,162)
 Change in net assets	 \$ 411,082	 \$ 135,585	 \$ 68,747	 \$453,504
 Beginning Fund Balance	 <u>82,324</u>	 <u>493,406</u>	 <u>628,991</u>	 <u>697,738</u>
Ending Fund Balance	<u>\$ 493,406</u>	<u>\$ 628,991</u>	<u>\$ 697,738</u>	<u>\$1,151,242</u>

¹ Figures may not total due to rounding.
Source: The Charter School.

Additional Lease Obligations

Current Facilities. The Charter School currently operates one school for grades kindergarten through 5th grade in two (2) locations. Students in grades 2nd through 5th are housed in dedicated and shared space within Middle School 328 Community Math & Science Prep, a New York City Department of Education-operated public school located at 401 West 164th Street, New York, New York (the “**328 Facility**”). Students in grades kindergarten through 1st are housed in a private space within the Church of

St. Rose of Lima, a Catholic church located at 1086 St. Nicholas Avenue, New York, New York (the “**Lima Facility**” and, together with the 328 Facility, the “**Current Facilities**”). Upon completion, the Charter School will move to the education facility being developed and financed with proceeds of the Series 2022 Bonds located at 528 West 162nd Street, New York, New York (the “**Facility**”).

The Borrower has entered into a Lease with the Church of St. Rose of Lima in the County of New York (the “**Lima Landlord**”) dated as of August 13, 2021 for the Lima Facility (the “**Lima Lease**”). The Lima Lease expires on August 31, 2023. The Borrower is to pay to the Lima Landlord \$350,000 in equal monthly payments of \$29,166.67 for the period ending August 31, 2022. From September 1, 2022 to August 31, 2023, the Borrower is to pay to the Lima Landlord \$1,050,000 in equal monthly payments of \$87,500. The Borrower has entered into a sublease with the Charter School dated as of August 18, 2021, pursuant to which the Borrower sublets the Lima Facility to the Charter School subject to the terms and conditions of the Lima Lease, with a term that will expire one day prior to the expiration of the Lima Lease (August 30, 2023).

The Charter School occupies the 328 Facility along with New York City Department of Education pursuant to approvals from the NYCDOE, rent and expense free. The Charter School’s use of the 328 Facility is set to end on June 30, 2022. The Charter School is in the process of modifying and extending the Lima Lease to allow the Charter School to continue its operations at there through construction of the Series 2022 Project. The Lima Facility can accommodate the Charter School’s planned enrollment, when it ceases operations at the 328 Facility.

Facility. The Borrower has entered into the Lease with 528 W 162 LLC (the “**Landlord**”) for the Facility. The forty-eight (48) year term of the Lease (the “**Term**”) will commence no later than the day which is the first day of the first full month which is 60 days after the issuance of the Series 2022 Bonds (the “**Commencement Date**”). Commencing on the Commencement Date, the Borrower is to pay to the Landlord \$840,000 per year in equal monthly payments of \$70,000, subject to periodic increases during the 6th year, 11th year, 16th year, 21st year, 26th year, 31st year and 36th year during the Term in an amount equal to the greater of (i) 10% of the then-payable rent and (ii) the percentage increase in per pupil funding from the New York City Department of Education over the prior five year period (“**Lease Rent**”). The rent payable by the Borrower to the Landlord from the 41st year through the 48th year is to be equal to the then fair market rental value for the Facility, determined in accordance with the procedure described in the Lease First Amendment. Upon termination of the Lease, ownership of the Facility vests in the Landlord. The Borrower has entered into the Sublease with the Charter School pursuant to which the Borrower will sublease the Facility to the Charter School subject to the terms and conditions of the Lease, with a term that will commence simultaneously with the Lease.

Nonprofit Loan Agreement. The Charter School has entered into a Loan Agreement dated as of March 26, 2020, as amended by the First Amendment to Loan Agreement and Note dated as of July 1, 2021, the Second Amendment to Loan Agreement and Note dated as of August 1, 2021, the Third Amendment to Loan Agreement and Note dated as of September 1, 2021 and the Fourth Amendment to Loan Agreement and Note dated as of January 26, 2022, with the Nonprofit Finance Fund (together, the “**Nonprofit Loan Agreement**”) for a loan of \$850,000 to finance pre-development activities for the Facility and a property that the Charter School was previously considering acquiring. The Nonprofit Loan Agreement will be paid in full with legally available monies of the Charter School on or before the issuance of the Series 2022 Bonds. The Charter School will receive \$783,566.36 for working capital expenses from the proceeds of the Series 2022B Bonds upon issuance thereof.

Line of Credit. The Charter School has entered into a \$75,000 line of credit with Neighborhood Trust Federal Credit Union on August 17, 2018 (the “**Line of Credit**”). The interest rate on the Line of Credit is fixed at 9.75%. The Charter School has not drawn on this Line of Credit to date.

Retirement Plan

The Charter School currently offers employees a variety of benefits, some of which are dependent on employee classifications. Generally, the Charter School offers eligible employees the ability to participate in a 403(b) retirement plan (the “**Retirement Plan**”). All employees are immediately eligible to participate in the Retirement Plan. The Charter School contributed approximately \$21,200 to the Retirement Plan for the year ended June 30, 2021.

Insurance

The Charter School and the Borrower will maintain the insurance coverages required in the Covenant Agreement, the Leasehold Mortgage (in the case of the Borrower), the Lease and the Loan Agreement.

No Litigation

No material action, suit proceeding, or investigation at law or in equity, before or by any court, any governmental agency, or any public board or body is pending or, to the best of the knowledge of the Charter School, the Borrower, as applicable, is overtly threatened against the Charter School or the Borrower.

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(2) 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, 2024:

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, 2024:

(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.

(b) 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.

(c) 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.

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

(e) 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 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.

(f) 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 Non-Renewal (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 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 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.

(a-1) (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) 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 10 days to respond. The petition must be dismissed, adjudicated or disposed of by the commissioner within 10 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.

(i) Notwithstanding any other provision of law to the contrary, within the later of (a) five months after a charter school's written request for co-location and (b) 30 days after the charter school's charter is approved by its charter entity, the city school district shall either: (1) 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 (2B) 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.

(ii) No later than 30 days after approval by the Board of Education or expiration of the offer period prescribed in paragraph (i) above, the charter school shall either accept the city school district's offer or appeal in accordance with paragraph (iii) 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.

(iii) 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.

(iv) 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.

(v) 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:

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

(2) 30% of the product of the Charter School Basic Tuition for the current school year and (a) for a new charter school that first commences instruction on or after July 1, 2014, the charter school's current year enrollment; or (b) 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.

(vi) An arbitration in an appeal pursuant to this paragraph shall be conducted by a single arbitrator selected in accordance with the Act.

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

Effective until June 30, 2024:

(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 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(l)(n) of the New York Education Law for the year prior to the Base Year;

(viii) for the 2020–2021 and 2021–2022 school years, 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 multiplied by, for the 2020–2021 school year only, (iii) nine hundred forty-five one-thousandths (0.945) 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(l)(n) of the New York Education Law for the year prior to the Base Year.

(ix) for the 2022–2023, 2023–2024, 2024–2025 school years, 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 four years prior to the Base Year and finishing with the year prior to the Base Year, excluding the 2020–2021 school 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(l)(n) of the New York Education Law for the year prior to the Base Year.

(x) for the 2025–2026 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(l)(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 computed 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, (A) for the 2014–2015 school year \$250, (B) for the 2015–2016 school year \$350, (C)

for the 2016–2017 school year \$500, and (D) for the 2017–2018 school year and thereafter, the sum of (1) the supplemental basic tuition calculated for the 2016–2017 school year plus (2) \$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 school 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 data by the charter school, and any necessary adjustments resulting from such final report shall be made to payments during the school's second year of operation.

Notwithstanding any other provision of the New York Education Law 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 section 8065-a of title twenty of the United States code and sections 76.785-76.799 and 300.209 of title thirty-four of the code of federal regulations

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. Provided that for expenses incurred in the two thousand twenty—two thousand twenty-one school year, for a city school district in a city having a population of 1,000,000 or more, the annual apportionment shall be reduced by \$35,000,000 upon certification by the director of the budget of the availability of a grant in the same amount from the elementary and secondary school emergency relief funds provided through the American rescue plan act of 2021.

Effective June 30, 2024:

(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 to §3602(1)(paragraph 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)(paragraph 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) of this paragraph;

(iv) for the 2014-2015, 2015-2016 and 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 year pursuant to the provisions of subparagraph (i) of this paragraph or the charter school basic tuition computed for the current year pursuant to the provisions of subparagraph (i) of this paragraph 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)(paragraph 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)(paragraph 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)(paragraph 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)(paragraph 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)(paragraph 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)(paragraph n) of the New York Education Law for the year prior to the base year.

(viii) for the 2020-2021 and 2021-2022 school years, 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)(paragraph 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 multiplied by, for the 2020-2021 school year only, (iii) nine hundred forty-five one-thousandths (0.945) 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)(paragraph 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)(paragraph n) of the New York Education Law for the year prior to the base year.

(ix) for the 2022-2023 through 2024-2025 school years 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 four years prior to the base year and finishing with the year prior to the base year, excluding the 2020-2021 school year, of the total approved operating expense for such school district calculated pursuant to §3602(1)(paragraph 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)(paragraph 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)(paragraph n) of the New York Education Law for the year prior to the base year.

(x) for the 2025-2026 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)(paragraph 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)(paragraph 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)(paragraph 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 computed 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, and (2) for the 2015-2016 school year \$350, and (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 school 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 subdivision may be reduced pursuant to an agreement between the school and the charter entity set forth in the charter. Payments made pursuant to this subdivision 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 subdivision 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, 2016-2017 school years and thereafter. Provided that for expenses incurred in the 2020-2021 school year, for a city school district in a city having a population of 1,000,000 or more, the annual apportionment shall be reduced by \$35,000,000 upon certification by the director of the budget of the availability of a grant in the same amount from the elementary and secondary school emergency relief funds provided through the American rescue plan act of 2021.

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.

“Base Year” shall mean the school year immediately preceding the current year.

“Weighted Pupils With Disabilities” shall be computed as follows:

“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.

“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:

(a) 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%;

(b) 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%.

Computation of Total Aidable Pupil Units. A district’s 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 *Computation of Additional Aidable Pupil Units* below.

Computation of Adjusted Average Daily Attendance. For purposes of this section Adjusted Average Daily Attendance of a school district for any school year shall be computed as follows:

(a) 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.

(b) In computing such attendance, the school district shall (a) 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; (b) deduct the aggregate attendance on such religious holidays from the total aggregate attendance, by grade level; (c) deduct such religious holidays from the total number of days of session, by grade level; (d) compute the Adjusted Average Daily Attendance for the school year.

(c) 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.

Computation of Additional Aidable Pupil Units. The Additional Aidable Pupil Units used to compute Total Aidable Pupil Units pursuant to this section 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: (a) the number of children on a regular enrollment register of a public school district on such date; (b) the number of children eligible to receive home instruction in the school district on such date; (c) the number of children for whom Equivalent Attendance must be computed pursuant to this Section on such date; (d) 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; (e) 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 (f) 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.

The "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:

- (a) any balances and transfers;
- (b) any payments for transportation of pupils to and from school during the regular school year inclusive of capital outlays and debt service therefor;
 - (b-2) 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;
- (c) 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 payments to state university on account of capital outlay relating to certain children residing in such school district, such payments shall not be so excluded;
- (d) any payments for cafeteria or school lunch programs;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;

(i) 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;

(j) 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;

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

(l) 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;

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

(n) 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;

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

(p) 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;

(q) 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

(r) 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 December 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 December 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. The Commissioner may excuse any delay in reporting under this paragraph for the length of time of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis, however, such delay shall not exceed 30 days from such reporting deadline.

(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 or 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.

(f) If there is a delay in reporting pursuant to paragraph (a) under the heading "Charter school obligations," the Commissioner shall excuse any delay in payments required under this subdivision for the length of time of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis, however, such delay shall not exceed 30 days from such payment deadline.

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.

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APPENDIX C

BUDGET PROJECTION

The following projections are “forward-looking statements” and are subject to the general qualifications and limitations described under “RISK FACTORS—Forward-Looking Statements” with respect to such statements.

The information contained in the following table has been prepared by the Charter School. Such projections relate only to a limited number of fiscal years and consequently do not cover the entire period that the Series 2022 Bonds will be outstanding. Neither the Underwriter nor the Issuer has independently verified the following projections, and they make no representation nor give any assurances that such projections or the assumptions underlying them are complete or correct. The financial projections are based on assumptions made by the Charter School (on matters such as future enrollment, revenues and anticipated expenses), but there can be no assurance that actual enrollment, revenues and expenses will be consistent with such assumptions. Actual operating results of the Charter School may be affected by many factors, including, but not limited to, increased costs, lower than anticipated revenues (as a result of insufficient enrollment, reduced payments from the State, or otherwise), effects of the COVID-19 pandemic, employee relations, changes in taxes, changes to applicable government regulation, changes in demographic trends, factors associated with education, competition for students, and changes in local or general economic conditions.

NO REPRESENTATION OR ASSURANCE CAN BE GIVEN THAT THE CHARTER SCHOOL WILL REALIZE REVENUES IN AMOUNTS SUFFICIENT TO MAKE ALL REQUIRED PAYMENTS ON THE SERIES 2022 BONDS. THE REALIZATION OF FUTURE REVENUES DEPENDS ON, AMONG OTHER THINGS, THE MATTERS DESCRIBED IN “RISK FACTORS” AND FUTURE CHANGES IN ECONOMIC AND OTHER CONDITIONS THAT ARE UNPREDICTABLE AND CANNOT BE DETERMINED AT THIS TIME. THE UNDERWRITER AND ISSUER MAKE NO REPRESENTATION AS TO THE ACCURACY OF THE PROJECTIONS CONTAINED HEREIN.

WHIN Music Community Charter School
Cash Flow Projections

	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>	<u>Projected</u>
<i>FTE</i>	323	385	441	471	476	481
State Grants	6,766,241	8,245,357	9,682,351	10,638,968	11,099,114	11,545,907
Facility Lease Aid	1,443,583	1,699,871	2,463,968	2,728,347	2,852,951	2,982,934
Federal Grants	550,091	210,385	237,378	252,413	265,104	269,803
Contributions	54,000	72,000	90,000	90,000	90,000	90,000
Other Income	5,050	5,050	5,050	5,050	5,050	5,050
Total Revenues	8,818,965	10,232,663	12,478,747	13,714,778	14,312,219	14,893,694
Admin Personnel Costs	1,152,789	1,175,845	1,199,361	1,223,349	1,247,816	1,272,772
Instructional Personnel Costs	2,530,508	2,713,698	2,980,492	3,249,562	3,314,013	3,379,753
Payroll Taxes & Fringe Benefits	978,789	1,051,517	1,130,833	1,185,441	1,221,376	1,258,549
Professional Services	290,300	294,306	298,376	302,511	306,713	310,983
Academic Expenses	744,847	455,771	473,645	483,818	480,723	482,639
Admin Expenses	32,250	31,970	32,192	32,417	32,643	32,872
Technology Expenses	112,205	94,732	96,566	98,438	100,347	102,293
Insurance	76,162	100,732	106,776	113,182	119,973	127,171
Professional Development	100,000	101,000	102,010	138,030	104,410	105,455
Marketing/Recruitment	46,000	45,500	45,500	40,500	35,500	35,500
Travel & Lodging	500	500	500	500	500	500
Facility Expense	1,533,583	1,715,021	4,005,966	4,138,857	4,146,504	4,160,408
Other	1,000	1,000	1,000	1,000	1,000	1,000
Total Expenses	7,598,932	7,781,591	10,473,218	11,007,605	11,111,518	11,269,895
Add back: Land Lease	-	-	700,000	840,000	840,000	840,000
Add back: Debt Service	-	-	2,637,664	2,619,313	2,615,513	2,617,763
Net Revenues Available for Debt Service	1,220,033	2,451,073	5,343,193	6,166,486	6,656,213	7,081,562
Land Lease	420,000	420,000	700,000	840,000	840,000	840,000
Less: Capitalized Lease	(420,000)	(420,000)	-	-	-	-
Principal	-	-	-	365,000	400,000	440,000
Interest	2,974,086	2,957,675	2,957,675	2,957,675	2,922,088	2,883,088
Less: Capitalized Interest	(2,974,086)	(2,957,675)	-	-	-	-
Net Debt Service/Rent	-	-	3,657,675	4,162,675	4,162,088	4,163,088
Total Debt Outstanding	43,910,000	43,910,000	43,910,000	43,545,000	43,145,000	42,705,000
Debt Service Coverage	N/A	N/A	1.46x	1.48x	1.60x	1.70x
Net Revenues After Debt Service	1,220,033	2,451,073	1,685,518	2,003,811	2,494,126	2,918,474
Less: CapEx	(176,700)	(136,700)	(36,700)	(26,700)	(26,700)	(26,700)
Less: Lease Reserve Fund	-	(1,263,111)	-	-	-	-
Net Cash Flow	1,043,333	1,051,261	1,648,818	1,977,111	2,467,426	2,891,774
Beginning Cash Balance*	1,055,000	2,098,333	3,149,594	4,798,412	6,775,523	9,242,949
Ending Cash Balance	2,098,333	3,149,594	4,798,412	6,775,523	9,242,949	12,134,723
Days Cash on Hand	70	103	162	218	295	384
Ground Lease Reserve Fund Balance**	225,000	1,488,111	1,488,111	1,488,111	1,488,111	1,488,111

*FY23 Beginning Cash Balance is an estimate of where the charter school expects to start the school year

**Ground Lease Reserve Fund to be fully funded before completion of construction and prior to exhaustion of capitalized Ground Lease Payments

APPENDIX D

**AUDITED FINANCIAL STATEMENTS, OTHER FINANCIAL INFORMATION AND
INDEPENDENT AUDITOR'S REPORT OF THE CHARTER SCHOOL FOR THE FISCAL
YEAR ENDED JUNE 30, 2021**

(attached)

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WHIN MUSIC COMMUNITY CHARTER SCHOOL

NEW YORK, NEW YORK

AUDITED FINANCIAL STATEMENTS

REPORT REQUIRED BY
GOVERNMENT AUDITING STANDARDS

AND

INDEPENDENT AUDITOR'S REPORTS

JUNE 30, 2021
(With Comparative Totals for 2020)



MENGEL METZGER BARR & CO. LLP

Certified Public Accountants

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MENGEL METZGER BARR & CO. LLP

Certified Public Accountants

INDEPENDENT AUDITOR'S REPORT

Board of Trustees
WHIN Music Community Charter School

Report on the Financial Statements

We have audited the accompanying financial statements of WHIN Music Community Charter School, which comprise the statement of financial position as of June 30, 2021, and the related statements of activities and changes in net assets, functional expenses, and cash flows for the year 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 audit. We conducted our audit 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 audit 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 entity'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 entity'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 WHIN Music Community Charter School as of June 30, 2021, and the changes in its net assets and its cash flows for the year then ended, in accordance with accounting principles generally accepted in the United States of America.

Report on Summarized Comparative Information

We have previously audited WHIN Music Community Charter School's June 30, 2020 financial statements, and we expressed an unmodified audit opinion on those audited financial statements in our report dated October 28, 2020. In our opinion, the summarized comparative information presented herein as of and for the year ended June 30, 2020 is consistent, in all material respects, with the audited financial statements from which it has been derived.

Other Report Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated October 26, 2021 on our consideration of WHIN Music Community Charter 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 WHIN Music Community Charter School's internal control over financial reporting and compliance.

Mengel, Metzger, Barw & Co. LLP

Rochester, New York
October 26, 2021

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF FINANCIAL POSITION

JUNE 30, 2021

(With Comparative Totals for 2020)

	June 30,	
	2021	2020
<u>ASSETS</u>		
<u>CURRENT ASSETS</u>		
Cash	\$ 844,506	\$ 383,352
Grants and other receivables, net of allowance for doubtful accounts of \$105,637 at June 30, 2020	200,226	290,876
Current portion of pledges receivable	120,000	-
Prepaid expenses and other current assets	41,597	25,108
TOTAL CURRENT ASSETS	1,206,329	699,336
<u>OTHER ASSETS</u>		
Property and equipment, net	548,925	506,341
Pledges receivable	40,000	-
Cash in escrow	75,206	75,130
	664,131	581,471
TOTAL ASSETS	\$ 1,870,460	\$ 1,280,807
<u>LIABILITIES AND NET ASSETS</u>		
<u>CURRENT LIABILITIES</u>		
Accounts payable and accrued expenses	\$ 135,118	\$ 205,628
Accrued payroll and benefits	259,965	207,761
Note payable, net of unamortized debt issuance costs of \$12,911 at June 30, 2021	265,246	113,372
Current portion of long-term debt	28,291	21,027
TOTAL CURRENT LIABILITIES	688,620	547,788
<u>LONG-TERM DEBT, net of current portion</u>	30,598	35,281
TOTAL LIABILITIES	719,218	583,069
<u>NET ASSETS</u>		
Without donor restrictions	991,242	697,738
With donor restrictions	160,000	-
TOTAL NET ASSETS	1,151,242	697,738
TOTAL LIABILITIES AND NET ASSETS	\$ 1,870,460	\$ 1,280,807

The accompanying notes are an integral part of the financial statements.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF ACTIVITIES AND CHANGES IN NET ASSETS

YEAR ENDED JUNE 30, 2021
(With Comparative Totals for 2020)

	Year ended June 30,			
	2021			2020
	Without donor restrictions	With donor restrictions	Total	Total
Operating revenue and support:				
State and local per pupil				
operating revenue	\$ 4,232,750	\$ -	\$ 4,232,750	\$ 3,620,534
Government grants	234,532	-	234,532	135,888
Private grants	236,208	160,000	396,208	77,543
Other income	472	-	472	5,660
TOTAL OPERATING				
REVENUE AND SUPPORT	4,703,962	160,000	4,863,962	3,839,625
Expenses:				
Program:				
Regular education	1,876,644	-	1,876,644	1,860,426
Special education	1,352,092	-	1,352,092	988,353
Management and general	832,691	-	832,691	835,499
Fundraising	69,869	-	69,869	86,600
TOTAL EXPENSES	4,131,296	-	4,131,296	3,770,878
Loss on impairment of construction-in-progress	(279,162)	-	(279,162)	-
CHANGE IN NET ASSETS	293,504	160,000	453,504	68,747
Net assets at beginning of year	697,738	-	697,738	628,991
NET ASSETS AT END OF YEAR	\$ 991,242	\$ 160,000	\$ 1,151,242	\$ 697,738

The accompanying notes are an integral part of the financial statements.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF FUNCTIONAL EXPENSES

YEAR ENDED JUNE 30, 2021
(With Comparative Totals for 2020)

	No. of Positions	Year Ended June 30,							Total
		2021						2020	
		Program Services			Supporting Services			Total	
		Regular Education	Special Education	Sub-total	Management and General	Fundraising	Sub-total	Total	Total
Personnel Services Costs:									
Administrative staff personnel	11	\$ 352,109	\$ 104,440	\$ 456,549	\$ 329,157	\$ 50,000	\$ 379,157	\$ 835,706	\$ 809,208
Instructional personnel	26	827,462	802,815	1,630,277	-	-	-	1,630,277	1,403,204
Total personnel services costs	37	1,179,571	907,255	2,086,826	329,157	50,000	379,157	2,465,983	2,212,412
Fringe benefits and payroll taxes		274,937	213,635	488,572	78,054	11,857	89,911	578,483	537,397
Retirement		10,082	7,834	17,916	2,862	435	3,297	21,213	19,071
Legal service		-	-	-	21,282	-	21,282	21,282	20,475
Accounting / audit services		-	-	-	216,381	-	216,381	216,381	205,244
Other purchased / professional / consulting services		147,456	67,899	215,355	5,563	845	6,408	221,763	118,996
Repairs and maintenance		210	163	373	60	8	68	441	12,951
Insurance		21,306	16,555	37,861	6,049	919	6,968	44,829	35,450
Supplies / materials		82,793	26,077	108,870	-	-	-	108,870	70,263
Equipment / furnishings		7,527	5,849	13,376	2,137	325	2,462	15,838	10,279
Staff development		46,891	36,436	83,327	13,312	2,022	15,334	98,661	74,347
Marketing / recruitment		26,997	10,892	37,889	1,468	223	1,691	39,580	25,655
Technology		34,355	26,695	61,050	9,753	1,482	11,235	72,285	66,405
Student services		3,877	1,221	5,098	-	-	-	5,098	141,769
Office expense		2,246	1,746	3,992	10,800	97	10,897	14,889	16,823
Depreciation		38,396	29,835	68,231	10,900	1,656	12,556	80,787	98,785
Other		-	-	-	124,913	-	124,913	124,913	104,556
		<u>\$ 1,876,644</u>	<u>\$ 1,352,092</u>	<u>\$ 3,228,736</u>	<u>\$ 832,691</u>	<u>\$ 69,869</u>	<u>\$ 902,560</u>	<u>\$ 4,131,296</u>	<u>\$ 3,770,878</u>

The accompanying notes are an integral part of the financial statements.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF CASH FLOWS

YEAR ENDED JUNE 30, 2021
(With Comparative Totals for 2020)

	<u>Year ended June 30,</u>	
	<u>2021</u>	<u>2020</u>
<u>CASH FLOWS - OPERATING ACTIVITIES</u>		
Change in net assets	\$ 453,504	\$ 68,747
Adjustments to reconcile change in net assets to net cash provided from operating activities:		
Depreciation and amortization	80,787	98,785
Loss on impairment of construction-in-progress	279,162	-
Bad debts	105,637	105,637
Changes in certain assets and liabilities affecting operations:		
Grants and other receivables	(14,987)	(238,706)
Pledges receivable	(160,000)	25,000
Prepaid expenses and other current assets	(16,489)	2,105
Accounts payable and accrued expenses	(110,355)	94,772
Accrued payroll and benefits	<u>52,204</u>	<u>(941)</u>
NET CASH PROVIDED FROM OPERATING ACTIVITIES	<u>669,463</u>	<u>155,399</u>
<u>CASH FLOWS - INVESTING ACTIVITIES</u>		
Purchases of property and equipment	<u>(346,543)</u>	<u>(324,960)</u>
NET CASH USED FOR INVESTING ACTIVITIES	<u>(346,543)</u>	<u>(324,960)</u>
<u>CASH FLOWS - FINANCING ACTIVITIES</u>		
Repayments on long term debt	(26,475)	(18,777)
Borrowings on note payable	<u>164,785</u>	<u>113,372</u>
NET CASH PROVIDED FROM FINANCING ACTIVITIES	<u>138,310</u>	<u>94,595</u>
NET INCREASE (DECREASE) IN CASH AND RESTRICTED CASH	461,230	(74,966)
Cash and restricted cash at beginning of year	<u>458,482</u>	<u>533,448</u>
CASH AND RESTRICTED CASH AT END OF YEAR	<u>\$ 919,712</u>	<u>\$ 458,482</u>

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF CASH FLOWS, Cont'd

YEAR ENDED JUNE 30, 2021
(With Comparative Totals for 2020)

	<u>June 30,</u>	
	<u>2021</u>	<u>2020</u>
<u>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</u>		
Reconciliation of cash reported within the statement of financial position that sum to the total amounts shown in the statement of cash flows		
Cash	\$ 844,506	\$ 383,352
Cash in escrow	<u>75,206</u>	<u>75,130</u>
Total cash and restricted cash shown in the statement of cash flows	<u>\$ 919,712</u>	<u>\$ 458,482</u>
 <u>NON-CASH OPERATING AND INVESTING ACTIVITIES</u>		
Purchases of property and equipment included in accounts payable	<u>\$ 39,845</u>	<u>\$ -</u>
 <u>NON-CASH INVESTING AND FINANCING ACTIVITIES</u>		
Purchases of property and equipment financed with long-term debt	<u>\$ 29,056</u>	<u>\$ 35,988</u>
Capitalized debt issuance costs included in construction-on-progress	<u>\$ 12,911</u>	<u>\$ -</u>

The accompanying notes are an integral part of the financial statements.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Charter School

WHIN Music Community Charter School (the “Charter School”) is an educational corporation that operates as a charter school in New York, New York. The Charter School provides a uniquely challenging educational program that incorporates intensive daily music instruction, fosters innovative teaching methods, imbues students with a love of learning and facilitates the development of the community through music, academic, and social inclusion. On June 14, 2016 the Board of Regents of the University of the State of New York granted the Charter School a provisional charter valid for a term of five years (through June 30, 2022) and renewable upon expiration.

Classification of net assets

To ensure observance of limitations and restrictions placed on the use of resources available to the Charter School, the accounts of the Charter School are maintained in accordance with the principles of accounting for not-for-profit organizations. This is the procedure by which resources are classified for reporting purposes into net asset groups, established according to their nature and purpose. Accordingly, all financial transactions have been recorded and reported by net asset group.

The assets, liabilities, activities, and net assets are classified based on the existence or absence of donor or grantor-imposed restrictions. Accordingly, net assets and changes therein are classified and reported as follows:

Net Assets Without Donor Restrictions

Net assets available for use in general operations and not subject to donor (or certain grantor) restrictions. The Board of Trustees has discretionary control to use these in carrying on operations in accordance with the guidelines established by the Charter School.

Net Assets With Donor Restrictions – Net assets subject to donor (or certain grantor) imposed restrictions. Some donor-imposed restrictions are temporary in nature, such as those that will be met by the passage of time or other events specified by the donor. Other donor-imposed restrictions are perpetual in nature, where the donor stipulates that resources be maintained in perpetuity. Donor-imposed restrictions are released when a restriction expires, that is, when the stipulated time has elapsed, when the stipulated purpose for which the resource was restricted has been fulfilled, or both. The Charter School had no assets with donor restrictions at June 30, 2020. The Charter School had \$160,000 of net assets with donor restrictions at June 30, 2021 as described in Note D.

Revenue and support recognition

Revenue from Exchange Transactions: The Charter School recognizes revenue in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) 2014-09, Revenue from Contracts with Customers, as amended. ASU 2014-09 applies to exchange transactions with customers that are bound by contracts or similar arrangements and establishes a performance obligation approach to revenue recognition.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, Cont'd

The Charter School records substantially all revenues over time as follows:

State and local per pupil operating revenue

The Charter School recognizes revenue as educational programming is provided to students throughout the year. The Charter School earns state and local per pupil revenue based on the approved per pupil tuition rate of the public school district in which the pupil resides. The amount received each year from the resident district is the product of the approved per pupil tuition rate and the full-time equivalent student enrollment of the Charter School. Each NYS school district has a fixed per pupil tuition rate which is calculated annually by NYSED in accordance with NYS Education Law. Amounts are billed in advance every other month and payments are typically received in six installments during the year. At the end of each school year, a reconciliation of actual enrollment to billed enrollment is performed and any additional amounts due or excess funds received are agreed upon between the Charter School and the district(s) and are paid or recouped. Additional funding is available for students requiring special education services. The amount of additional funding is dependent upon the length of time and types of services provided by the School to each student, subject to a maximum amount based upon a set rate for each district as calculated by NYSED.

The following table summarizes contract balances at their respective statement of financial position dates:

	June 30,		
	2021	2020	2019
Grants and other receivables	\$ 51,108	\$ 206,993	\$ 39,013

Contributions

The Charter School recognizes contributions when cash, securities or other assets, an unconditional promise to give, or a notification of a beneficial interest is received. Conditional promises to give, that is, those with a measurable performance or other barrier, and a right of return, are not recognized until the conditions on which they depend have been substantially met.

Contributions and unconditional promises to give are recorded as revenue in the appropriate class of net assets depending on the existence of any donor restrictions. A contribution that is received and expended in the same period for a specific purpose is classified as revenue without donor restrictions.

Contributions are recorded as restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated purpose restriction is accomplished, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities and changes in net assets as net assets released from restrictions.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, Cont'd

Grant revenue

Some of the Charter School's revenue is derived from cost-reimbursable federal and state contracts and grants, which are conditioned upon certain performance requirements and/or the incurrence of allowable qualifying expenses. Amounts received are recognized as revenue when the Charter School has incurred expenditures in compliance with specific contract or grant provisions. Certain grants are subject to audit and retroactive adjustments by its funders. Any changes resulting from these audits are recognized in the year they become known. Qualifying expenditures that have been incurred but are yet to be reimbursed are reported as grants receivable in the accompanying statement of financial position. There were no amounts received prior to incurring qualifying expenditures, which would be reported as deferred revenue in the accompanying statement of financial position at June 30, 2021 and 2020, respectively. The Organization has not any received cost-reimbursement grants that have not been recognized at June 30, 2021 and 2020, because qualifying expenditures have not yet been incurred.

Cash

Cash balances are maintained at a financial institution located in New York and are insured by the Federal Deposit Insurance Corporation up to \$250,000. In the normal course of business, the cash account balances at any given time may exceed insured limits. However, the Charter School has not experienced any losses in such accounts and does not believe it is exposed to significant risk in cash.

Cash in escrow

The Charter School is required to maintain cash in an escrow account in accordance with the terms of its charter agreement. The agreement requires \$25,000 to be placed in escrow each of the first three years of operations and a balance of \$75,000 be maintained to fund any audit and legal expenses incurred should the Charter School cease operations and dissolve. The amount in escrow was \$75,206 and \$75,130 at June 30, 2021 and 2020, respectively.

Grants and other receivables

Grants and other receivables are stated at the amount management expects to collect from outstanding balances. Management provides for probable uncollectible amounts based on its assessment of the current status of individual receivables from grants, agencies and others. Balances that are still outstanding after management has used reasonable collection efforts are written off against the allowance for doubtful accounts. There was no allowance for doubtful accounts at June 30, 2021. At June 30, 2020, the allowance for doubtful accounts was \$105,637.

Pledges receivable

Pledges receivable represent unconditional promises to give. Those that are expected to be collected within one year are recorded at their net realizable value. For amounts to be collected in future years, no discount was considered necessary to record estimated future collections at their present value. There was no allowance for uncollectible pledges receivable at June 30, 2021 and 2020.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, Cont'd

Property and equipment

Property and equipment are recorded at cost. Depreciation and amortization are computed using the straight-line method on a basis considered adequate to depreciate the assets over their estimated useful lives, which range from three to seven years.

Major renewals and betterments are capitalized, while repairs and maintenance are charged to operations as incurred. Upon sale or retirement, the related cost and allowances for depreciation are removed from the accounts and the related gain or loss is reflected in operations.

Debt issuance costs

Debt issuance costs are stated at cost and are amortized over the term of the debt. The Charter School shows debt issuance costs as a deduction from the carrying amount of the debt, net on the accompanying statement of financial position.

Contributed services

The Charter School is located in a New York City Department of Education facility and utilizes approximately 39,000 square feet at no charge. In addition, the Charter School receives contributed services from volunteers to develop its academic program and to serve on the Board of Trustees, and received transportation services provided by the local district. The Charter School was unable to determine a value for these services.

Tax exempt status

The Charter School is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code and applicable state regulations and, accordingly, is exempt from federal and state taxes on income.

The Charter School files Form 990 tax returns in the U.S. federal jurisdiction. The tax returns for the years ended June 30, 2018 through June 30, 2021 are still subject to potential audit by the IRS. Management of the Charter School believes it has no material uncertain tax positions and, accordingly, it has not recognized any liability for unrecognized tax benefits.

Marketing costs

The Charter School expenses marketing costs as they are incurred. Total marketing and recruiting costs approximated \$39,600 and \$25,700 for the years ended June 30, 2021 and June 30, 2020, respectively.

Use of estimates in the preparation of financial statements

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 revenue and expenses during the reporting period. Actual results could differ from those estimates.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, Cont'd

Functional allocation of expenses

The costs of programs and supporting services activities have been summarized on a functional basis in the statement of activities. The statements of functional expenses present the natural classification detail of expenses by function. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

Comparatives for the period ended June 30, 2020

The financial statements include certain prior period summarized comparative information in total but not by net asset class or functional classification. Such information does not include sufficient detail to constitute a presentation in conformity with accounting principles generally accepted in the United States of America. Accordingly, such information should be read in conjunction with Charter School's financial statements for the period ended June 30, 2020, from which the summarized information was derived.

New accounting pronouncements:

Leases

In February 2016, the FASB issued a new standard related to leases to increase transparency and comparability among entities by requiring the recognition of right-of-use ("ROU") assets and lease liabilities on the statement of financial position. Most prominent among the changes in the standard is the recognition of ROU assets and lease liabilities by lessees for those leases classified as operating leases under current U.S. GAAP. For nonpublic entities, the FASB voted on May 20, 2020, to extend the guidance in this new standard to be effective for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022. The Charter School is currently evaluating the provisions of this standard to determine the impact the new standard will have on the Charter School's financial position or results of operations.

Gifts-in-kind

In September 2020, the FASB issued a new accounting update to improve transparency in the reporting of contributed nonfinancial assets, also known as gifts-in-kind. The update requires not-for-profit entities to present contributed nonfinancial assets separately on the statement of activities, apart from contributions of cash and other financial assets. In addition, the update requires not-for-profit entities to disclose in the notes to the financial statements a breakout of the different types of gifts-in-kind recognized, any donor restrictions associated with the gift, the valuation technique(s) used to arrive at the fair value measure, whether or not the gift-in-kind was monetized, and any policies on monetization. The update is effective for fiscal years beginning after June 15, 2021 and will be applied on a retrospective basis. The Charter School is currently evaluating the provisions of this update to determine the impact it will have on the Charter School's financial statements.

Subsequent events

The Charter School has conducted an evaluation of potential subsequent events occurring after the statement of financial position date through October 26, 2021, which is the date the financial statements are available to be issued. See Note F, Note J, and Note K.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE B: LIQUIDITY AND AVAILABILITY

The Charter School regularly monitors liquidity required to meet its operating needs and other contractual commitments. The Charter School's main source of liquidity is its cash accounts.

For purposes of analyzing resources available to meet general expenditures over a 12-month period, the Charter School considers all expenditures related to its ongoing activities of education and public service as well as the conduct of services undertaken to support those activities to be general expenditures.

In addition to financial assets available to meet general expenditures over the next 12 months, the Charter School operates with a balanced budget and anticipates collecting sufficient revenue to cover general expenditures not covered by donor-restricted resources. Refer to the statement of cash flows which identifies the sources and uses of the Charter School's cash and shows positive cash generated by operations for fiscal years 2021 and 2020.

Financial assets available for general expenditure, that is, without donor or other restrictions limiting their use, within one year of the statement of financial position date, comprise the following at June 30, 2021 and 2020:

	June 30,	
	2021	2020
Cash	\$ 844,506	\$ 383,352
Grants and other receivables	200,226	290,876
Current portion of pledges receivable	<u>120,000</u>	<u>-</u>
Total financial assets available to management for general expenditures within one year	<u>\$ 1,164,732</u>	<u>\$ 674,228</u>

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE C: PROPERTY AND EQUIPMENT

Property and equipment consisted of the following:

	June 30,	
	2021	2020
Furniture	\$ 180,862	\$ 140,516
Office equipment	83,058	77,713
Leasehold improvements	69,475	69,475
Musical equipment	127,540	95,748
Computer equipment	64,735	64,735
Construction-in-progress	326,068	280,180
	851,738	728,367
Less accumulated depreciation and amortization	302,813	222,026
	<u>\$ 548,925</u>	<u>\$ 506,341</u>

At June 30, 2021, the Charter School had construction-in-progress of \$326,068 relating to costs for a new facility (see Note F). No provision for depreciation will be made for these costs until the facility is put into use. The Charter School entered into a contract for architectural services in connection with the new facility for \$987,200. As of June 30, 2021 no amounts had been billed under this contract. During the year ended June 30, 2021, as further described in Note F, the Charter School determined certain costs incurred relating to the 181st Street site were impaired when the location was no longer deemed viable. As a result, construction-in-progress of \$279,162 was written off during the year ended June 30, 2021.

NOTE D: NET ASSETS

Net assets without donor restrictions consist of the following:

	June 30,	
	2021	2020
Undesignated net assets	\$ 766,452	\$ 361,077
Invested in property and equipment, net of related debt	224,790	336,661
	<u>\$ 991,242</u>	<u>\$ 697,738</u>

Net assets with donor restrictions consist of the following:

	June 30,	
	2021	2020
Restricted due to time	<u>\$ 160,000</u>	<u>\$ -</u>

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE E: LINE OF CREDIT

The Charter School entered into a \$75,000 line of credit with a credit union in August 2018. The interest rate on the line of credit is fixed at 9.75%. There were no borrowings on the line of credit during the years ended June 30, 2021 and 2020.

NOTE F: SCHOOL FACILITY

During 2017, the Charter School received approval from the New York City Department of Education for use of dedicated and shared space for no charge at Middle School 328 Community Math & Science Prep, a New York Public School located at 401 West 164th Street, New York, NY.

During 2019, the Charter School began exploring alternative options for a permanent location and in April 2019, the Charter School signed a non-binding letter of intent to enter into a ground lease for a permanent location. The Board of Trustees approved expenditure of up to \$214,000 to explore obtaining necessary approvals. In January 2020, Friends of WHIN Music Community Charter School ("Friends of WHIN") entered into a lease for this location. Friends of WHIN has one board member in common with the Charter School.

On February 6, 2020, the Charter School signed a sublease with Friends of WHIN for a property located on West 181st Street, New York, NY, dependent on the premises being delivered to the Charter School ready for occupancy. Friends of WHIN was unable to obtain a Certificate of Occupancy and the agreement with the Charter School was terminated, effective June 30, 2021. Prior to termination, rent was abated in its entirety for the year ended June 30, 2021, in accordance with the terms of the sublease.

On June 15, 2021, the Charter School signed a sublease with Friends of WHIN for a property located on West 162nd Street, New York, NY. Friends of WHIN is responsible for completing certain work on the premises to prepare the premises for the Charter School's occupancy. The commencement date of the sublease is contingent on Friends of WHIN securing a loan to finance the work to be done to prepare the facility for the Charter School's occupancy. Upon commencement of the lease, the Charter School will be required to pay a security deposit of \$225,000 in the form of cash or letter of credit. The term of the sublease shall be for approximately forty (40) years, commencing on the commencement date as described above. Each sublease year will run from July 1st to June 30th. The first rental year shall run from the commencement date through June 30th of the year the commencement date occurs.

Future expected minimum payments of this lease are approximately as follows:

<u>Year ending June 30,</u>	<u>Amount</u>
2022	\$ 210,000
2023	420,000
2024	2,559,300
2025	2,769,300
2026	2,769,300
Thereafter	<u>105,568,300</u>
	<u>\$ 114,296,200</u>

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE F: SCHOOL FACILITY, Cont'd

As of October 26, 2021, Friends of WHIN has not secured financing for the work to be done to prepare the facility for the Charter School's occupancy, and, therefore, the lease commencement date has not yet been established.

Effective August 18, 2021, the Charter School entered into a sublease agreement with Friends of WHIN for facility space located on St. Nicholas Avenue, New York, NY, commencing August 2021 and expiring August 2023.

Future expected minimum payments of this lease are approximately as follows:

<u>Year ending June 30,</u>	<u>Amount</u>
2022	\$ 439,400
2023	1,443,600
2024	272,000
	<u>\$ 2,155,000</u>

NOTE G: CONTINGENCY

Certain grants and contracts may be subject to audit by funding sources. Such audits might result in disallowance of costs submitted for reimbursement by the Charter School. Management is of the opinion that such disallowances, if any, will not have a material effect on the accompanying financial statements. Accordingly, no amounts have been provided in the accompanying financial statements for such potential claims.

NOTE H: CONCENTRATIONS

At June 30, 2021 and 2020, grants and other receivables and pledges receivable are comprised of the following:

	<u>June 30,</u>	
	<u>2021</u>	<u>2020</u>
New York State	40%	80%
Foundation A	21%	**
Foundation B	14%	**
Per Pupil - District A	**	16%

**Balance represents less than 10% of total grants and other receivables and pledges receivable

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE H: CONCENTRATIONS, Cont'd

During the years ended June 30, 2021 and 2020 total operating revenue and support came from the following sources:

	June 30,	
	<u>2021</u>	<u>2020</u>
New York City per-pupil	87%	94%

The per-pupil rate is set annually by the State based on the school district in which the Charter School's students are located.

NOTE I: RETIREMENT PLAN

The Charter School sponsors a 403(b) retirement plan ("the Plan") for its employees. All employees are immediately eligible to participate in the Plan. The Plan allows for the Charter School to make a matching contribution to the Plan. The Charter School contributed approximately \$21,200 and \$19,100 the Plan for the years ended June 30, 2021 and June 30, 2020, respectively.

NOTE J: OPERATING LEASES

The Charter School entered into non-cancellable lease agreements for office equipment expiring at various dates through October 2024, including two leases entered in August 2021. The future payments on these agreements are as follows:

<u>Year ending June 30,</u>	<u>Amount</u>
2022	\$ 15,286
2023	12,060
2024	12,060
2025	4,020
	<u>\$ 43,426</u>

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE K: NOTE PAYABLE

On March 26, 2020 the Charter School entered into a loan agreement with Nonprofit Finance Fund (NFF) for a loan with a maximum aggregate principal amount of \$600,000 to be used for closing costs and to finance predevelopment activities related to improvements for a site on West 181st Street, New York, NY (the “project”), the future site of the Charter School’s facility. As further described in Note F, during the year ended June 30, 2021, this site was no longer deemed viable and an alternative site was identified. NFF approved continuation of the loan relating to the alternative site. As of June 30, 2020, the Charter School borrowed \$113,372 of the amount available on this loan. On July 28, 2020, the Charter School borrowed an additional \$146,561 on this loan and interest accumulated to date totaling \$18,224 was added to the note payable balance at June 30, 2021. The interest rate is fixed at 6.75%, annually, with interest-only payments due monthly. The loan was scheduled to mature on the earlier of March 26, 2021 or the closing of permanent construction financing for the project at which point all outstanding principal and interest would be due. The loan was subsequently refinanced, with the interest rate remaining fixed at 6.75% annually, and full principal and interest due on September 1, 2021. Effective September 1, 2021, the loan was further amended to increase the maximum principal amount to \$850,000 and extend the maturity date to the earlier of February 1, 2022 or the date of closing on permanent construction financing.

The note payable balance of \$278,157 is shown net of related debt acquisition costs totaling \$12,911 on the accompanying statement of financial position for the year ended June 30, 2021.

In connection with the note payable, the Charter School is required to maintain compliance with certain covenants. At June 30, 2021, the Charter School was in compliance with these covenants.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021
(With Comparative Totals for 2020)

NOTE L: LONG-TERM DEBT

	June 30,	
	2021	2020
Contract to purchase musical instruments. The Contract requires quarterly payments of \$3,007 beginning December 2018 through September 2022.	\$ 15,038	\$ 27,067
Contract to purchase musical instruments. The Contract requires quarterly payments of \$2,249 beginning December 2019 through September 2023.	20,243	29,241
Contract to purchase musical instruments. The Contract requires quarterly payments of \$1,816 beginning December 2020 through September 2024.	23,608	-
	58,889	56,308
Less: current portion of long-term debt	28,291	21,027
	<u>\$ 30,598</u>	<u>\$ 35,281</u>

Future maturities of long-term debt are as follows:

<u>Year ending June 30,</u>	<u>Amount</u>
2022	\$ 28,291
2023	19,269
2024	9,513
2025	1,816
	<u>\$ 58,889</u>

NOTE M: FUNCTIONAL EXPENSES

The financial statements report certain categories of expenses that are attributed to more than one program or supporting function. Therefore, expenses require allocation on a reasonable basis that is consistently applied. All expenses that are allocated to more than one program or supporting function are allocated on the basis of estimates of time, effort, and usage.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2021

(With Comparative Totals for 2020)

NOTE N: FINANCIAL IMPACT OF COVID-19 OUTBREAK

On January 30, 2020, the World Health Organization (“WHO”) announced a global health emergency because of a new strain of coronavirus (the “COVID-19 outbreak”) and the risks to the international community as the virus spreads globally beyond its point of origin. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. The full impact of the COVID-19 outbreak continues to evolve as of the date of this report. As such, it is uncertain as to the full magnitude that the pandemic will have on the Charter School’s financial condition, liquidity, and future results of operations. Management is actively monitoring the global situation on its financial condition, liquidity, operations, suppliers, industry, and workforce. Given the daily evolution of the COVID-19 outbreak and the global responses to curb its spread, the Charter School is not able to estimate the effects of the COVID-19 outbreak on its results of operations, financial condition, or liquidity for fiscal year 2022.

In response to the COVID-19 outbreak, the Federal Government passed several COVID relief acts which include funding for elementary and secondary education. The Elementary and Secondary School Emergency Relief Fund (ESSER Fund) was established to award grants to state and local educational agencies. The Charter School has recognized \$60,387 of revenue relative to ESSER grants during the year ended June 30, 2021.

NOTE O: RENEWAL PROCESS

The Charter School is currently in the process of renewing its charter as granted by the New York State Board of Regents. The charter currently expires June 30, 2022. The renewal process includes review by New York State Department of Education (NYSED) of various operational and governance aspects, including fiscal health and internal controls, board governance, and academic performance. Upon review of the renewal application and results, NYSED will determine if the charter should be renewed and if so, for how long. Successful charter renewals can range from one to five years. At this time, management of the Charter School expects the charter to be renewed.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

REPORT REQUIRED BY GOVERNMENT AUDITING STANDARDS

**INDEPENDENT AUDITOR'S 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**

Board of Trustees
WHIN Music Community Charter School

We have audited, 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, the financial statements of WHIN Music Community Charter School, which comprise the statement of financial position as of June 30, 2021 and the related statements of activities and changes in net assets, functional expenses, and cash flows for the year then ended, and the related notes to the financial statements, and have issued our report thereon dated October 26, 2021.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered WHIN Music Community Charter 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 WHIN Music Community Charter School's internal control. Accordingly, we do not express an opinion on the effectiveness of WHIN Music Community Charter 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 a 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 that might be material weaknesses or significant deficiencies, and therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control over financial reporting 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 WHIN Music Community Charter School's financial statements are free from 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.

Mengel, Metzger, Baw & Co. LLP

Rochester, New York
October 26, 2021

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APPENDIX E

**AUDITED FINANCIAL STATEMENTS, OTHER FINANCIAL INFORMATION AND
INDEPENDENT AUDITOR'S REPORT OF THE CHARTER SCHOOL FOR THE FISCAL
YEAR ENDED JUNE 30, 2020**

(attached)

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WHIN MUSIC COMMUNITY CHARTER SCHOOL

NEW YORK, NEW YORK

AUDITED FINANCIAL STATEMENTS

REPORT REQUIRED BY
GOVERNMENT AUDITING STANDARDS

AND

INDEPENDENT AUDITOR'S REPORTS

JUNE 30, 2020
(With Comparative Totals for 2019)

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INDEPENDENT AUDITOR'S REPORT

Board of Trustees
WHIN Music Community Charter School

Report on the Financial Statements

We have audited the accompanying financial statements of WHIN Music Community Charter School, which comprise the statement of financial position as of June 30, 2020, and the related statements of activities and changes in net assets, functional expenses, and cash flows for the year 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 audit. We conducted our audit 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 audit 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 entity'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 entity'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 WHIN Music Community Charter School as of June 30, 2020, and the changes in its net assets and its cash flows for the year then ended, in accordance with accounting principles generally accepted in the United States of America.

Report on Summarized Comparative Information

We have previously audited WHIN Music Community Charter School's June 30, 2019 financial statements, and we expressed an unmodified audit opinion on those audited financial statements in our report dated October 15, 2019. In our opinion, the summarized comparative information presented herein as of and for the year ended June 30, 2019 is consistent, in all material respects, with the audited financial statements from which it has been derived.

Other Report Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated October 28, 2020 on our consideration of WHIN Music Community Charter 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 WHIN Music Community Charter School's internal control over financial reporting and compliance.

Emphasis of Matters

As discussed in Note A to the financial statements, in 2020, WHIN Music Community Charter School adopted new accounting guidance for recognition of revenue, contributions received, and statement of cash flows presentation. Our opinion is not modified with respect to these matters.

Mengel, Metzger, Barw & Co. LLP

Rochester, New York
October 28, 2020

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF FINANCIAL POSITION

JUNE 30, 2020

(With Comparative Totals for 2019)

		June 30,	
<u>ASSETS</u>		<u>2020</u>	<u>2019</u>
<u>CURRENT ASSETS</u>			
Cash		\$ 383,352	\$ 483,369
Grants and other receivables, net of allowance for doubtful accounts of \$105,637 at June 30, 2020		290,876	157,807
Pledges receivable		-	25,000
Prepaid expenses and other current assets		25,108	27,213
TOTAL CURRENT ASSETS		699,336	693,389
<u>OTHER ASSETS</u>			
Property and equipment, net		506,341	244,178
Cash in escrow		75,130	50,079
		581,471	294,257
TOTAL ASSETS		\$ 1,280,807	\$ 987,646
<u>LIABILITIES AND NET ASSETS</u>			
<u>CURRENT LIABILITIES</u>			
Accounts payable and accrued expenses		\$ 205,628	\$ 110,856
Accrued payroll and benefits		207,761	208,702
Note payable		113,372	-
Current portion of long-term debt		21,027	12,030
TOTAL CURRENT LIABILITIES		547,788	331,588
<u>LONG-TERM DEBT, net of current portion</u>		35,281	27,067
TOTAL LIABILITIES		583,069	358,655
<u>NET ASSETS</u>			
Without donor restrictions		697,738	603,991
With donor restrictions		-	25,000
TOTAL NET ASSETS		697,738	628,991
TOTAL LIABILITIES AND NET ASSETS		\$ 1,280,807	\$ 987,646

The accompanying notes are an integral part of the financial statements.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF ACTIVITIES AND CHANGES IN NET ASSETS

YEAR ENDED JUNE 30, 2020
(With Comparative Totals for 2019)

	Year ended June 30,			
	2020			2019
	Without donor restrictions	With donor restrictions	Total	Total
Operating revenue and support:				
State and local per pupil				
operating revenue	\$ 3,620,534	\$ -	\$ 3,620,534	\$ 2,516,052
Government grants	135,888	-	135,888	420,285
Private grants	77,543	-	77,543	91,455
Other income	5,660	-	5,660	3,696
Net assets released from restriction	<u>25,000</u>	<u>(25,000)</u>	<u>-</u>	<u>-</u>
TOTAL OPERATING				
REVENUE AND SUPPORT	3,864,625	(25,000)	3,839,625	3,031,488
Expenses:				
Program:				
Regular education	1,860,426	-	1,860,426	1,494,716
Special education	988,353	-	988,353	777,358
Management and general	835,499	-	835,499	608,800
Fundraising	<u>86,600</u>	<u>-</u>	<u>86,600</u>	<u>15,029</u>
TOTAL EXPENSES	<u>3,770,878</u>	<u>-</u>	<u>3,770,878</u>	<u>2,895,903</u>
CHANGE IN NET ASSETS	93,747	(25,000)	68,747	135,585
Net assets at beginning of year	<u>603,991</u>	<u>25,000</u>	<u>628,991</u>	<u>493,406</u>
NET ASSETS AT END OF YEAR	<u>\$ 697,738</u>	<u>\$ -</u>	<u>\$ 697,738</u>	<u>\$ 628,991</u>

The accompanying notes are an integral part of the financial statements.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF FUNCTIONAL EXPENSES

YEAR ENDED JUNE 30, 2020
 (With Comparative Totals for 2019)

	No. of Positions	Year Ended June 30,							Total
		2020						2019	
		Program Services			Supporting Services				
		Regular Education	Special Education	Sub-total	Management and General	Fundraising	Sub-total	Total	Total
Personnel Services Costs:									
Administrative staff personnel	11	\$ 359,149	\$ 55,254	\$ 414,403	\$ 344,805	\$ 50,000	\$ 394,805	\$ 809,208	\$ 634,050
Instructional personnel	23	818,536	584,668	1,403,204	-	-	-	1,403,204	1,101,794
Total personnel services costs	34	1,177,685	639,922	1,817,607	344,805	50,000	394,805	2,212,412	1,735,844
Fringe benefits and payroll taxes		286,061	155,438	441,499	83,753	12,145	95,898	537,397	403,529
Retirement		10,152	5,516	15,668	2,972	431	3,403	19,071	13,582
Legal service		-	-	-	20,475	-	20,475	20,475	14,185
Accounting / audit services		-	-	-	205,244	-	205,244	205,244	188,064
Other purchased / professional / consulting services		46,362	42,092	88,454	13,574	16,968	30,542	118,996	119,000
Repairs and maintenance		6,894	3,746	10,640	2,018	293	2,311	12,951	425
Insurance		18,870	10,254	29,124	5,525	801	6,326	35,450	28,914
Supplies / materials		53,366	16,897	70,263	-	-	-	70,263	75,509
Equipment / furnishings		5,472	2,973	8,445	1,602	232	1,834	10,279	2,642
Staff development		39,576	21,504	61,080	11,587	1,680	13,267	74,347	52,995
Marketing / recruitment		15,848	6,950	22,798	2,495	362	2,857	25,655	51,991
Technology		37,026	18,847	55,873	9,198	1,334	10,532	66,405	68,674
Student services		107,677	34,092	141,769	-	-	-	141,769	36,276
Office expense		2,853	1,549	4,402	12,300	121	12,421	16,823	29,080
Depreciation		52,584	28,573	81,157	15,395	2,233	17,628	98,785	69,841
Other		-	-	-	104,556	-	104,556	104,556	5,352
		<u>\$ 1,860,426</u>	<u>\$ 988,353</u>	<u>\$ 2,848,779</u>	<u>\$ 835,499</u>	<u>\$ 86,600</u>	<u>\$ 922,099</u>	<u>\$ 3,770,878</u>	<u>\$ 2,895,903</u>

The accompanying notes are an integral part of the financial statements.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF CASH FLOWS

YEAR ENDED JUNE 30, 2020
(With Comparative Totals for 2019)

	Year ended June 30,	
	2020	2019
<u>CASH FLOWS - OPERATING ACTIVITIES</u>		
Change in net assets	\$ 68,747	\$ 135,585
Adjustments to reconcile change in net assets to net cash provided from operating activities:		
Depreciation and amortization	98,785	69,841
Bad debts	105,637	-
Changes in certain assets and liabilities affecting operations:		
Grants and other receivables	(238,706)	(89,482)
Pledges receivable	25,000	100,000
Prepaid expenses and other current assets	2,105	(19,213)
Accounts payable and accrued expenses	94,772	(98,782)
Accrued payroll and benefits	(941)	96,896
NET CASH PROVIDED FROM OPERATING ACTIVITIES	<u>155,399</u>	<u>194,845</u>
<u>CASH FLOWS - INVESTING ACTIVITIES</u>		
Purchases of property and equipment	<u>(324,960)</u>	<u>(41,289)</u>
NET CASH USED FOR INVESTING ACTIVITIES	<u>(324,960)</u>	<u>(41,289)</u>
<u>CASH FLOWS - FINANCING ACTIVITIES</u>		
Repayments on long term debt	(18,777)	(9,023)
Repayments on note payable	-	(30,000)
Borrowings on note payable	<u>113,372</u>	<u>-</u>
NET CASH PROVIDED FROM (USED FOR) FINANCING ACTIVITIES	<u>94,595</u>	<u>(39,023)</u>
NET (DECREASE) INCREASE IN CASH AND RESTRICTED CASH	(74,966)	114,533
Cash and restricted cash at beginning of year	<u>533,448</u>	<u>418,915</u>
CASH AND RESTRICTED CASH AT END OF YEAR	<u>\$ 458,482</u>	<u>\$ 533,448</u>

WHIN MUSIC COMMUNITY CHARTER SCHOOL

STATEMENT OF CASH FLOWS, Cont'd

YEAR ENDED JUNE 30, 2020
(With Comparative Totals for 2019)

	<u>June 30,</u>	
	<u>2020</u>	<u>2019</u>
<u>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</u>		
Reconciliation of cash reported within the statement of financial position that sum to the total amounts shown in the statement of cash flows		
Cash	\$ 383,352	\$ 483,369
Cash in escrow	<u>75,130</u>	<u>50,079</u>
Total cash and restricted cash shown in the statement of cash flows	<u>\$ 458,482</u>	<u>\$ 533,448</u>
 <u>NON-CASH OPERATING AND INVESTING ACTIVITIES</u>		
Purchases of property and equipment included in accounts payable	<u>\$ -</u>	<u>\$ 27,526</u>
 <u>NON-CASH INVESTING AND FINANCING ACTIVITIES</u>		
Purchases of property and equipment financed with long-term debt	<u>\$ 35,988</u>	<u>\$ 48,120</u>

The accompanying notes are an integral part of the financial statements.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Charter School

WHIN Music Community Charter School (the “Charter School”) is an educational corporation that operates as a charter school in New York, New York. The Charter School provides a uniquely challenging educational program that incorporates intensive daily music instruction, fosters innovative teaching methods, imbues students with a love of learning and facilitates the development of the community through music, academic, and social inclusion. On June 14, 2016 the Board of Regents of the University of the State of New York granted the Charter School a provisional charter valid for a term of five years (through June 30, 2022) and renewable upon expiration.

Classification of net assets

To ensure observance of limitations and restrictions placed on the use of resources available to the Charter School, the accounts of the Charter School are maintained in accordance with the principles of accounting for not-for-profit organizations. This is the procedure by which resources are classified for reporting purposes into net asset groups, established according to their nature and purpose. Accordingly, all financial transactions have been recorded and reported by net asset group.

The assets, liabilities, activities, and net assets are classified based on the existence or absence of donor or grantor-imposed restrictions. Accordingly, net assets and changes therein are classified and reported as follows:

Net Assets Without Donor Restrictions

Net assets available for use in general operations and not subject to donor (or certain grantor) restrictions. The Board of Trustees has discretionary control to use these in carrying on operations in accordance with the guidelines established by the Charter School.

Net Assets With Donor Restrictions – Net assets subject to donor (or certain grantor) imposed restrictions. Some donor-imposed restrictions are temporary in nature, such as those that will be met by the passage of time or other events specified by the donor. Other donor-imposed restrictions are perpetual in nature, where the donor stipulates that resources be maintained in perpetuity. Donor-imposed restrictions are released when a restriction expires, that is, when the stipulated time has elapsed, when the stipulated purpose for which the resource was restricted has been fulfilled, or both. The Charter School had no assets with donor restrictions at June 30, 2020. The Charter School had \$25,000 of net assets with donor restrictions at June 30, 2019 as described in Note D.

Revenue and support recognition

Revenue from Exchange Transactions: The Charter School recognizes revenue in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Update (ASU) 2014-09, Revenue from Contracts with Customers, as amended. ASU 2014-09 applies to exchange transactions with customers that are bound by contracts or similar arrangements and establishes a performance obligation approach to revenue recognition.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, Cont'd

The Charter School records substantially all revenues over time as follows:

State and local per pupil operating revenue

The Charter School recognizes revenue as educational programming is provided to students throughout the year. The Charter School earns state and local per pupil revenue based on the approved per pupil tuition rate of the public school district in which the pupil resides. The amount received each year from the resident district is the product of the approved per pupil tuition rate and the full-time equivalent student enrollment of the Charter School. Each NYS school district has a fixed per pupil tuition rate which is calculated annually by NYSED in accordance with NYS Education Law. Amounts are billed in advance every other month and payments are typically received in six installments during the year. At the end of each school year, a reconciliation of actual enrollment to billed enrollment is performed and any additional amounts due or excess funds received are agreed upon between the Charter School and the district(s) and are paid or recouped. Additional funding is available for students requiring special education services. The amount of additional funding is dependent upon the length of time and types of services provided by the School to each student, subject to a maximum amount based upon a set rate for each district as calculated by NYSED.

The following table summarizes contract balances at their respective statement of financial position dates:

	June 30,		
	2020	2019	2018
Grants and other receivables	\$ 206,993	\$ 39,013	\$ 28,568

Contributions

The Charter School recognizes contributions when cash, securities or other assets, an unconditional promise to give, or a notification of a beneficial interest is received. Conditional promises to give, that is, those with a measurable performance or other barrier, and a right of return, are not recognized until the conditions on which they depend have been substantially met.

Contributions and unconditional promises to give are recorded as revenue in the appropriate class of net assets depending on the existence of any donor restrictions. A contribution that is received and expended in the same period for a specific purpose is classified as revenue without donor restrictions.

Contributions are recorded as restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated purpose restriction is accomplished, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statement of activities and changes in net assets as net assets released from restrictions.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, Cont'd

Grant revenue

Some of the Charter School's revenue is derived from cost-reimbursable federal and state contracts and grants, which are conditioned upon certain performance requirements and/or the incurrence of allowable qualifying expenses. Amounts received are recognized as revenue when the Charter School has incurred expenditures in compliance with specific contract or grant provisions. Certain grants are subject to audit and retroactive adjustments by its funders. Any changes resulting from these audits are recognized in the year they become known. Qualifying expenditures that have been incurred but are yet to be reimbursed are reported as grants receivable in the accompanying statement of financial position. There were no amounts received prior to incurring qualifying expenditures, which would be reported as deferred revenue in the accompanying statement of financial position at June 30, 2020 and 2019, respectively. The Organization has not any received cost-reimbursement grants that have not been recognized at June 30, 2020 and 2019, because qualifying expenditures have not yet been incurred.

Cash

Cash balances are maintained at a financial institution located in New York and are insured by the Federal Deposit Insurance Corporation up to \$250,000. In the normal course of business, the cash account balances at any given time may exceed insured limits. However, the Charter School has not experienced any losses in such accounts and does not believe it is exposed to significant risk in cash.

Cash in escrow

The Charter School is required to maintain cash in an escrow account in accordance with the terms of its charter agreement. The agreement requires \$25,000 to be placed in escrow each of the first three years of operations and a balance of \$75,000 be maintained to fund any audit and legal expenses incurred should the Charter School cease operations and dissolve. The amount in escrow was \$75,130 and 50,079 at June 30, 2020 and 2019, respectively.

Grants and other receivables

Grants and other receivables are stated at the amount management expects to collect from outstanding balances. Management provides for probable uncollectible amounts based on its assessment of the current status of individual receivables from grants, agencies and others. Balances that are still outstanding after management has used reasonable collection efforts are written off against the allowance for doubtful accounts. At June 30, 2020, the allowance for doubtful accounts was \$105,637. There was no allowance for doubtful accounts at June 30, 2019.

Pledges receivable

Pledges receivable represent unconditional promises to give. Those that are expected to be collected within one year are recorded at their net realizable value. For amounts to be collected in future years, no discount was considered necessary to record estimated future collections at their present value. There was no allowance for uncollectible pledges receivable at June 30, 2020 and 2019.

Property and equipment

Property and equipment are recorded at cost. Depreciation and amortization are computed using the straight-line method on a basis considered adequate to depreciate the assets over their estimated useful lives, which range from three to seven years.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, Cont'd

Contributed services

The Charter School is located in a New York City Department of Education facility and utilizes approximately 39,000 square feet at no charge. In addition, the Charter School receives contributed services from volunteers to develop its academic program and to serve on the Board of Trustees, and received transportation services provided by the local district. The Charter School was unable to determine a value for these services.

Tax exempt status

The Charter School is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code and applicable state regulations and, accordingly, is exempt from federal and state taxes on income.

The Charter School files Form 990 tax returns in the U.S. federal jurisdiction. The tax returns for the years ended June 30, 2017 through June 30, 2020 are still subject to potential audit by the IRS. Management of the Charter School believes it has no material uncertain tax positions and, accordingly, it has not recognized any liability for unrecognized tax benefits.

Marketing costs

The Charter School expenses marketing costs as they are incurred. Total marketing and recruiting costs approximated \$25,700 and \$52,000 for the years ended June 30, 2020 and June 30, 2019, respectively.

Use of estimates in the preparation of financial statements

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 revenue and expenses during the reporting period. Actual results could differ from those estimates.

Functional allocation of expenses

The costs of programs and supporting services activities have been summarized on a functional basis in the statement of activities. The statements of functional expenses present the natural classification detail of expenses by function. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

Comparatives for the period ended June 30, 2019

The financial statements include certain prior period summarized comparative information in total but not by net asset class or functional classification. Such information does not include sufficient detail to constitute a presentation in conformity with accounting principles generally accepted in the United States of America. Accordingly, such information should be read in conjunction with Charter School's financial statements for the period ended June 30, 2019, from which the summarized information was derived.

Reclassifications

Certain prior year amounts have been reclassified to conform with the current year presentation.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, Cont'd

Adoption of New Accounting Standards

Revenue from contracts with customers

In May 2014, the Financial Accounting Standards Board ("FASB") issued new guidance related to revenue recognition (ASC 606), which provides a five-step analysis of contracts to determine when and how revenue is recognized and replaces most existing revenue recognition guidance in U.S. generally accepted accounting principles. The core principle of the new guidance is that an entity should recognize revenue to reflect the transfer of goods and services to customers in an amount equal to the consideration the entity receives or expects to receive. ASC 606 is effective for annual reporting periods beginning after December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019. The Charter School adopted ASC 606 with a date of the initial application of July 1, 2019.

The Charter School applied ASC 606 using the cumulative effect method, which generally requires the recognition of the cumulative effect of initially applying the new guidance as an adjustment to the opening balance of net assets, at July 1, 2019. There was no adjustment to the opening balance of net assets at July 1, 2019, as a result of this new accounting standard. In addition, the comparative information has not been adjusted and continues to be reported under existing revenue guidance. The Charter School does not expect the adoption of the new revenue standard to have a material impact on its change in net assets on an ongoing basis.

As part of the adoption of ASC 606, the Charter School elected to use the following transition practical expedients: (1) all contract modifications that occurred prior to the date of initial application when identifying the satisfied and unsatisfied performance obligation, determining the transaction price, and allocating the transaction price have been reflected in the aggregate; and (2) ASC 606 is applied only to contracts that are not completed at the initial date of application. Because contract modifications are minimal, there is not a significant impact as a result of electing these practical expedients.

Contributions received and contributions made

In June 2018, FASB issued Accounting Standards Update (ASU) 2018-08, "Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made". ASU 2018-08 assists entities in evaluating whether transactions should be accounted for as contributions or exchange transactions and determining whether a contribution is conditional. For most resource recipients, this standard is effective for annual reporting periods beginning after December 15, 2018. The Charter School adopted the provisions of ASU 2018-08 applicable to contributions received with a date of initial application of July 1, 2019 under a modified prospective basis. Accordingly, there is no effect on net assets.

Statement of cash flows

In November 2016, the FASB issued new guidance related to the statement of cash flows (ASC 230), which requires entities to include restricted cash in the reconciliation of the beginning-of-year to the end-of-year balance of cash in the statement of cash flows. ASC 230 is effective for annual reporting periods beginning after December 15, 2018, and interim periods within fiscal years beginning after December 2019. The Charter School adopted this standard as of July 1, 2019 using the retrospective transition method.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE A: THE CHARTER SCHOOL AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES., Cont'd

New accounting pronouncement - leases

In February 2016, the FASB issued a new standard related to leases to increase transparency and comparability among entities by requiring the recognition of right-of-use ("ROU") assets and lease liabilities on the statement of financial position. Most prominent among the changes in the standard is the recognition of ROU assets and lease liabilities by lessees for those leases classified as operating leases under current U.S. GAAP. For nonpublic entities, the FASB voted on May 20, 2020, to extend the guidance in this new standard to be effective for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022. The Charter School is currently evaluating the provisions of this standard to determine the impact the new standard will have on the Charter School's financial position or results of operations.

Subsequent events

The Charter School has conducted an evaluation of potential subsequent events occurring after the statement of financial position date through October 28, 2020, which is the date the financial statements are available to be issued. No subsequent events requiring disclosure were noted.

NOTE B: LIQUIDITY AND AVAILABILITY

The Charter School regularly monitors liquidity required to meet its operating needs and other contractual commitments. The Charter School's main source of liquidity is its cash accounts.

For purposes of analyzing resources available to meet general expenditures over a 12-month period, the Charter School considers all expenditures related to its ongoing activities of education and public service as well as the conduct of services undertaken to support those activities to be general expenditures.

In addition to financial assets available to meet general expenditures over the next 12 months, the Charter School operates with a balanced budget and anticipates collecting sufficient revenue to cover general expenditures not covered by donor-restricted resources. Refer to the statement of cash flows which identifies the sources and uses of the Charter School's cash and shows positive cash generated by operations for fiscal years 2020 and 2019.

Financial assets available for general expenditure, that is, without donor or other restrictions limiting their use, within one year of the statement of financial position date, comprise the following at June 30, 2020 and 2019:

	June 30,	
	2020	2019
Cash	\$ 383,352	\$ 483,369
Grants and other receivables	290,876	157,807
Pledges receivable	-	25,000
Total financial assets available to management for general expenditures within one year	<u>\$ 674,228</u>	<u>\$ 666,176</u>

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE C: PROPERTY AND EQUIPMENT

Property and equipment consisted of the following:

	June 30,	
	2020	2019
Furniture	\$ 140,516	\$ 101,858
Office equipment	77,713	67,475
Leasehold improvements	69,475	69,475
Musical equipment	95,748	56,401
Computer equipment	64,735	60,339
Construction-in-progress	280,180	11,871
	728,367	367,419
Less accumulated depreciation and amortization	222,026	123,241
	<u>\$ 506,341</u>	<u>\$ 244,178</u>

At June 30, 2020, the Charter School had construction-in-progress of \$280,180 relating to costs for a new facility (see Note F). No provision for depreciation will be made for these costs until the facility is put into use. The Charter School has additional commitments with vendors and contractors relating to the new facility totaling approximately \$150,000.

NOTE D: NET ASSETS

Net assets without donor restrictions consist of the following:

	June 30,	
	2020	2019
Undesignated net assets	\$ 361,077	\$ 398,910
Invested in property and equipment, net of related debt	336,661	205,081
	<u>\$ 697,738</u>	<u>\$ 603,991</u>

Net assets with donor restrictions consist of the following:

	June 30,	
	2020	2019
Restricted due to time	<u>\$ -</u>	<u>\$ 25,000</u>

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE E: LINE OF CREDIT

The Charter School entered into a \$75,000 line of credit with a credit union in August 2018. The interest rate on the line of credit is fixed at 9.75%. There were no borrowings on the line of credit during the years ended June 30, 2020 and 2019.

NOTE F: SCHOOL FACILITY

During 2017, the Charter School received approval from the New York City Department of Education for use of dedicated and shared space for no charge at Middle School 328 Community Math & Science Prep, a New York Public School located at 401 West 164th Street, New York, NY.

During 2019, the Charter School began exploring alternative options for a permanent location and in April 2019, the Charter School signed a non-binding letter of intent to enter into a ground lease for a permanent location. The Board of Trustees approved expenditure of up to \$214,000 to explore obtaining necessary approvals. In January 2020, Friends of WHIN Music Community Charter School (an unrelated entity) entered into a lease for this location.

On February 6, 2020, the Charter School signed a sublease with Friends of WHIN Music Community Charter School for a property located at 506 West 181st Street, New York, NY. Friends of WHIN Music Community Charter School is responsible for completing certain work on the premises to prepare the premises for the Charter School's occupancy. The commencement date of the sublease is contingent on Friends of WHIN Music Community Charter School securing a loan to finance the work to be done to prepare the facility for the Charter School's occupancy. Upon the commencement of the lease, the Charter School will be required to make a security deposit of \$225,000 in the form of cash or a letter of credit. The term of the sublease shall be for approximately forty (40) years, commencing on the commencement date as described above.

Each sublease year will run from July 1st to June 30th. The first rental year shall run from the commencement date through June 30th of the year the commencement date occurs. Provided the Charter School is not in default under the terms of the sublease, rent shall be abated as follows:

1. From the commencement date through June 30, 2021, rent shall be abated in its entirety.
2. Should the premise be delivered to the Charter School ready for occupancy in lease year 2 (July 1, 2021 through June 30, 2022) monthly rent shall be reduced by \$30,208.33 from lease year 2 delivery date through the 2nd anniversary of the commencement date.
3. Should the premise not be delivered until lease year 3 (July 1, 2022 through June 30, 2023), rent for lease year 2 shall be abated in its entirety, and rent for lease year 3 shall not commence until the premises are delivered to the Charter School ready for occupancy, at which time the rent shall be the full rent set forth in the lease, unless the lease year 3 delivery date occurs within 24 months of the commencement date, in which case monthly rent during lease year 3 shall be reduced by \$30,208.33 until the 2nd anniversary of the commencement date.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE F: SCHOOL FACILITY, Cont'd

Before considering the impact of any possible rent abatement, future payments on the lease are as follows:

<u>Year ending June 30,</u>	<u>Amount</u>
2021	\$ 2,016,290
2022	2,016,290
2023	2,016,290
2024	2,016,290
2025	2,088,790
Thereafter	<u>69,314,850</u>
Total	<u>\$ 79,468,800</u>

As of October 28, 2020, Friends of WHIN Music Community Charter School has not secured a loan to finance the work to be done to prepare the facility for the Charter School's occupancy, and, therefore, the lease commencement date has not yet been established.

NOTE G: CONTINGENCY

Certain grants and contracts may be subject to audit by funding sources. Such audits might result in disallowance of costs submitted for reimbursement by the Charter School. Management is of the opinion that such disallowances, if any, will not have a material effect on the accompanying financial statements. Accordingly, no amounts have been provided in the accompanying financial statements for such potential claims.

NOTE H: CONCENTRATIONS

At June 30, 2020 and 2019, grants and other receivables and pledges receivable are comprised of the following:

	<u>June 30,</u>	
	<u>2020</u>	<u>2019</u>
New York State	80%	10%
Per Pupil - District A	16%	**
Foundation	**	14%
Charter School Program (CSP) grant	**	69%

**Balance represents less than 10% of total grants and other receivables and pledges receivable

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE H: CONCENTRATIONS, Cont'd

During the years ended June 30, 2020 and 2019 total operating revenue and support came from the following sources:

	<u>June 30,</u>	
	<u>2020</u>	<u>2019</u>
New York City per-pupil	94%	83%
Charter School Program (CSP) grant	**	10%

**Revenue represents less than 10% of total operating revenue and support

The per-pupil rate is set annually by the State based on the school district in which the Charter School's students are located.

NOTE I: RETIREMENT PLAN

The Charter School sponsors a 403(b) retirement plan ("the Plan") for its employees. All employees are immediately eligible to participate in the Plan. The Plan allows for the Charter School to make a matching contribution to the Plan. The Charter School contributed approximately \$19,100 and \$13,600 the Plan for the years ended June 30, 2020 and June 30, 2019, respectively.

NOTE J: OPERATING LEASES

The Charter School entered into non-cancellable lease agreements for office equipment expiring at various dates through February 2022. The future payments on these agreements are as follows:

<u>Year ending June 30,</u>	<u>Amount</u>
2021	\$ 4,721
2022	981
Total	<u>\$ 5,702</u>

NOTE K: NOTE PAYABLE

On March 26, 2020 the Charter School entered into a loan agreement with Nonprofit Finance Fund (NFF) for a loan with a maximum aggregate principal amount of \$600,000 to be used for closing costs and to finance predevelopment activities related to improvements at 506 West 181st Street, New York, NY (the "project"), the future site of the Charter School's facility. As of June 30, 2020, the Charter School has borrowed \$113,372 of the amount available on this loan. The interest rate is fixed at 6.75%, annually, with interest-only payments due monthly. The loan matures on the earlier of March 26, 2021 or the closing of permanent construction financing for the project at which point all outstanding principal and interest is due.

In connection with the note payable, the Charter School is required to maintain compliance with certain covenants. At June 30, 2020, the Charter School was in compliance with these covenants.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

NOTES TO FINANCIAL STATEMENTS, Cont'd

JUNE 30, 2020

(With Comparative Totals for 2019)

NOTE L: LONG-TERM DEBT

	<u>June 30,</u>	
	<u>2020</u>	<u>2019</u>
Contract to purchase musical instruments. The Contract requires quarterly payments of \$3,007 beginning December 2018 through September 2022.	\$ 27,067	\$ 39,097
Contract to purchase musical instruments. The Contract requires quarterly payments of \$2,249 beginning December 2019 through September 2023.	29,241	-
	56,308	39,097
Less: current portion of long-term debt	21,027	12,030
	<u>\$ 35,281</u>	<u>\$ 27,067</u>

Future maturities of long-term debt are as follows:

<u>Year ending June 30,</u>	<u>Amount</u>
2021	\$ 21,027
2022	21,027
2023	12,005
2024	2,249
Total	<u>\$ 56,308</u>

NOTE M: FUNCTIONAL EXPENSES

The financial statements report certain categories of expenses that are attributed to more than one program or supporting function. Therefore, expenses require allocation on a reasonable basis that is consistently applied. All expenses that are allocated to more than one program or supporting function are allocated on the basis of estimates of time, effort, and usage.

NOTE N: ACCOUNTING IMPACT OF COVID-19 OUTBREAK

On January 30, 2020, the World Health Organization (“WHO”) announced a global health emergency because of a new strain of coronavirus (the “COVID-19 outbreak”) and the risks to the international community as the virus spreads globally. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. The full impact of the COVID-19 outbreak continues to evolve as of the date of this report. As such, it is uncertain as to the full magnitude that the pandemic will have on the Charter School’s financial condition, liquidity, and future results of operations. Management is actively monitoring the global situation on its financial condition, liquidity, operations, suppliers, industry, and workforce. Given the daily evolution of the COVID-19 outbreak and the global responses to curb its spread, the Charter School is not able to estimate the effects of the COVID-19 outbreak on its results of operations, financial condition, or liquidity for fiscal year 2021.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

REPORT REQUIRED BY GOVERNMENT AUDITING STANDARDS

INDEPENDENT AUDITOR'S 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*

Board of Trustees
WHIN Music Community Charter School

We have audited, 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, the financial statements of WHIN Music Community Charter School, which comprise the statement of financial position as of June 30, 2020 and the related statements of activities and changes in net assets, functional expenses, and cash flows for the year then ended, and the related notes to the financial statements, and have issued our report thereon dated October 28, 2020.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered WHIN Music Community Charter 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 WHIN Music Community Charter School's internal control. Accordingly, we do not express an opinion on the effectiveness of WHIN Music Community Charter 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 a 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 that might be material weaknesses or significant deficiencies, and therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control over financial reporting 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 WHIN Music Community Charter School's financial statements are free from 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.

Mengel, Metzger, Baw & Co. LLP

Rochester, New York
October 28, 2020



Annual Financial Statement Audit Report

for Board of Regents Authorized Charter Schools

School Name:	Charter School Name
Date (Report is due Nov. 1):	November 1, 2020
Primary District of Location (If NYC select NYC DOE):	New York City Department of Education
If located in NYC DOE select CSD:	NYCSD #6
School Fiscal Contact Name:	Charlie Ortiz
School Fiscal Contact Email:	[REDACTED]
School Fiscal Contact Phone:	[REDACTED]
School Audit Firm Name:	Mengel Metzger Barr & Co. LLP
School Audit Contact Name:	Jackie Lee
School Audit Contact Email:	[REDACTED]
School Audit Contact Phone:	[REDACTED]
Audit Period:	2019-20
Prior Year:	2018-19

The following items are required to be included:

- 1.) The independent auditor's report on financial statements and notes.
- 2.) Excel template file containing the Financial Position, Statement of Activities, Cash Flow and Functional Expenses worksheets.
- 3.) Reports on internal controls over financial reporting and on compliance.

The additional items listed below should be included if applicable. Please explain the reason(s) if the items are not included. Examples might include: a written management letter was not issued; the school did not expend federal funds in excess of the Single Audit Threshold of \$750,000; the management letter response will be submitted by the following date (should be no later than 30 days from the submission of the report); etc.

Item	If not included, state the reason(s) below (if not applicable fill in N/A):
Management Letter	N/A
Management Letter Response	N/A
Form 990	Extension filed
Federal Single Audit (A-133)	The school did not expend federal funds in excess of the Single Audit Threshold
Corrective Action Plan	N/A

Charter School Name
Statement of Financial Position
as of June 30

	<u>2020</u>	<u>2019</u>
<u>CURRENT ASSETS</u>		
Cash and cash equivalents	\$ 383,352	\$ 483,369
Grants and contracts receivable	290,876	182,807
Accounts receivables	-	-
Prepaid Expenses	25,108	27,213
Contributions and other receivables	-	-
Other current assets	-	-
TOTAL CURRENT ASSETS	<u>699,336</u>	<u>693,389</u>
<u>NON-CURRENT ASSETS</u>		
Property, Building and Equipment, net	\$ 506,341	\$ 244,178
Restricted Cash	75,130	50,079
Security Deposits	-	-
Other Non-Current Assets	-	-
TOTAL NON-CURRENT ASSETS	<u>581,471</u>	<u>294,257</u>
TOTAL ASSETS	<u><u>1,280,807</u></u>	<u><u>987,646</u></u>
<u>CURRENT LIABILITIES</u>		
Accounts payable and accrued expenses	\$ 205,628	\$ 106,647
Accrued payroll, payroll taxes and benefits	73,342	208,702
Current Portion of Loan Payable	113,372	-
Due to Related Parties	-	-
Refundable Advances	-	-
Deferred Revenue	134,419	4,209
Other Current Liabilities	21,027	12,030
TOTAL CURRENT LIABILITIES	<u>547,788</u>	<u>331,588</u>
<u>LONG-TERM LIABILITIES</u>		
Loan Payable; Due in More than One Year	\$ 35,281	\$ 27,067
Deferred Rent	-	-
Due to Related Party	-	-
Other Long-Term Liabilities	-	-
TOTAL LONG-TERM LIABILITIES	<u>35,281</u>	<u>27,067</u>
TOTAL LIABILITIES	<u>583,069</u>	<u>358,655</u>
<u>NET ASSETS</u>		
Unrestricted	\$ 697,738	\$ 603,991
Temporarily restricted	-	25,000
Permanently restricted	-	-
TOTAL NET ASSETS	<u>697,738</u>	<u>628,991</u>
TOTAL LIABILITIES AND NET ASSETS	<u><u>1,280,807</u></u>	<u><u>987,646</u></u>

Charter School Name
Statement of Activities
as of June 30

	2020			2019
	Unrestricted	Temporarily Restricted	Total	Total
OPERATING REVENUE				
State and Local Per Pupil Revenue - Reg. Ed	\$ 3,049,065	\$ -	\$ 3,049,065	\$ 2,215,902
State and Local Per Pupil Revenue - SPED	571,469	-	571,469	300,150
State and Local Per Pupil Facilities Revenue	-	-	-	-
Federal Grants	121,221	-	121,221	410,522
State and City Grants	14,667	-	14,667	9,763
Other Operating Income	5,584	-	5,584	-
Food Service/Child Nutrition Program	-	-	-	-
TOTAL OPERATING REVENUE	3,762,006	-	3,762,006	2,936,337
EXPENSES				
Program Services				
Regular Education	\$ 1,860,426	\$ -	\$ 1,860,426	\$ 1,494,716
Special Education	988,353	-	988,353	777,358
Other Programs	-	-	-	-
Total Program Services	2,848,779	-	2,848,779	2,272,074
Management and general	835,499	-	835,499	608,800
Fundraising	86,600	-	86,600	15,029
TOTAL EXPENSES	3,770,878	-	3,770,878	2,895,903
SURPLUS / (DEFICIT) FROM OPERATIONS	(8,872)	-	(8,872)	40,434
SUPPORT AND OTHER REVENUE				
Interest and Other Income	\$ 76	\$ -	\$ 76	\$ 3,696
Contributions and Grants	102,543	(25,000)	77,543	91,460
Fundraising Support	-	-	-	-
Investments	-	-	-	-
Donated Services	-	-	-	-
Other Support and Revenue	-	-	-	-
TOTAL SUPPORT AND OTHER REVENUE	102,619	(25,000)	77,619	95,156
Net Assets Released from Restrictions / Loss on Disposal of Assets	\$ -	\$ -	\$ -	\$ -
CHANGE IN NET ASSETS	93,747	(25,000)	68,747	135,590
NET ASSETS - BEGINNING OF YEAR	\$ 603,991	\$ 25,000	\$ 628,991	\$ 493,406
PRIOR YEAR/PERIOD ADJUSTMENTS	-	-	-	-
NET ASSETS - END OF YEAR	\$ 697,738	\$ -	\$ 697,738	\$ 628,996

Charter School Name
Statement of Cash Flows

as of June 30

	2020	2019
CASH FLOWS - OPERATING ACTIVITIES		
Increase (decrease) in net assets	\$ 68,747	\$ 135,585
Revenues from School Districts	-	-
Accounts Receivable	-	-
Due from School Districts	-	-
Depreciation	98,785	69,841
Grants Receivable	(238,706)	(89,482)
Due from NYS	-	-
Grant revenues	-	-
Prepaid Expenses	2,105	(19,213)
Accounts Payable	94,772	(99,270)
Accrued Expenses	-	-
Accrued Liabilities	(941)	96,896
Contributions and fund-raising activities	-	-
Miscellaneous sources	-	-
Deferred Revenue	-	-
Interest payments	-	488
Other	25,000	100,000
Bad Debts	105,637	-
NET CASH PROVIDED FROM OPERATING ACTIVITIES	\$ 155,399	\$ 194,845
CASH FLOWS - INVESTING ACTIVITIES		
Purchase of equipment	(324,960)	(41,289)
Other	-	-
NET CASH PROVIDED FROM INVESTING ACTIVITIES	\$ (324,960)	\$ (41,289)
CASH FLOWS - FINANCING ACTIVITIES		
Principal payments on long-term debt	(18,777)	(39,023)
Other	113,372	-
NET CASH PROVIDED FROM FINANCING ACTIVITIES	\$ 94,595	\$ (39,023)
NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS	\$ (74,966)	\$ 114,533
Cash at beginning of year	533,448	418,915
CASH AND CASH EQUIVALENTS AT END OF YEAR	\$ 458,482	\$ 533,448

Charter School Name
Statement of Functional Expenses
as of June 30

		2020							2019		
No. of Positions		Program Services				Supporting Services			Total		
		Regular	Special	Other Education	Total	Fundraising	Management and	Total			
		Education	Education				General				
		\$	\$	\$	\$	\$	\$	\$	\$	\$	
	Personnel Services Costs										
	Administrative Staff Personnel	11.00	359,149	55,254	-	414,403	50,000	344,805	394,805	809,208	634,050
	Instructional Personnel	23.00	818,536	584,668	-	1,403,204	-	-	-	1,403,204	1,101,794
	Non-Instructional Personnel	-	-	-	-	-	-	-	-	-	-
	Total Salaries and Staff	34.00	1,177,685	639,922	-	1,817,607	50,000	344,805	394,805	2,212,412	1,735,844
	Fringe Benefits & Payroll Taxes		286,061	155,438	-	441,499	12,145	83,753	95,898	537,397	403,529
	Retirement		10,152	5,516	-	15,668	431	2,972	3,403	19,071	13,582
	Management Company Fees		-	-	-	-	-	-	-	-	-
	Legal Service		-	-	-	-	-	20,475	20,475	20,475	14,185
	Accounting / Audit Services		-	-	-	-	-	205,244	205,244	205,244	188,064
	Other Purchased / Professional / Consulting Services		46,362	42,092	-	88,454	16,968	13,574	30,542	118,996	119,000
	Building and Land Rent / Lease		-	-	-	-	-	-	-	-	-
	Repairs & Maintenance		6,894	3,746	-	10,640	293	2,018	2,311	12,951	425
	Insurance		18,870	10,254	-	29,124	801	5,525	6,326	35,450	28,914
	Utilities		-	-	-	-	-	-	-	-	-
	Supplies / Materials		53,366	16,897	-	70,263	-	-	-	70,263	75,509
	Equipment / Furnishings		5,472	2,973	-	8,445	232	1,602	1,834	10,279	2,642
	Staff Development		39,576	21,504	-	61,080	1,680	11,587	13,267	74,347	52,995
	Marketing / Recruitment		15,848	6,950	-	22,798	362	2,495	2,857	25,655	51,991
	Technology		37,026	18,847	-	55,873	1,334	9,198	10,532	66,405	68,674
	Food Service		-	-	-	-	-	-	-	-	-
	Student Services		107,677	34,092	-	141,769	-	-	-	141,769	36,276
	Office Expense		2,853	1,549	-	4,402	121	12,300	12,421	16,823	29,080
	Depreciation		52,584	28,573	-	81,157	2,233	15,395	17,628	98,785	69,841
	OTHER		-	-	-	-	-	104,556	104,556	104,556	5,352
	Total Expenses		\$ 1,860,426	\$ 988,353	\$ -	\$ 2,848,779	\$ 86,600	\$ 835,499	\$ 922,099	\$ 3,770,878	\$ 2,895,903

WHIN Music Community Charter School

PROJECTED BUDGET FOR 2020-2021

July 1, 2020 to June 30, 2021

Please Note: The student enrollment data is entered below in the Enrollment Section beginning in row 155. This will populate the data in row 10.

Assumptions

DESCRIPTION OF ASSUMPTIONS - Please note assumptions when applicable

	REGULAR EDUCATION	SPECIAL EDUCATION	OTHER	FUNDRAISING	MANAGEMENT & GENERAL	TOTAL
Total Revenue	2,284,870	1,248,667	-	71,684	733,707	4,336,927
Total Expenses	2,268,207	1,245,109	-	74,297	734,207	4,321,820
Net Income	16,662	1,558	-	(2,613)	(600)	15,107
Actual Student Enrollment	210	33				243
Total Paid Student Enrollment	188	33				221

PROGRAM SERVICES

SUPPORT SERVICES

REGULAR EDUCATION	SPECIAL EDUCATION	OTHER	FUNDRAISING	MANAGEMENT & GENERAL	TOTAL
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REVENUE

REVENUES FROM STATE SOURCES

Per Pupil Revenue

CY Per Pupil Rate

District of Location

\$16,123.00

Mount Vernon

School District 3 (Enter Name)

School District 4 (Enter Name)

School District 5 (Enter Name)

Special Education Revenue

Grants

Stimulus

Other

Other State Revenue

TOTAL REVENUE FROM STATE SOURCES

REVENUE FROM FEDERAL FUNDING

IDEA Special Needs

Title I

Title Funding - Other

School Food Service (Free Lunch)

Grants

Charter School Program (CSP) Planning & Implementation

Other

Other Federal Revenue

TOTAL REVENUE FROM FEDERAL SOURCES

LOCAL and OTHER REVENUE

Contributions and Donations, Fundraising

Erate Reimbursement

Interest Income, Earnings on Investments,

NYC-DYCD (Department of Youth and Community Developmt.)

Food Service (Income from meals)

Text Book

Other Local Revenue

TOTAL REVENUE FROM LOCAL and OTHER SOURCES

TOTAL REVENUE

234 x \$16,123

2 FTE

(20-59%) 6 x @ \$10,390, (~60%) 31 x @ \$19,049

NYSTIL, NYSSL, NYSLIBL

Non-Per Pupil Additional State Funding

Based on \$1,000 for students in over 60% category.

Based on enrollment x \$500/student

Title II, IV funding

Contributions and fundraising

E-Rate Reimbursement

Interest

Instrument Rental Income

List exact titles and staff FTE's (Full time equivalent)

EXPENSES

ADMINISTRATIVE STAFF PERSONNEL COSTS

No. of Positions

Executive Management

Instructional Management

Deans, Directors & Coordinators

CFO / Director of Finance

Operation / Business Manager

Administrative Staff

TOTAL ADMINISTRATIVE STAFF

INSTRUCTIONAL PERSONNEL COSTS

Teachers - Regular

Teachers - SPED

Substitute Teachers

Teaching Assistants

Specialty Teachers

2.00

4.00

-

2.00

3.00

11

4.00

9.00

-

-

10.00

153,776

211,705

-

-

50,000

365,481

250,236

596,471

-

-

562,409

59,145

81,425

-

-

142,000

373,670

-

-

-

-

-

Executive Director, Principal - 2 FTE

Dir. Of Student Culture, Dir. Of Special Programs, Dir. Of Music, Curriculum Coach -

Operations Associate, Dir. Of Operations- 2 FTE

Office Supervisor, School Aide/Family Engagement, Development - 3 FTE

Teachers - 4 FTE

SPED Teachers - 9 FTE

ELL Teachers, PE Teacher, Reading Interventionist, Includes ENL Coordinator

WHIN Music Community Charter School

PROJECTED BUDGET FOR 2020-2021

July 1, 2020 to June 30, 2021

Please Note: The student enrollment data is entered below in the Enrollment Section beginning in row 155. This will populate the data in row 10.

Assumptions

DESCRIPTION OF ASSUMPTIONS - Please note assumptions when applicable

		REGULAR EDUCATION	SPECIAL EDUCATION	OTHER	FUNDRAISING	MANAGEMENT & GENERAL	TOTAL	
Total Revenue		2,284,870	1,246,867	-	71,684	733,707	4,336,927	
Total Expenses		2,268,207	1,245,109	-	74,297	734,207	4,321,820	
Net Income		16,662	1,558	-	(2,613)	(500)	15,107	
Actual Student Enrollment		210	33				243	
Total Paid Student Enrollment		188	33				221	
		REGULAR EDUCATION	SPECIAL EDUCATION	OTHER	FUNDRAISING	MANAGEMENT & GENERAL	TOTAL	
Aides		-	-	-	-	-	-	
Therapists & Counselors		1.00	43,656	7,663	-	-	51,319	Counselor - 1 FTE
Other		4.00	172,942	30,357	-	-	203,299	Music Teachers - 5 FTE, Instructional stipends
TOTAL INSTRUCTIONAL		28	1,029,243	777,136	-	-	1,806,379	
NON-INSTRUCTIONAL PERSONNEL COSTS								
Nurse		-	-	-	-	-	-	
Librarian		-	-	-	-	-	-	
Custodian		-	-	-	-	-	-	
Security		-	-	-	-	-	-	
Other		-	-	-	-	-	-	
TOTAL NON-INSTRUCTIONAL		-	-	-	-	-	-	
SUBTOTAL PERSONNEL SERVICE COSTS		39	1,394,724	833,364	50,000	373,570	2,651,657	
PAYROLL TAXES AND BENEFITS								
Payroll Taxes		122,844	73,400	-	4,404	32,903	233,551	
Fringe / Employee Benefits		247,632	147,963	-	8,877	66,327	470,800	SS, Med, SUI, NYSD, Workers Comp, Health, Dental, Vision
Retirement / Pension		11,158	6,667	-	400	2,969	21,213	401k Match
TOTAL PAYROLL TAXES AND BENEFITS		381,634	228,031	-	13,681	102,219	725,564	
TOTAL PERSONNEL SERVICE COSTS		1,776,357	1,061,394	-	63,681	475,788	3,377,221	
CONTRACTED SERVICES								
Accounting / Audit		-	-	-	-	24,000	24,000	Audit fees
Legal		-	-	-	-	20,000	20,000	Legal - Paid
Management Company Fee		-	-	-	-	147,980	147,980	Financial Consulting Fees
Nurse Services		-	-	-	-	-	-	
Food Service / School Lunch		-	-	-	-	-	-	
Payroll Services		25,247	15,085	-	905	6,762	48,000	Payroll Fees
Special Ed Services		-	20,000	-	-	-	20,000	SpED Services
Titlement Services (i.e. Title I)		-	-	-	-	-	-	
Other Purchased / Professional / Consulting		13,083	4,227	-	164	1,226	18,700	Professional Services
TOTAL CONTRACTED SERVICES		38,330	39,313	-	1,069	199,968	278,680	
SCHOOL OPERATIONS								
Board Expenses		-	-	-	-	1,000	1,000	Board Expenses
Classroom / Teaching Supplies & Materials		52,288	9,178	-	-	-	61,466	Classroom and Teaching Supplies
Special Ed Supplies & Materials		-	-	-	-	-	-	
Textbooks / Workbooks		25,392	4,457	-	-	-	29,849	Textbooks and Workbooks, Classroom Library
Supplies & Materials other		16,354	2,871	-	-	-	19,225	Curriculum Software
Equipment / Furniture		2,630	1,571	-	94	704	5,000	
Telephone		16,502	9,908	-	594	4,441	31,526	Telephone and Internet
Technology		29,242	14,284	-	777	5,808	50,111	Software, Tech Supplies
Student Testing & Assessment		8,320	1,460	-	-	-	9,780	Testing and Assessment
Field Trips		2,552	448	-	-	-	3,000	Field Trips
Transportation (student)		-	-	-	-	-	-	
Student Services - other		175,240	30,760	-	-	-	206,000	Student Incentives/Events, Enrichment, Uniforms, Afterschool
Office Expense		1,709	511	-	61	15,457	17,739	Supplies, Postage, Printing/Copying, Staff Events
Staff Development		39,008	23,307	-	1,398	10,448	74,159	Professional Development
Staff Recruitment		5,786	3,457	-	207	1,550	11,000	Recruitment, Tuition
Student Recruitment / Marketing		11,059	1,941	-	-	-	13,000	Recruitment, Marketing
School Meals / Lunch		-	-	-	-	-	-	
Travel (Staff)		263	157	-	9	70	500	Staff Travel
Fundraising		-	-	-	4,000	-	4,000	
Other		-	-	-	-	1,000	1,000	Bank Fees, Interest
TOTAL SCHOOL OPERATIONS		386,423	104,310	-	7,141	40,479	538,353	

WHIN Music Community Charter School

PROJECTED BUDGET FOR 2020-2021

July 1, 2020 to June 30, 2021

Please Note: The student enrollment data is entered below in the Enrollment Section beginning in row 155. This will populate the data in row 10.

Assumptions

DESCRIPTION OF ASSUMPTIONS - Please note assumptions when applicable

	REGULAR EDUCATION	SPECIAL EDUCATION	OTHER	FUNDRAISING	MANAGEMENT & GENERAL	TOTAL
Total Revenue	2,284,870	1,246,667	-	71,684	733,707	4,336,927
Total Expenses	2,268,207	1,245,109	-	74,297	734,207	4,321,820
Net Income	16,662	1,558	-	(2,613)	(600)	15,107
Actual Student Enrollment	210	33				243
Total Paid Student Enrollment	188	33				221

PROGRAM SERVICES

SUPPORT SERVICES

REGULAR EDUCATION	SPECIAL EDUCATION	OTHER	FUNDRAISING	MANAGEMENT & GENERAL	TOTAL
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FACILITY OPERATION & MAINTENANCE

Insurance	17,103	10,219	-	613	4,581	32,516	General Liability
Janitorial	-	-	-	-	-	-	
Building and Land Rent / Lease	-	-	-	-	-	-	
Repairs & Maintenance	2,630	1,571	-	94	704	5,000	Repairs and Maintenance
Equipment / Furniture	-	-	-	-	-	-	Non-capitalized furniture
Security	-	-	-	-	-	-	
Utilities	-	-	-	-	-	-	

TOTAL FACILITY OPERATION & MAINTENANCE	19,733	11,791	-	707	5,285	37,516	
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DEPRECIATION & AMORTIZATION

	47,365	28,301	-	1,688	12,686	90,050	Depreciation
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DISSOLUTION ESCROW & RESERVES / CONTINGENCY							Dissolution
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TOTAL EXPENSES	2,268,207	1,245,109	-	74,297	734,207	4,321,820	
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NET INCOME	16,662	1,558	-	(2,613)	(600)	15,107	-196,258
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ENROLLMENT - *School Districts Are Linked To Above Entries*

	REGULAR EDUCATION	SPECIAL EDUCATION	TOTAL ENROLLED
District of Location	208	33	241
Mount Vernon	2		2
School District 3 (Enter Name)			-
School District 4 (Enter Name)			-
School District 5 (Enter Name)			-
TOTAL ENROLLMENT	210	33	243

REVENUE PER PUPIL	10,880	37,778	-
--------------------------	---------------	---------------	----------

EXPENSES PER PUPIL	10,801	37,731	-
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Statement Period	Account Number
06/01/19 - 06/30/19	

Page 1 of 2

267 114968 **AUTO5-DIGIT 10032 R P2 T2
WHIN MUSIC COMMUNITY CHARTER SCHOOL
CHARLES ORTIZ
GREGORY DAVID
401 WEST 164TH STREET 4TH FLOOR
NEW YORK NY 10032

Let your Credit Union help you
END YOUR YEAR SUCCESSFULLY!
Rapid approval on personal loans, small business loans and emergency loans.



Mail in statements will increase from \$.45 to \$1.50. For free statements or to avoid statement fee, please utilize our online banking.

STATEMENT SUMMARY

Deposit Accounts

Total Balance: \$50,079.11

Account Type	Previous Balance	Deposits	Withdrawals	New Balance
REGULAR BUSINESS SHARE (00)	54.06	0.00	0.45	53.61
SECONDARY SHARE BUSINESS (51)	50,021.39	4.11	0.00	50,025.50

Loan Accounts

Total Balance: \$0.00

Account Type	Previous Balance	Advances	Payments	New Balance
*WORKING CAPITAL (22)	.00	0.00	0.00	.00

REGULAR BUSINESS SHARE (00)

Ending Balance: \$53.61

ACCOUNT OWNERS/SIGNERS: WHIN MUSIC COMMUNITY CHARTER SCHOOL,
CHARLES ORTIZ, GREGORY DAVID

Date	Memo	Description	Deposits	Withdrawals	Balance
06/01		PREVIOUS BALANCE			54.06
06/30		STATEMENT FEE		.45	53.61
06/30		NEW BALANCE			53.61

WITHDRAWALS AND OTHER DEBITS

Date	Amount	Date	Amount	Date	Amount	Date	Amount
06/30	.45						

YTD DIVIDENDS EARNED .00

ANNUAL PERCENTAGE YIELD EARNED FROM 06/01/19 THROUGH 06/30/19 IS 00.00% BASED UPON AN AVERAGE BALANCE OF 54.05 AND TOTAL DIVIDENDS EARNED OF 0.00

SECONDARY SHARE BUSINESS (51)

Ending Balance: \$50,025.50

ACCOUNT OWNERS/SIGNERS: WHIN MUSIC COMMUNITY CHARTER SCHOOL,
CHARLES ORTIZ, GREGORY DAVID

Date	Memo	Description	Deposits	Withdrawals	Balance
06/01		PREVIOUS BALANCE			50,021.39
06/30		DIVIDEND	4.11		50,025.50
06/30		NEW BALANCE			50,025.50



PLEASE KEEP US INFORMED OF ADDRESS CHANGES	
TO MAKE AN ADDRESS CHANGE, PLEASE COMPLETE AND RETURN TO THE CREDIT UNION.	
Member's Name	
<input type="checkbox"/> Address	Apt. No.
<input type="checkbox"/> City and State	Zip Code
Member's Signature (required)	
CHANGES NOTED ABOVE ARE SUBJECT TO VERIFICATION BY THE CREDIT UNION.	

PLEASE RETAIN THIS STATEMENT. IT IS A PERMANENT RECORD OF YOUR TRANSACTIONS.

DA E	AMOUN
3. TOTAL	

NUMBER OR DATE	AMOUNT
5. TOTAL	

YOUR BILLING RIGHTS - KEEP THIS NOTICE FOR FUTURE USE

NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR STATEMENT. If you think your statement is wrong or if you need more information about a

11921

Statement Period	Account Number
06/01/19 - 06/30/19	

SECONDARY SHARE BUSINESS (51) *continued*

DEPOSITS AND OTHER CREDITS							
Date	Amount	Date	Amount	Date	Amount	Date	Amount
06/30	4.11						
YTD DIVIDENDS EARNED 24.81							
ANNUAL PERCENTAGE YIELD EARNED FROM 06/01/19 THROUGH 06/30/19 IS 00.10% BASED UPON AN AVERAGE BALANCE OF 50021.39 AND TOTAL DIVIDENDS EARNED OF 4.11							

*WORKING CAPITAL (22)

Ending Balance: \$.00

DLY PERIODIC RATE .026712% **ANNUAL PERCENTAGE RATE 9.7500%** FROM 06/01 TO 06/30

LINE OF CREDIT \$ 75,000.00 AVAILABLE LINE OF CREDIT \$ 75,000.00

Date	Description	Advances	Principal Payments	Balance
06/01	PREVIOUS BALANCE			.00
06/30	NEW BALANCE			.00
YTD INTEREST PAID .00				

FEES CHARGED

Date	Description	Account	Amount
	TOTAL FEES FOR THIS PERIOD		.00

INTEREST CHARGED

Date	Description	Account	Amount
	TOTAL INTEREST FOR THIS PERIOD		.00

TOTALS YEAR-TO-DATE

TOTAL FEES CHARGED IN 2019	.00
TOTAL INTEREST CHARGED IN 2019	.00

YEAR TO DATE TAX REPORTING SUMMARY BY TAX REPORTING EIN

REPORTING EIN	DIVIDENDS EARNED	DIVIDENDS WITHHELD	CERTIFICATE PENALTY	MORTGAGE INTEREST	NON-MORTGAGE INTEREST
	24.81	0.00	0.00	0.00	0.00



APPENDIX F

FORM OF BOND COUNSEL OPINION

June 29, 2022

Build NYC Resource Corporation
New York, New York

Re: \$40,840,000
Build NYC Resource Corporation
Tax-Exempt Revenue Bonds, Series 2022A (WHIN Music Community Charter School Project)

\$3,070,000
Build NYC Resource Corporation
Taxable Revenue Bonds, Series 2022B (WHIN Music Community Charter School Project)

Ladies and Gentlemen:

We have acted as bond counsel to the Build NYC Resource Corporation (New York, New York) (the “**Issuer**”), in connection with the issuance on the date hereof by the Issuer of its Tax-Exempt Revenue Bonds, Series 2022A (WHIN Music Community Charter School Project) in the aggregate principal amount of \$40,840,000 (the “**Tax-Exempt Bonds**”) and its Taxable Revenue Bonds, Series 2022B (WHIN Music Community Charter School Project) (the “**Taxable Bonds**”; and, together with the Tax-Exempt Bonds, the “**Initial Bonds**”) in the aggregate principal amount of \$3,070,000. The Initial Bonds are authorized to be issued pursuant to:

- (i) Section 1411 of the New York Not-for-Profit Corporation Law (the “**Act**”),
- (ii) the Bond Resolution duly adopted by the Issuer adopted on November 16, 2021 (the “**Resolution**”), and
- (iii) the Indenture of Trust, dated as of June 1, 2022 (the “**Indenture**”), by and between the Issuer and The Bank of New York Mellon, as trustee for the benefit of the Owners of the Initial Bonds (the “**Trustee**”).

The Initial Bonds are being issued to finance or refinance the costs of the acquisition, construction, renovation and equipping of a certain Facility (as defined in the Loan Agreement referenced below) (collectively, the “**Project**”).

The Issuer will loan the proceeds of the Initial Bonds to Friends of WHIN Music Community Charter School, Inc. (the “**Institution**”), a not-for-profit corporation duly organized and existing under the laws of the State of New York, pursuant to the terms of a Loan Agreement, dated as of June 1, 2022 (the “**Loan Agreement**”), between the Issuer and the Institution. The Institution has evidenced its obligation to make loan payments to the Issuer by the issuance and delivery of certain Promissory Notes, each dated June 29, 2022 (collectively, the “**Note**”), each from the Institution to the Issuer and endorsed by the Issuer to the Trustee.

The Institution leases the Facility (as defined in the Loan Agreement) from 528 W 162 LLC pursuant to that certain Lease between 528 W 162 LLC and the Institution dated as of April 16, 2021, as amended by that certain First Amendment to Lease dated as of April 4, 2022 (the “**Lease**”). The Institution

further subleases the Facility (as defined in the Loan Agreement) to WHIN Music Community Charter School (the “**Organization**”), pursuant to that certain Sublease between the Institution and the Organization, dated as of June 15, 2021, as amended and restated by that certain Amended and Restated Sublease dated as of April 4, 2022 (the “**Sublease**”), between the Institution and the Organization, and the Organization will operate the Facility as a public charter school (all as defined in the Loan Agreement). The Issuer, the Trustee and the Organization will enter into a Use Agreement, dated as of June 1, 2022 (the “**Use Agreement**”) where the Organization will make certain covenants for the benefit of the Issuer and the Trustee.

The Institution has granted mortgage liens on and security interests in its leasehold interest in the Facility to the Issuer and the Trustee, pursuant to a Leasehold Mortgage and Security Agreement (Building Loan), and a Leasehold Mortgage and Security Agreement (Indirect Loan), each dated as of June 1, 2022 (collectively, the “**Mortgage**”), each from the Institution to the Issuer and the Trustee, and the Issuer, as security for the Initial Bonds, for the benefit of the Owners of the Initial Bonds, will assign all of its rights under the Mortgage to the Trustee pursuant to an Assignment of Leasehold Mortgage and Security Agreement (Building Loan), and an Assignment of Leasehold Mortgage and Security Agreement (Indirect Loan) (collectively, the “**Assignment of Mortgage**”), each from the Issuer to the Trustee. To further secure the Initial Bonds, the Institution will grant a lien on and security interest in all of its assets pursuant to the Pledge and Security Agreement, dated as of June 1, 2022 (the “**Pledge and Security Agreement**”), in favor of the Trustee.

The Issuer, the Institution and the Organization have entered into a Tax Regulatory Agreement, dated the date hereof (the “**Tax Regulatory Agreement**”), in which the Issuer, the Institution and the Organization have made certain representations and covenants, established certain conditions and limitations and created certain expectations, relating to compliance with the requirements imposed by the Internal Revenue Code of 1986, as amended (the “**Code**”). D.A. Davidson & Co., LLC (the “**Underwriter**”) has agreed to purchase the Initial Bonds pursuant to the terms of a Bond Purchase Agreement, dated June 23, 2022 (the “**Bond Purchase Agreement**”), among the Issuer, the Underwriter, the Institution and the Organization.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in Section 1.01 of the Indenture.

The Initial Bonds are dated the date hereof, and bear interest from the date thereof pursuant to the terms of the Initial Bonds. The Initial Bonds are subject to prepayment or redemption prior to maturity, as a whole or in part, at such time or times, under such circumstances and in such manner as is set forth in the Initial Bonds and the Indenture.

As bond counsel, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates and documents (including all documents constituting the Record of Proceedings with respect to the issuance of the Initial Bonds) as we have deemed necessary or appropriate for the purposes of the opinions rendered below. In such examination, we have assumed the genuineness of all signatures, the authenticity and due execution of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies. As to any facts material to our opinion, without having conducted any independent investigation, we have relied upon, and assumed the accuracy and truthfulness of, the aforesaid instruments, certificates and documents.

In rendering the opinions set forth below, we have relied upon, among other things, certain representations and covenants made by the parties in this transaction including: (i) the Institution in (a) the Bond Purchase Agreement; (b) the Tax Regulatory Agreement; (c) the Loan Agreement; (d) the Letter of Representation and Indemnification, dated of even date herewith; and (e) the Continuing Disclosure

Agreement, dated the date hereof (the “**Continuing Disclosure Agreement**”), among the Institution, the Organization and the Trustee; (f) the Pledge and Security Agreement; and (g) the Bond Counsel Due Diligence Questionnaire submitted to us by the Institution and the Organization, as amended and supplemented; (ii) the Organization in (a) the Bond Purchase Agreement; (b) the Tax Regulatory Agreement; (c) the Use Agreement; (d) the Letter of Representation and Indemnification, dated of even date herewith; and (e) the Continuing Disclosure Agreement; and (f) the Bond Counsel Due Diligence Questionnaire submitted to us by the Institution and the Organization, as amended and supplemented; and (iii) the Issuer in (a) the Indenture; (b) the Tax Regulatory Agreement; (c) the Loan Agreement; (d) the Assignment of Mortgage; (e) the Certificate of Determination, dated the date hereof; and (f) the General Certificate of the Issuer, dated the date hereof. We call your attention to the fact that there are certain requirements with which the Issuer, the Institution and the Organization must comply after the date of issuance of the Tax-Exempt Bonds in order for the interest on the Tax-Exempt Bonds to remain excluded from gross income for Federal income tax purposes. Copies of the aforementioned documents are included in the Record of Proceedings or on file with Bond Counsel.

In addition, in rendering the opinions set forth below, we have relied upon the opinions of the General Counsel of the Issuer, Meredith J. Jones, Esq., counsel to the Institution and the Organization, Cohen Schneider Law, P.C., New York, New York, and counsel to the Trustee, Paparone Law PLLC, New York, New York, all of even date herewith. Copies of the aforementioned opinions are contained in the Record of Proceedings.

Based upon and subject to the foregoing, we are of the opinion that:

1. The Issuer is a duly organized and existing corporate entity constituting a local development corporation of the State of New York.
2. The Issuer is duly authorized to issue, execute, sell and deliver the Initial Bonds, for the purpose of paying the costs described above.
3. The Resolution has been duly adopted by the Issuer and is in full force and effect.
4. The Indenture, the Tax Regulatory Agreement, the Loan Agreement, the Assignment of Mortgage, the Use Agreement and the Bond Purchase Agreement (collectively, the “**Issuer Documents**”) have been duly authorized, executed and delivered by the Issuer.
5. Assuming the due authorization, execution and delivery of the Issuer Documents by the other parties thereto, the Issuer Documents are legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms.
6. The Initial Bonds have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding special obligations of the Issuer payable solely from the revenues derived from the Loan Agreement, enforceable against the Issuer in accordance with their respective terms.
7. The Initial Bonds do not 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 will be liable thereon.
8. The Code sets forth certain requirements which must be met subsequent to the issuance and delivery of the Tax-Exempt Bonds for interest thereon to be and remain excluded from gross income for Federal income tax purposes. Noncompliance with such requirements could cause the interest on the Tax-Exempt Bonds to be included in gross income for Federal income tax purposes retroactive to the date

of issuance of the Tax-Exempt Bonds. Pursuant to the Indenture, the Loan Agreement, the Use Agreement and the Tax Regulatory Agreement, the Issuer, the Institution and the Organization have covenanted to maintain the exclusion from gross income of the interest on the Tax-Exempt Bonds pursuant to Section 103 of the Code. In addition, the Issuer, the Institution and the Organization have made certain representations and certifications in the Indenture, the Loan Agreement, the Use Agreement and the Tax Regulatory Agreement. We are also relying on the opinion of counsel to the Institution and the Organization as to all matters concerning the status of the Institution and the Organization as organizations described in Section 501(c)(3) of the Code and exempt from federal income tax under Section 501(a) of the Code, and that the intended use of the facilities financed or refinanced with proceeds of Tax-Exempt Bonds will be in furtherance of the Institution's and the Organization's exempt purposes under Section 501(c)(3) of the Code. We have not independently verified the accuracy of those certifications and representations or those opinions.

Under existing law, assuming compliance with the tax covenants described herein and the accuracy of the aforementioned representations and certifications, interest on the Tax-Exempt Bonds is excluded from gross income for Federal income tax purposes under Section 103 of the Code. We are also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code.

9. Under existing law, interest on the Tax-Exempt Bonds are exempt from personal income taxes imposed by the State of New York or any political subdivision of the State of New York (including The City of New York), assuming compliance with the tax covenants and the accuracy of the representations and certifications described in paragraph 8 herein.

10. Interest on the Taxable Bonds is not excluded from gross income for Federal income tax purposes under Section 103 of the Code.

11. Interest on the Taxable Bonds is not exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York).

Except as stated in paragraphs 8, 9, 10 and 11, we express no opinion as to any other Federal, state or local tax consequences of the ownership or disposition of, or the accrual or receipt of interest on, the Initial Bonds. Furthermore, we express no opinion as to any Federal, state or local tax law consequences with respect to the Initial Bonds, or the interest thereon, if any action is taken with respect to the Initial Bonds or the proceeds thereof upon the advice or approval of other counsel.

The foregoing opinions are qualified to the extent that the enforceability of the Initial Bonds, the Indenture, the Loan Agreement, the Use Agreement, the Tax Regulatory Agreement, the Assignment of Mortgage and the Bond Purchase Agreement may be limited by bankruptcy, insolvency or other laws or enactments now or hereafter enacted by the State of New York or the United States affecting the enforcement of creditors' rights and by restrictions on the availability of equitable remedies and to the extent, if any, that enforceability of the indemnification provisions of such documents may be limited under law. We express no opinion with respect to the availability of any specific remedy provided for in any of the bond documents.

In rendering the foregoing opinions, we are not passing upon and do not assume any responsibility for the accuracy, completeness, sufficiency or fairness of any documents, information or financial data supplied by the Issuer, the Institution, the Organization or the Trustee in connection with the Initial Bonds, the Indenture, the Loan Agreement, the Use Agreement, the Mortgage, the Tax Regulatory Agreement, the Assignment of Mortgage, the Continuing Disclosure Agreement, the Bond Purchase Agreement, the Pledge and Security Agreement, the Lease, the Sublease and the Project, and we make no representation that we

have independently verified the accuracy, completeness, sufficiency or fairness of any such documents, information or financial data.

We express no opinion with respect to the registration requirements under the Securities Act of 1933, as amended, the registration or qualification requirements under the Trust Indenture Act of 1939, as amended, the registration, qualification or other requirements of State Securities laws or the availability of exemptions therefrom.

We express no opinion as to the sufficiency of the description of the Facility Realty or the Facility Personalty contained in the Loan Agreement or as to the adequacy, perfection or priority of any security interest in any collateral securing the Initial Bonds.

We express no opinion with respect to whether the Issuer, the Institution or the Organization (i) have complied with environmental laws, (ii) have obtained any or all necessary governmental approvals, consents or permits in connection with the construction, renovation, equipping, furnishing and operation of the Facility, or (iii) have complied with the New York Labor Law or other applicable laws, rules, regulations, orders and zoning and building codes, all in connection with the construction, renovation, equipping, furnishing and operation of the Facility.

The opinions expressed herein may be relied upon by the addressee and may not be relied upon by any other person without our prior written consent.

Very truly yours,

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APPENDIX G

FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (this “**Agreement**”) is entered into as of this June 29, 2022, by and among Friends of WHIN Music Community Charter School, Inc. (the “**Institution**”), WHIN Music Community Charter School (the “**Charter School**”) and The Bank of New York Mellon, as dissemination agent (the “**Dissemination Agent**”), in connection with the issuance of Build NYC Resource Corporation’s (the “**Issuer**”) (a) Tax-Exempt Revenue Bonds (WHIN Music Community Charter School Project) Series 2022A (the “**Series 2022A Bonds**”), in the aggregate principal amount of \$40,840,000 and (b) Taxable Revenue Bonds (WHIN Music Community Charter School Project) Series 2022B (the “**Series 2022B Bonds**”) and together with the Series 2022A Bonds, the “**Bonds**”), in the aggregate principal amount of \$3,070,000. The Bonds are being issued pursuant to an Indenture of Trust, dated as of June 1, 2022 (the “**Indenture**”), by and between Build NYC Resource Corporation (the “**Issuer**”) and The Bank of New York Mellon, as trustee (the “**Trustee**”), including any amendments or supplements thereto.

In consideration of the purchase of such Bonds by the owners thereof, the Institution and the Organization hereby covenant and agree as follows:

Section 1. Purpose of this Agreement. This Agreement is entered into by the Institution and the Charter School as of the date set forth below, for the benefit of the holders and owners (the “**Bondholders**”) of the Bonds and in order to assist the Participating Underwriter (as defined below) in complying with the requirements of the Rule (as defined below).

Section 2. Definitions. The terms set forth below shall have the following meanings in this Agreement, unless the context clearly otherwise requires. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Covenant Agreement and Loan Agreement (each as defined below).

“*Annual Financial Information*” means (i) operational data for the Charter School for the current year in the form of Exhibit I hereto, and (ii) a copy of the Audited Financial Statements of the Institution and the Charter School as certified by the Institution’s and the Charter School’s respective independent public accountants.

“*Annual Financial Information Disclosure*” means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in Section 4(a).

“*Audited Financial Statements*” means the audited financial statements of the Institution and the Charter School, prepared in accordance with generally accepted accounting principles in the United States as in effect from time to time.

“*Authorizer*” means the Board of Regents of the University of the State of New York on behalf of the New York State Education Department, or any other body subsequently authorized by the State of New York to grant, revoke, suspend the Charter issued to the Charter School.

“*Commission*” means the Securities and Exchange Commission.

“*Covenant Agreement*” means the Covenant Agreement, dated as of June 1, 2022, by the Trustee and the Charter School.

“*Dissemination Agent*” means, initially, The Bank of New York Mellon, its successors and assigns, and, thereafter, any agent designated as such in writing by the Institution and the Organization and which has filed with the Institution and the Organization a written acceptance of such designation, and such agent’s successors and assigns.

“*EMMA*” means the Electronic Municipal Market Access facility for municipal securities disclosure of the MSRB.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Fiscal Year*” means each year ending June 30, commencing with the Fiscal Year ending June 30, 2022.

“*Loan Agreement*” means the Loan Agreement dated as of June 1, 2022, among the Issuer, the Institution and the Charter School.

“*Material Event*” means the occurrence of any of the events with respect to the Bonds set forth in Exhibit IV.

“*Material Events Disclosure*” means dissemination of a notice of a Material Event as set forth in Section 5 hereof.

“*MSRB*” means the Municipal Securities Rulemaking Board.

“*Other Information*” means the information as set forth in Section 4(c).

“*Other Information Disclosure*” means the dissemination of disclosure concerning the information as set forth in Section 4(c).

“*Participating Underwriter*” means each broker, dealer or municipal securities dealer acting as an underwriter in any primary offering of the Bonds.

“*Prescribed Form*” means, with regard to the filing of Annual Financial Information, Audited Financial Statements, Other Information and notices of Material Events with the MSRB at www.emma.msrb.org (or such other address or addresses as the MSRB may from time to time specify), such electronic format, accompanied by such identifying information, as shall have been prescribed by the MSRB and which shall be in effect on the date of filing of such information.

“*Quarterly Financial Information*” means the information as set forth in Section 4(b).

“*Quarterly Financial Information Disclosure*” means the dissemination of disclosure concerning the information as set forth in Section 4(b).

“*Rule*” means Rule 15c2-12 adopted by the Commission under the Exchange Act, as the same may be amended from time to time.

“*State*” means the State of New York.

“*Undertaking*” means the obligations of the Institution and the Organization pursuant to Sections 4 and 5.

Section 3. CUSIP Number/Final Limited Offering Memorandum. The CUSIP Number of the final maturity of the Series 2022A Bonds is 12008E SU1 and the Series 2022B Bonds is 12008E SV9. The Final Limited Offering Memorandum relating to the Bonds is dated June 23, 2022 (the “**Final Limited Offering Memorandum**”).

Section 4. Annual Financial Information Disclosure; Quarterly Financial Information Disclosure; Other Information Disclosure.

(a) Annual Financial Information and Audited Financial Statements. Subject to Section 9 of this Agreement, the Institution and the Organization hereby covenant that each will, or will cause the Dissemination Agent to, disseminate the Annual Financial Information and the Audited Financial Statements (in the form and by the dates set forth below and in Exhibit I hereto) by delivering such Annual Financial Information and the Audited Financial Statements to the MSRB within fifteen (15) days after the date required for filing the Institution’s and the Charter School’s Audited Financial Statements with the State and the Authorizer, respectively, but in no case later than January 31st of the calendar year following the end of each Fiscal Year, commencing with Fiscal Year ended June 30, 2022 (For example, the Annual Financial Information and the Audited Financial Statements for the Fiscal Year ended June 30, 2022 will be provided to the MSRB by January 31, 2023). If Audited Financial Statements are not available, then, unaudited financial statements, prepared in accordance with Generally Accepted Accounting Principles as described in the final Limited Offering Memorandum will be included in the Annual Report. It shall be sufficient if the Institution or the Charter School provides to the MSRB any or all of the Annual Financial Information Disclosure by specific reference to documents previously provided to the MSRB or the Commission and, if such document is a Final Limited Offering Memorandum within the meaning of the Rule, available from the MSRB.

If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, the Institution or the Charter School will, or will cause the Dissemination Agent to, disseminate a statement to such effect as part of its Annual Financial Information for the year in which such event first occurs.

If any amendment is made to this Agreement, the Annual Financial Information for the year in which such amendment is made (or in any notice or supplement provided to the MSRB) shall contain a narrative description of the reasons for such amendment and its impact on the type of information being provided.

(b) Quarterly Financial Information. Subject to Section 9 of this Agreement, the Institution and the Charter School shall, or shall cause the Dissemination Agent to, disseminate the Quarterly Financial Information (in the form and by the dates set forth below in subsection (d) and in Exhibit II hereto) by delivering such Quarterly Financial Information to the MSRB by February 15 (for each quarter ending December 31), May 15 (for each quarter ending March 31), August 15 (for each quarter ending June 30), and November 15 (for each quarter ending September 30), as applicable, commencing with the quarter ending March 31, 2023.

(c) Other Information. Subject to Section 9 of this Agreement, the Institution and the Charter School shall, or shall cause the Dissemination Agent to disseminate Other Information (in the form and by the dates set forth below in subsection (d) and Exhibit III hereto) by delivering such Other Information Disclosure to the MSRB within the dates specified in Exhibit III hereto.

(d) Disclosure in Prescribed Form. The Institution and the Organization are required to deliver such information in Prescribed Form and by such time so that such entities receive the information by the dates specified.

(e) Information Regarding Facility. Notwithstanding any provision hereof to the contrary, Institution and the Charter School's obligations to provide reporting regarding its operations at the Facility shall commence upon the earlier of (i) the receipt of a temporary certificate of occupancy for the Facility or (ii) the date on which students first attend class in the Facility.

Section 5. Material Events Disclosure. The Institution and the Charter School hereby covenant that each will, or will cause the Dissemination Agent to, disseminate in a timely manner, not in excess of ten (10) business days after the occurrence of the event, Material Events Disclosure to the MSRB in Prescribed Form. Notwithstanding the foregoing, notice of optional or unscheduled redemption of any Bonds or defeasance of any Bonds need not be given under this Agreement any earlier than the notice (if any) of such redemption or defeasance is given to the owners of the Bonds pursuant to the Indenture. From and after the Effective Date, the Institution and the Charter School are required to deliver such Material Events Disclosure in the same manner as provided by Section 4 of this Agreement.

Section 6. Duty to Update EMMA/MSRB. The Institution and the Charter School shall determine, in the manner each deems appropriate, whether there has occurred a change in the MSRB's e-mail address or filing procedures and requirements under EMMA each time it is required to file information with the MSRB.

Section 7. Consequences of Failure of the Institution and the Charter School to Provide Information. The Institution and the Charter School shall, or shall cause the Dissemination Agent to, give notice in a timely manner, not in excess of ten (10) business days after the occurrence of the event, to the MSRB in Prescribed Form of any failure to provide Annual Financial Information Disclosure, Quarterly Financial Information Disclosure or Other Information Disclosure when the same is due hereunder.

In the event of a failure of the Institution and the Charter School to comply with any provision of this Agreement, the Bondholder of any Bond may seek specific performance by court order to cause the Institution and the Organization to comply with their obligations under this Agreement.

If there exists a Dissemination Agent and such Dissemination Agent is unable to verify that any information required to be provided to the MSRB by in Exhibit I and Exhibit II by the date required therein, the Dissemination Agent shall send a notice to the MSRB and the Participating Underwriter in substantially the form attached hereto as Exhibit VI.

Section 8. Amendments; Waiver. Notwithstanding any other provision of this Agreement, the Institution, the Organization and the Dissemination Agent, if any, may amend this Agreement with the prior written consent of the Majority Holders.

Section 9. Termination of Undertaking. The Undertaking of the Institution and the Charter School shall be terminated hereunder when the Institution shall no longer have any legal liability for any obligation on or relating to the repayment of the Bonds. The Institution shall, or shall cause the Dissemination Agent to, give notice to the MSRB in a timely manner and in Prescribed Form if this Section is applicable.

Section 10. Dissemination Agent.

(a) The Institution and the Charter School have appointed The Bank of New York Mellon as its Dissemination Agent, and may, from time to time, appoint or engage a different Dissemination Agent to assist it in carrying out its obligations under this Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Institution and the Charter School pursuant to this Agreement. Notwithstanding anything to the contrary herein, the Dissemination Agent shall not be responsible for any determination as to the adequacy of the contents or format of any Annual Financial Information Disclosure, Quarterly Financial Information Disclosure or Other Information Disclosure, and as to the materiality of any Material Event.

(b) The duties of the Dissemination Agent are to:

(i) contact the Institution and the Charter School at least thirty (30) days before each Annual Financial Information Disclosure, Quarterly Financial Information Disclosure, and Other Information Disclosure is due under this Agreement; excluding the Other Information required under Exhibit III.

(ii) (A) send the draft templates to Institution and the Charter School management, with those sections completed that can be obtained from publicly available data for each Annual Financial Information Disclosure, Quarterly Financial Information Disclosure, and Other Information Disclosure in the Prescribed Form; and (B) file such information on EMMA;

(iii) e-mail alert to the Institution and the Charter School, the Participating Underwriter and the Trustee when any documents are filed on EMMA;

(iv) post notice on EMMA when the Institution and the Charter School misses a Continuing Disclosure filing deadline in the form set forth in Exhibit VI;

(v) post notice on EMMA when it receives notice of a Material Event at the Institution and the Charter School listed on Exhibit IV; and

(vi) assist the Institution and the Charter School to arrange investor calls in coordination with the Participating Underwriter as required under Section 16 hereof.

(c) The Dissemination Agent does not serve as an auditor, financial advisor, broker-dealer or underwriter, is not providing “advice” under Dodd-Frank Wall Street Reform and Consumer Protection Act and does not certify the completeness or accuracy of the Template or any information given by the Institution and the Charter School to The Bank of New York Mellon for filing on EMMA.

(d) In the event of a failure of the Institution or the Charter School to comply with any provision of this Agreement, the Bondholder of any Bond may seek specific performance by court order to cause the Institution and the Charter School to comply with their obligations under this Agreement.

(e) The Dissemination Agent is due a one-time set-up fee at closing, and an annual fee payable in advance on the Closing Date and on each anniversary of the Closing Date, subject to Paragraph 9 hereof.

Section 11. Indemnification. The Institution and the Charter School will indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless for, from and against any loss, expense and liabilities which the Dissemination Agent may incur arising out of or in the exercise or performance of the powers and duties of the Dissemination Agent pursuant to this Agreement and the applicable, related agency agreement, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the negligence or willful misconduct of the Dissemination Agent. The obligations of the Institution and the Charter School under this Section will survive resignation or removal of the Dissemination Agent and payment of the Bonds for a period of one (1) year.

Section 12. Additional Information. Nothing in this Agreement shall be deemed to prevent the Institution or the Charter School from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Financial Information, Quarterly Information, Other Information, or notice of occurrence of a Material Event, in addition to that which is required by this Agreement. If the Institution or the Charter School chooses to include any information from any document or notice of occurrence of a Material Event in addition to that which is specifically required by this Agreement, the Institution and the Charter School shall not have any obligation under this Agreement to update such information or include it in any future disclosure or notice of the occurrence of a Material Event. The Dissemination Agent shall disseminate all information required to be posted to EMMA pursuant to Section 5(C) of the Covenant Agreement.

Section 13. Beneficiaries. This Agreement has been executed in order to assist the Participating Underwriter in complying with the Rule; however, this Agreement shall inure solely to the benefit of the Institution, the Charter School, the Dissemination Agent, if any, the Trustee and the Bondholders of the Bonds, and shall create no rights in any other person or entity.

Section 14. Recordkeeping. The Institution and the Charter School shall maintain records of all Annual Financial Information Disclosure, Quarterly Information Disclosure, Other Information Disclosure, and Material Events Disclosure, including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

Section 15. Past Compliance. The Institution and the Charter School represent that this Agreement is their first continuing disclosure undertaking entered into by it pursuant to the Rule.

Section 16. Investor Calls. The Dissemination Agent shall provide notice of each investor call required under the Covenant Agreement in a timely manner but in no event less than ten (10) business days prior to the date set for each such conference call.

Section 17. Assignment. The Institution and the Charter School shall not transfer its obligations under the Indenture, the Loan Agreement unless the transferee agrees to assume all obligations of the Institution or the Organization under this Agreement or to execute a Continuing Disclosure Agreement under the Rule in a form approved by the Majority Holders.

Section 18. No Indebtedness of the State. No indebtedness of any kind incurred or created by the Institution or the Charter School shall constitute an indebtedness of the State or its political subdivisions

(including the Authorizer, and no indebtedness of the Institution or the Charter School shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

Section 19. Governing Law. This Agreement shall be governed by the laws of the State.
Dated as of the date first set forth above.

**FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.**

By: _____
Arnold Adlin, Board Chair

**WHIN MUSIC COMMUNITY CHARTER
SCHOOL**

By: _____
Gregory David, Board Chair

**THE BANK OF NEW YORK MELLON, as
Dissemination Agent**

By: _____
Name: _____
Title: _____

[Signature Page to Continuing Disclosure Agreement]

EXHIBIT I

ANNUAL INFORMATION

Completion of the following tables, annually, commencing with the Fiscal Year ending June 30, 2022, to the extent not provided in the Annual Audit:

Board of Trustees and Officers of the Board			
Name	Position	Initial Start Date	Current Term Expiration

Employees		
	Full Time	Part Time
Administration		
Teachers		
Teacher Assistants		
Total		

Teacher Experience and Education	
	20__–20__
0–5 Years' Experience	
5–10 Years' Experience	
Over 10 Years' Experience	
Total	
Bachelor's Degree	
Master's Degree	
Total	

Historical Teacher Retention Rates	
Year	Percent Retained
From 20__ to 20__	%

Enrollment	
Grade	20__ - 20__
K	
1 st	
2 nd	
3 rd	
4 th	
5 th	
6 th	
7 th	
8 th	
Total	

Retention Rate by School Year	
School Year	Percent Retention from Previous School Year
From 20__ to 20__	%

Wait List Summary	
Grade	20__ - 20__
K	
1 st	
2 nd	
3 rd	
4 th	
5 th	
6 th	
7 th	
8 th	
Total	

Percentage of students that scored at or above Level 3 in English Language Arts	
20__ - 20__	
Grade	
3 rd	%
4 th	
5 th	
6 th	
7 th	
8 th	

Percentage of students that scored at or above Level 3 in Mathematics	
20__ - 20__	

Grade

3 rd	%
4 th	
5 th	
6 th	
7 th	
8 th	

Historic Per Pupil Funding Chart for New York City-based Charter Schools	
School Year	Per Pupil Funding ¹
20__ - 20__	\$

¹ Per pupil funding does not include supplemental aid which may have been available in any year.

EXHIBIT II

QUARTERLY INFORMATION

1. By February 15 (for each quarter ending December 31), May 15 (for each quarter ending March 31), August 15 (for each quarter ending June 30), and November 15 (for each quarter ending September 30), as applicable, or as otherwise set forth below, the Charter School shall provide each of the following reports:
 - a. unaudited financial statements for the previous quarter and Fiscal Year to date reflecting revenues and expenses in comparative form with the Charter School's then current operating budget for the Charter School (e.g. actual to budget);
 - b. quarterly enrollment of the Charter School, and by grade within the Charter School, together with waitlist information, if applicable. Waitlist information shall include number of potential students by grade, but shall not include any personally identifiable information; and
 - c. a statement explaining for any material deviations of the foregoing data.

EXHIBIT III
OTHER INFORMATION

- (a) Periodic Reports. Within thirty (30) days of such event, the Charter School shall provide each of the following reports:
- (i) A copy of the Charter School's adopted annual operating budget and capital budget for the Charter School's present Fiscal Year, within thirty (30) days of its adoption by the Board of Trustees, commencing with the Fiscal Year ending June 30, 2023; and
 - (ii) A copy of material revisions, if any, to the Charter School's annual budgets or capital budgets for the Charter School and as approved by its Board of Trustees within thirty (30) days of adoption by the Board of Trustees.

EXHIBIT IV

EVENTS WITH RESPECT TO THE BONDS FOR WHICH MATERIAL EVENTS DISCLOSURE IS REQUIRED

1. Principal and interest payment delinquencies
2. Nonpayment-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. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security
7. Modifications to rights of security holders, if material
8. Bond calls, if material, and tender offers
9. Defeasances
10. Release, substitution or sale of property securing repayment of the securities, if material
11. Rating changes
12. Bankruptcy, insolvency, receivership or similar event of the Institution or Organization *
13. The consummation of a merger, consolidation or acquisition involving the Institution or Charter School or the sale of all or substantially all of the assets of the Institution or the Charter School, 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. Incurrence of a financial obligation of the Institution or the Charter School, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Institution or the Charter School, any of which affect security holders, if material
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Institution or the Charter School, any of which reflect financial difficulties

* This event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Institution or the Organization in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Institution or the Organization, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Institution or the Organization.

EXHIBIT V-1

CERTIFICATE OF AUTHORIZED REPRESENTATIVE OF THE CHARTER SCHOOL

I, _____, as the Authorized Representative for the Charter School, hereby certify as of the date hereof that other than as described herein, to the best of the Charter School's knowledge:

1. The information contained in the Template prepared on the date hereof is true and correct in all material respects.
2. There have been no notices of potential adverse actions of which the Charter School has been notified; adopted corrective plans of action, adverse actions or restrictions; Charter non-renewals or revocations by the Authorizer and status updates on appeals or actions taken by the Charter School in response.
3. There have been no notices of investigations or actions taken by regulatory agencies (such as the SEC, for example).
4. There has been no litigation (including any matters of criminal misconduct) against the Charter School, members of the Board of Trustees or employees to the extent such action is expected to materially affect operations and/or the Charter School's finances.
5. There have been no casualty losses, to extent daily operations are disrupted for more than 7-10 days, with information about insurance coverage.
6. There have been no non-scheduled terminations by the Board of Trustees, or resignations of, key school administrative personnel employed by the Charter School and/or management contracts; as well as material changes in members of the Board of Trustees (such as a mass resignation, for example).
7. There have been no building code, or other public health and safety violations at the Facility that disrupt operations at the Facility for more than 7-10 days.
8. The Charter School is in compliance with the insurance requirements under the Security Documents or Bond Documents.
9. There are no material defaults applicable to the Charter School which exist under the Bond Documents.
10. No Material Events as set forth in Exhibit IV have occurred that have not been disclosed on EMMA.

WHIN MUSIC COMMUNITY CHARTER SCHOOL

By: _____
Authorized Representative

Dated: _____, 20__.

EXHIBIT V-2

CERTIFICATE OF AUTHORIZED REPRESENTATIVE OF THE INSTITUTION

I, _____, as the Authorized Representative for the Institution, hereby certify as of the date hereof that other than as described herein, to the best of the Institution's knowledge:

1. The information contained in the template prepared on the date hereof is true and correct in all material respects.
2. There have been no notices of potential adverse actions of which the Institution has been notified with respect to its corporate status.
3. There have been no notices of investigations or actions taken by regulatory agencies (e.g. the SEC).
4. There has been no litigation (including any matters of criminal misconduct) against the Institution, board members or employees to the extent such action is expected to materially affect operations and/or Institution finances.
5. There have been no casualty losses, to the extent daily operations are disrupted for more than 7-10 days, with information about insurance coverage.
6. There have been no non-scheduled terminations by the Board of Directors, or resignations of, key administrative personnel employed by the Institution (if any) and/or management contracts, as well as material changes in members of the Board of Directors (e.g. mass resignation).
7. The Institution is in compliance with the insurance requirements under the Security Documents or Bond Documents.
8. There are no material defaults applicable to the Institution which exist under the Bond Documents.
9. No Material Events as set forth in Exhibit IV have occurred that have not been disclosed on EMMA.

FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.

By: _____
Authorized Representative

Dated: _____, 20__.

EXHIBIT VI

FORM OF NOTICE TO THE MSRB OF FAILURE TO FILE [_____]

Name of Issuer: Build NYC Resource Corporation

Name of Issue: (i) (a) Revenue Bonds (WHIN Music Community Charter School Project) Series 2022A (the “Series 2022A Bonds”), in the aggregate principal amount of \$40,840,000 and (b) Taxable Revenue Bonds (WHIN Music Community Charter School Project) Series 2022B (the “Series 2022B Bonds” and together with the Series 2022A Bonds, the “Bonds”), in the aggregate principal amount of \$3,070,000.

Name of Institution: Friends of WHIN Music Community Charter School, Inc.

Name of Charter School: WHIN Music Community Charter School

Date of Issuance: June 29, 2022

NOTICE IS HEREBY GIVEN that the [Institution] [and] [the Charter School] has/have not provided [_____] with respect to the above-named Bonds as required by the Continuing Disclosure Undertaking Agreement with respect to the Bonds. The Institution [and] [the Charter School] has/have notified the Dissemination Agent that it anticipates [_____] will be filed by _____, 20__.

Dated: _____, 20__.

THE BANK OF NEW YORK MELLON,
as Dissemination Agent

By: _____
Authorized Signatory

cc: Institution

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APPENDIX H

BOOK-ENTRY ONLY SYSTEM

The information in this APPENDIX H concerning DTC (as defined below), Cede & Co. and the Book-Entry System has been furnished by DTC for use in disclosure documents such as this Limited Offering Memorandum. The Issuer and the Underwriter believe such information to be reliable, but neither the Issuer nor the Underwriter takes any responsibility for the accuracy or completeness thereof.

The Depository Trust Company (“**DTC**”), New York, New York, will act as securities depository for the securities discussed in the body of this Limited Offering Memorandum (the “**Series 2022 Bonds**”). The Series 2022 Bonds will be issued as fully-registered securities 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 Series 2022 Bond certificate will be issued for each maturity of the Series 2022 Bonds, each in the aggregate 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, 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**”). DTC has a Standard & Poor’s of AA+. 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.

Purchases of the Series 2022 Bonds under the DTC system must be made by or through Direct Participants which will receive a credit for the Series 2022 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2022 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 2022 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 the Series 2022 Bonds, except in the event that use of the book-entry system for the Series 2022 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2022 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 the Series 2022 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2022 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2022 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping 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 among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2022 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2022 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Series 2022 Bond documents. For example, Beneficial Owners of the Series 2022 Bonds may wish to ascertain that the nominee holding the Series 2022 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Bond Registrar and request that copies of the notices be provided directly to them.

Redemption notices are required to be sent to DTC. If less than all of the Series 2022 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Series 2022 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 and the Trustee 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 Series 2022 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, principal and interest payments on the Series 2022 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 Trustee or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, principal and interest payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of 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.

A Beneficial Owner will give notice to elect to have its Series 2022 Bonds purchased or tendered, through its Participant, to the Trustee, and will effect delivery of such Series 2022 Bonds by causing the Direct Participant to transfer the Participant's interest in the Series 2022 Bonds, on DTC's records, to the Trustee.

DTC may discontinue providing its services as depository with respect to the Series 2022 Bonds at any time by giving reasonable notice to the Issuer and the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Series 2022 Bond certificates are required to be printed and delivered. The Issuer may decide to discontinue use of the system of book-entry-only transfers through

DTC (or a successor securities depository). In that event, Series 2022 Bond certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy or completeness thereof.

THE INFORMATION ABOVE DISCUSSING THE BOOK-ENTRY SYSTEM HAS BEEN FURNISHED BY DTC. NO REPRESENTATION IS MADE BY THE ISSUER, THE BORROWER, THE CHARTER SCHOOL OR THE UNDERWRITER AS TO THE COMPLETENESS OR ACCURACY OF SUCH INFORMATION OR AS TO THE ABSENCE OF MATERIAL ADVERSE CHANGES IN SUCH INFORMATION SUBSEQUENT TO THE DATE HEREOF. NO ATTEMPT HAS BEEN MADE BY THE ISSUER, THE BORROWER, THE CHARTER SCHOOL, OR THE UNDERWRITER TO DETERMINE WHETHER DTC IS OR WILL BE FINANCIALLY OR OTHERWISE CAPABLE OF FULFILLING ITS OBLIGATIONS. THE ISSUER HAS NO RESPONSIBILITY OR OBLIGATION TO DTC PARTICIPANTS, INDIRECT PARTICIPANTS OR BENEFICIAL OWNERS, OR THE PERSONS FOR WHICH THEY ACT AS NOMINEES WITH RESPECT TO THE SERIES 2022 BONDS, OR FOR ANY PRINCIPAL OF, SINKING FUND INSTALLMENT, REDEMPTION PREMIUM, IF ANY, OR INTEREST PAYMENT THEREON.

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APPENDIX I

FORM OF INVESTMENT CERTIFICATE

INVESTMENT CERTIFICATE FOR BONDS

Build NYC Resource Corporation
One Liberty Plaza
New York, New York 10006
Attn: Executive Director

The undersigned, as agent for the initial purchaser or purchasers of the herein defined Bonds (the **“Purchaser”**), HEREBY ACKNOWLEDGES receipt from D.A. Davidson & Co. (the **“Underwriter”**), of the Build NYC Resource Corporation’s (the **“Issuer’s”**) (i) Tax-Exempt Revenue Bonds (WHIN Music Community Charter School Project), Series 2022A (the **“Series 2022A Bonds”**), in the aggregate principal amount of \$40,840,000; (ii) Taxable Revenue Bonds (WHIN Music Community Charter School Project), Series 2022B (the **“Series 2022B Bonds”** and together with the Series 2022A Bonds, the **“Bonds”**), in the aggregate principal amount of \$3,070,000, which Bonds are more particularly described in a certain Indenture of Trust, dated as of June 1, 2022 (the **“Indenture”**), between the Issuer and The Bank of New York Mellon, as trustee (the **“Trustee”**) (capitalized terms used but not defined herein shall have the respective meaning set forth in the Indenture).

The undersigned REPRESENTS to the Issuer as follows:

1. It has received the information with respect to WHIN Music Community Charter School (the **“Organization”**) and Friends of WHIN Music Community Charter School, Inc. (the **“Institution”**), and their affairs, which the Purchaser has requested, including financial statements and the Limited Offering Memorandum, dated June 23, 2022 (the **“Limited Offering Memorandum”**), and that any and all information relating to the Institution or the Organization and their respective affairs, which the Purchaser has requested, has been provided to the Purchaser by the Institution and the Organization and not the Issuer.

2. It has read the Indenture, the Loan Agreement, the Tax Regulatory Agreement, the Promissory Notes, and the other Project Documents.

3. The undersigned is the purchasing the Bonds for its own account or accounts for which it serves as discretionary investment adviser and not in the capacity of a bond house, broker or other distribution intermediary, nor with a view to the distribution or resale thereof, provided that the Purchaser reserves its rights to dispose of all or any part of the Bonds in accordance with the Indenture if in the future it deems it advisable to do so.

4. It has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment, and acknowledges that it is able to bear the economic risk of this investment.

5. It has not offered, offered to sell, offered for sale or sold the Bonds by means of any form of general solicitation or general advertising and the Purchaser is not an underwriter within the meaning of Section 2(11) of the Securities Act of 1933, as amended, and will only sell the Bonds, should it choose to do so, in accordance with applicable law and in compliance with the restrictions set forth in the Indenture.

6. It understands that the Bonds being purchased shall be special limited revenue obligations of the Issuer, payable by the Issuer solely from the loan payments, revenues and receipts payable by the

Institution under the Loan Agreement and the Promissory Notes, and that the Bonds do not constitute a debt of the State of New York or The City of New York, and neither the State of New York nor The City of New York is liable on the Bonds.

7. It understands that the Issuer has no power of taxation.

8. It understands that the Issuer and its members, directors, officers or agents (including the person or persons executing the Bonds on behalf of the Issuer) shall not be liable personally or be subject to any personal liability or accountability by reason of or in connection with the issuance thereof. It is understood that underwriters and bond counsel are not considered agents of the Issuer.

9. It understands that the Issuer makes no representation or warranty, express or implied, with respect to the merchantability, condition or workmanship of any part of the Facility or the suitability of the Facility for the purposes or needs of the Institution or the Organization or the extent to which proceeds derived from the sale of the Bonds will be sufficient to pay the cost of the Project.

10. It is not relying on the Issuer with respect to the financial condition of the Institution or the Organization, or the creditworthiness of the Institution or the Organization, or the competency or integrity of the management of the Institution or the Organization, or of the suitability of the Facility for the business or purposes of the Institution or the Organization. It has made an independent evaluation of the factors aforementioned in this *paragraph 10* without reliance upon the Issuer for any of them.

11. It has not relied upon the determination of the Issuer to issue its revenue bonds to finance the cost of the Project for any purpose of an evaluation of the financial condition or creditworthiness of the Institution or the Organization, or of the competency or integrity of the management of the Institution or of the Organization or of the suitability of the Facility for the business or purposes of the Institution or of the Organization or for any other purpose.

12. It understands that the Issuer does not in any way represent that the insurance required by the Loan Agreement or any other Project Document, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the business or interest of the Institution or the Organization.

13. It is a "Qualified Institutional Buyer" as that term is defined in Securities Exchange Commission Rule 144A (17 C.F.R. §230.144A) or any similar successor regulation or statute. For the avoidance of doubt, the Bonds are not being sold pursuant to Securities Exchange Commission Rule 144A (17 C.F.R. §230.144A) and the reference to Securities Exchange Commission Rule 144A (17 C.F.R. §230.144A) in the first sentence of this paragraph 14 is being used solely for defining "Qualified Institutional Buyer".

[PURCHASER]

Dated: June 29, 2022

By: _____

Name: _____

Title: _____

APPENDIX J

**FORMS OF LOAN AGREEMENT, INDENTURE, COVENANT AGREEMENT, USE
AGREEMENT, LEASE, AND SUBLEASE**

(attached)

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LOAN AGREEMENT

LOAN AGREEMENT

Dated as of June 1, 2022

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 1 Liberty Plaza, New York, New York 10006, as **"Issuer"**

and

FRIENDS OF WHIN MUSIC COMMUNITY CHARTER SCHOOL, INC.,

a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal office at 517 West 164th Street, New York 10032, as **"Institution"**

\$40,840,000

Build NYC Resource Corporation
Tax-Exempt Revenue Bonds
(WHIN Music Community Charter School Project), Series 2022A

and

\$3,070,000

Build NYC Resource Corporation
Taxable Revenue Bonds
(WHIN Music Community Charter School Project), Series 2022B

This **LOAN AGREEMENT**, dated as of June 1, 2022 (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 1 Liberty Plaza, New York, New York 10006 (the **"Issuer"**), party of the first part, and **FRIENDS OF WHIN MUSIC COMMUNITY CHARTER SCHOOL, INC.**, a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal office in New York City at 517 West 164th Street, New York, New York 10032 (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 and a taxable 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

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

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 Control Agreement shall mean the Account Control Agreement, dated as of June 1, 2022, among the Institution, the Trustee and the Depository Bank, as the same may be amended or supplemented from time to time or any successor Account Control Agreement entered into by a successor Depository Bank, the Trustee, and the Institution.

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 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.

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 leased by the Institution and occupied, used and operated by the Organization 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 528 West 162nd Street, New York, New York 10032, for use by the Institution in the providing of educational services for students in kindergarten through 8th grade.

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).

Assignment of Mortgage shall mean, collectively, the Assignment of Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Building Loan) and the Assignment of Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (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, (i) in the case of the Initial Bonds, \$100,000 or any integral multiple of \$5,000 in excess thereof, and (ii) in the case of any Additional Bonds, such denominations as shall be set forth in the Supplemental Indenture executed and delivered in connection with such Additional Bonds.

Authorized Principal Amount shall mean, (i) in the case of the Series 2022A Bonds, \$40,840,000, (ii) in the case of the Series 2022B Bonds, \$3,070,000, and (iii) in the case of any Additional Bonds, such authorized principal amount as shall be set forth in the Supplemental Indenture executed and delivered in connection with such Additional Bonds.

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.

Bond Purchase Agreement shall mean the Bond Purchase Agreement, dated June 23, 2022, among the Institution, the Organization, the Issuer and the Underwriter.

Bond Registrar shall mean the Trustee acting as registrar as provided in Section 3.10 of the Indenture.

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Concessionaire has 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 Workforce Disclosure Law shall have the meaning set forth in Section 8.16(g).

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 147(g) of the Code and any regulations thereunder, including but not limited to the following: Underwriter’s fee; counsel fees (including bond counsel, counsel to the Underwriter, Trustee’s counsel, Issuer’s counsel, Institution’s counsel, Organization’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, the Institution or the Organization 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); Rating Agency fees; Trustee and Paying Agent fees; accountant fees and other expenses related to issuance of the Initial Bonds; printing costs (for the Initial Bonds and of 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.

Covenant Agreement means the Covenant Agreement, dated as of June 1, 2022, between the Organization and the Trustee, as the same may be amended or supplemented from time to time.

Covered Counterparty has the meaning specified in Section 8.30(b).

Covered Employer has the meaning specified in Section 8.30(b).

DCA has the meaning specified in Section 8.30(b).

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, as of any particular date of computation, an amount (which amount may take the form of cash, Qualified Investments or any combination thereof) equal to the lesser of:

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Bond Resolution shall mean the resolution of the Issuer adopted on November 16, 2021, authorizing the issuance of the Initial Bonds.

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.

Certificate shall have the meaning set forth in Section 8.1(a).

CGL shall have the meaning set forth in Section 8.1(a).

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 June 29, 2022, the date of the initial issuance and delivery of the Initial Bonds.

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 58,895 square feet, the square footage of the Improvements upon completion of the Project Work.

Completion Deadline shall mean August 1, 2024.

Comptroller has the meaning specified in Section 8.30(b).

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(a) with respect to the Initial Bonds, as of any particular date of computation, an amount (which amount may take the form of cash, Qualified Investments or any combination thereof) equal to the lesser of:

(i) ten percent (10%) of the Stated Principal Amount (as defined in the Tax Regulatory Agreement) of the Initial Bonds;

(ii) 100% of the greatest amount required in the then current or any future calendar year to pay the sum of the scheduled principal and interest payable on Initial Bonds; or

(iii) 125% of the average annual amount required in the then current or any future calendar year to pay the sum of scheduled principal and interest on Initial Bonds.

(b) with respect to any Series of Additional Bonds, such amount as shall be set forth in the Supplemental Indenture entered into in connection with the issuance of such Additional Bonds.

Defeasance Obligations shall mean Government Obligations that are not subject to redemption prior to maturity.

Depository Agreement means the Depository Agreement, dated as of June 1, 2022, between the Institution and the Depository Bank, as the same may be amended or supplemented from time to time.

Depository Bank means The Bank of New York Mellon, as depository bank for the Institution, or any successor depository bank for the Institution.

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 or the Organization have participated or have been given the opportunity to participate, and which ruling or memorandum the Institution and/or the Organization, 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 and/or the Organization have participated or has been a party, or has been given the opportunity to participate or be a party; or

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(D) the admission in writing by the Institution or the Organization;

in any case, after the Closing Date, to the effect that the interest payable on the Series 2022A 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 Series 2022A 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 Series 2022A 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) hereof shall be considered to exist unless (1) the Holder or former Holder of the Series 2022A 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 Series 2022A 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 Series 2022A 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 Series 2022A Bond in the computation of minimum or indirect taxes.

DOL shall have the meaning set forth in Section 8.7(a).

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).

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 May 18, 2021, prepared by the Environmental Auditor.

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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.

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 the leasehold interest of the Institution pursuant to the Lease Agreement in the following:

(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

Environmental Auditor shall mean PVE, LLC.

Estimated Project Cost shall mean \$43,597,706.30.

Event of Default shall have the meaning specified in Section 9.1.

Event of Taxability shall mean the date specified in a Determination of Taxability as the date interest paid or payable on any Series 2022A Bond becomes includable for federal income tax purposes in the gross income of any Series 2022A Bondholder thereof as a consequence of any act, omission or event whatsoever, including any change of law, and regardless of whether the same was within or beyond the control of the Institution.

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.

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 each 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, 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

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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.

Indemnification Commencement Date shall mean November 16, 2021, 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 Accountant shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Institution and licensed to practice in the State.

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, and approved in writing by the Trustee (which approval shall not be unreasonably withheld).

Information Recipients shall have the meaning set forth in Section 8.7(c).

Initial Annual Administrative Fee shall mean \$1,250.00.

Initial Bonds shall mean collectively, the Series 2022A Bonds and the Series 2022B Bonds authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

Institution shall mean Friends of WHIN Music Community Charter School, Inc., a not-for-profit corporation organized 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 Documents shall mean collectively, the Bond Purchase Agreement, this Agreement, each Promissory Note, the Mortgage, the Building Loan Agreement, the Pledge and Security Agreement, the Account Control Agreement, the Depositary Agreement, the Continuing Disclosure Agreement, the Lease, the Sublease Agreement, the Tax Regulatory Agreement, and any other Project Documents to which the Institution is a party, each as may be amended from time to time.

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, January 1 and July 1 of each year, commencing January 1, 2023, 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 September 16, 2020, 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 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 Section 8.26), Article IX, Article X, Sections 11.1, 11.3 and 11.5, and Article XII (except Section 12.2); and

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Loss Event shall have the meaning specified in Section 6.1.

LW has the meaning specified in Section 8.30(b).

LW Agreement has the meaning specified in Section 8.30(b).

LW Agreement Delivery Date has the meaning specified in Section 8.30(b).

LW Event of Default has the meaning specified in Section 8.30(b).

LW Law has the meaning specified in Section 8.30(b).

LW Term has the meaning specified in Section 8.30(b).

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 has 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.

Maturity Date shall mean collectively, (i) with respect to the Series 2022A Bonds, July 1, 2032, July 1, 2042, July 1, 2052, and July 1, 2057, and (ii) with respect to the Series 2022B Bonds, July 1, 2032.

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 Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Building Loan) and the Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (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.

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(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 the leasehold interest of the Institution pursuant to the Lease Agreement in that certain lot, piece or parcel of land in Block 2120 and Lot 18, generally known by the street address 528 West 162nd Street, 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 9,992 square feet.

Lease Agreement shall mean that certain Lease between the 528 W 162 LLC and the Institution, dated as of April 16, 2021, as amended by that certain First Amendment to Lease dated as of April 4, 2022, as the same may be further amended from time to time.

Lease Payment Reserve Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of this Indenture.

Lease Payment Reserve Requirement shall mean a total amount equal to \$1,263,111.24, payable in twelve (12) equal installments of \$105,259.27 beginning July 5, 2023.

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.

Letter of Representation and Indemnity Agreement shall mean the Letter of Representation and Indemnity Agreement, dated the Closing Date, from the Institution to the Issuer, the Trustee and the Underwriter of the Initial Bonds.

Liability shall have the meaning set forth in Section 8.2(a).

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 each January 5, March 5, May 5, July 5, September 5 and November 5 of each year.

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Nationally Recognized Bond Counsel shall mean Nixon Peabody 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 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.

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.

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.

Organization shall mean WHIN Music Community Charter School, a New York not-for-profit education corporation, exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Organization Documents shall mean, collectively, the Bond Purchase Agreement, the Use Agreement, the Tax Regulatory Agreement, the Covenant Agreement, the Continuing Disclosure Agreement and the Sublease Agreement.

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.

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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 has the meaning specified in Section 8.30(b).

Owed Monies has the meaning specified in Section 8.30(b).

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.

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(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 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;

(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 or performance mortgage 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;

(xiii) any lien, security interest, encumbrances or charge which exists in favor of the Trustee or to which the Trustee shall consent in writing; and

(xiv) a condominium declaration subjecting the leasehold interest created pursuant to the Lease Agreement to a leasehold condominium regime (the "Condominium"), together with floor plans of the Condominium, by-laws of the Condominium and such other documents as shall be required to form the Condominium (collectively, the "Condominium Documents"), by obtaining a No-Action Letter from the State Department of Law, it being agreed that neither the Mortgage nor the other Security Documents shall be subordinated to the Condominium, and so long as such Condominium Documents comply with Section 8.34 of the Loan Agreement, none of the Trustee or the Issuer shall have approval over the Condominium Documents; notwithstanding the foregoing, if requested by the Institution, the Trustee shall subordinate the lien of the Mortgage and the other Security Documents to the Condominium and the Condominium

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 Lease Agreement, the Building Loan Agreement, the Sublease 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 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;

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Documents provided the Trustee shall have approved (with the consent of the Majority Holders) the form of the Condominium Documents, not to be unreasonably withheld, conditioned or delayed, so long as such Condominium Documents comply with Section 8.34 of the Loan Agreement.

Person shall mean an individual or any Entity.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, 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.

Pledged Collateral shall have the meaning specified in Section 3.1 of the Pledge and Security Agreement.

Policy(ies) shall have the meaning specified in Section 8.1(a).

Predecessor Institution shall have the meaning specified in Section 8.20(b)(ii).

Prevailing Wage Law has 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 (i) the construction, renovation, furnishing, and equipping of an existing 29,880 square foot, three-story, building (the "Existing Facility"), and the construction, furnishing and equipping of an approximately 25,015 square foot, five-story addition to the Existing Facility (the "Addition" and together with the Existing Facility, the "Facility"), for a total of approximately 54,895 square feet, located on a 9,992 square foot parcel of leased land at 528 West 162nd Street in New York, New York; (ii) capitalized interest and a debt service reserve fund, and (iii) the issuance costs of the Bonds.

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

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a 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”, provided that if the Project Improvements Investment amount is modified in the M/WBE Participation Plan, as the same may be amended from time to time, it shall be deemed to be amended for all purposes under this Loan Agreement.

Project Costs shall mean:

- (i) all costs of engineering and architectural services with respect to the Project, 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;
- (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;
- (iii) the interest on the Bonds through July 1, 2024;
- (iv) all costs of contract bonds and of insurance that may be required or necessary during the period of Project construction and renovation;
- (v) the cost of lease payments for the Facility Realty during the period of construction and renovation of the Project through the Completion Deadline;
- (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 during the period of construction and renovation of the Project;
- (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, including any amounts required to reimburse the Institution for advances made for any item otherwise constituting

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Qualified Investments shall mean, to the extent permitted by applicable law, the following:

- (i) Government Obligations;
- (ii) commercial paper having, at the time of investment or contractual commitment to invest therein, a rating from S&P and Moody's, of A1 and P1, respectively;
- (iii) repurchase and reverse repurchase agreements collateralized with Government Obligations, including those of the Trustee or any of its affiliates;
- (iv) investments in money market mutual funds having a rating at time of investment in the highest investment category granted thereby from S&P or Moody's, including, without limitation any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to this Indenture which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;
- (v) demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, and certificates of deposit or bankers acceptances of depository institutions, including the Trustee or any of its affiliates, rated in the AA long-term ratings category or higher by S&P or Moody's or which are fully FDIC-insured;
- (vi) direct and general long-term obligations of any state of the United States on which the full faith and credit of the state is pledged and which are rated in either of the two highest rating categories by Moody's or S&P;
- (vii) direct and general short-term obligations of any state of the United States on which the full faith and credit of the state is pledged and which are rated in the highest rating category by Moody's and S&P; and
- (viii) other obligations, interest on which is excludable from gross income for purposes of federal income taxation, which are rated in the two highest rating categories by S&P and Moody's.

Qualified Workforce Program has the meaning specified in Section 8.30(b).

Rating Agency shall mean any of S&P, Moody's or Fitch and such other nationally recognized securities rating agency as shall have awarded a rating to the Initial Bonds.

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.

a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Project; and

- (x) all other costs and expenses relating to the completion of the Project or the issuance of a Series of Additional Bonds, including the payment of working capital in an amount not to exceed \$783,566.36 from the Series 2022B Bonds.

“Project Costs” shall not include (i) fees or commissions of real estate brokers, (ii) moving expenses, or (iii) operational costs (except as permitted by subsection (x) above).

Project Documents shall mean, collectively, the Institution Documents, the Organization Documents and the Security Documents.

Project Fee shall mean \$239,550, representing the \$244,550 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 Improvements shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements resulting from the Project Work.

Project Improvements Investment shall mean the costs and expenses to be incurred by the Institution after the Indemnification Commencement Date and prior to the Completion Deadline for the construction, reconstruction, acquisition or installation of the Project Improvements in connection with the Project Work which are (a) described in the Project Cost Budget, and (b) considered hard costs of construction under normal industry standards, including, without limitation: (1) payments to contractors, subcontractors, suppliers and materialmen for labor performed and materials supplied, and (2) costs and expenses for labor, services, facilities or equipment customarily considered as “general conditions” items, including the premium paid for payment and performance bonds and/or insurance policies that may be required in connection with the Project Work pursuant to this Agreement.

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 Personality and any work required to install same.

Promissory Note shall mean, (i) with respect to the Initial Bonds, that certain Series 2022A Promissory Note and that certain Series 2022B Promissory Note each in substantially the form of Exhibit H to this Agreement, each from the Institution to the Issuer and each endorsed by the Issuer to the Trustee, (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.

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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.

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 this Indenture.

Repair and Replacement Fund Requirement shall mean a total amount equal to \$200,000, payable in five equal annual installments of \$40,000 beginning July 5, 2027 and continuing annually for five (5) consecutive years, as may be increased in accordance with Section 8.32.

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”.

S&P shall mean Standard & Poor's Financial Services LLC, a Delaware limited liability company which is a subsidiary of McGraw Hill Financial, Inc., a corporation organized and existing under the laws of the State, its successors and assigns, and if such limited liability company 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).

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-

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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 Pledge and Security Agreement, the Account Control Agreement, the Depositary Agreement, the Covenant Agreement, the Lease Agreement, the Building Loan Agreement, the Sublease Agreement, the Tax Regulatory Agreement, the Use 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 the Indenture.

Series 2022A Bonds, means the Issuer's \$40,840,000 Tax-Exempt Revenue Bonds (WHIN Music Community Charter School Project), Series 2022A authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

Series 2022B Bonds, means the Issuer's \$3,070,000 Taxable Revenue Bonds (WHIN Music Community Charter School Project), Series 2022B authorized, issued, executed, authenticated and delivered on the Closing Date under 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 has the meaning specified in Section 8.30(b).

Site Employee has the meaning specified in Section 8.30(b).

Small Business Cap has the meaning specified in Section 8.30(b).

Specified Contract has the meaning specified in Section 8.30(b).

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(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.

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State shall mean the State of New York.

Sublease Agreement shall mean that certain Sublease between the Institution and the Organization, dated as of June 15, 2021, as amended and restated by that certain First Amended and Restated Sublease dated as of June 29, 2022, as the same may be further amended from time to time.

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, the Institution and the Organization 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 D.A. Davidson & Co., its successors and/or assigns.

Use Agreement shall mean the Use Agreement, dated as of June 1, 2022, among the Issuer, the Trustee and the Organization, as the same may be amended from time to time.

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:

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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 a not for profit local development corporation formed and existing on behalf of the City to act as a governmental issuer of taxexempt 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.

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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 organized under the laws of the State, is validly existing and in good standing under the laws of the State, is duly qualified to do business and in good standing under the laws of the State, is not in violation of any provision of its Organizational Documents, 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 and the Organization is or will be in use, occupancy or possession of any portion of the Facility.

(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.

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(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.

(y) No part of the proceeds of the Initial Bonds will be used to finance 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 leasehold 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.

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(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 shall not use 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 current or 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. The Institution represents and warrants that the Project Improvements Investment for the Project is \$26,400,000.

(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 (1) complete tax lot and no portion of any single tax lot.

(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.

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(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.

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 that are capable of being so extended, including any warranties given by contractors, manufacturers or service organizations who perform 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 necessary to complete the Project in full, the Institution shall pay that portion of such costs of the

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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 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.

(b) All Additional Improvements shall constitute a part of the Facility, subject to this Agreement and the Mortgage.

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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.

(i) The Institution covenants to invest or cause the investment of at least \$26,400,000 as its Project Improvements Investment.

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(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. Notwithstanding the foregoing, the Institution shall not be required to notify an Authorized Representative of the Issuer if the Additional Improvements: (i) are merely decorative in nature (e.g. painting, carpeting, etc.); or (ii) do not in the aggregate exceed \$100,000 in cost in any single improvement project.

(d) In addition to the Facility Realty, 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 Realty and/or the Pledged Collateral and shall not be subject to this Agreement, nor constitute part of the Facility, or subject to the lien and security interest of the Mortgage and the Pledge and Security Agreement, provided that the same is not made fixtures appurtenant to the Facility Realty. 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, without the consent of or notice to the Issuer or the Trustee.

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 Realty (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 or the Pledge and Security Agreement, as applicable, 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, \$50,000.

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

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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 \$50,000, 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 or the Pledge and Security Agreement, as applicable.

(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; (3) an undertaking by the title insurer to provide the notice of title continuation or endorsement; and (4) such other matters as the Trustee

shall reasonably 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 into the Project Fund in accordance with Section 4.01 of the Indenture. Such proceeds 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 on each Loan Payment Date (except as provided in Section 4.3(a)(ii), (iv), (v), (vi), (vii) and (viii) 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;

(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) with respect to interest due and payable on the Initial Bonds, the Institution shall further pay such additional amounts as set forth in the Indenture in the event of the occurrence of a Determination of Taxability with respect to the Series 2022A Bonds or an Event of Default under the Indenture;

(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 on the first day of the month immediately following the receipt by the Institution of notice of such deficiency, and on the first day of each of the five (5) succeeding months, or over such longer time period as shall be consented to in writing by the Majority Holders, an amount equal to one sixth (1/6th) of such deficiency in the Debt Service Reserve Fund;

(vii) all amounts required by Section 8.32 hereof; and

(viii) if after July 5, 2024 the amount on deposit in the Lease Payment Reserve Fund shall be less than the Lease Payment Fund Requirement, the Institution shall pay to the Trustee for deposit in the Lease Payment Reserve Fund on the first day of the month immediately following the receipt by the Institution of notice of such deficiency, and on the first day of each of the five (5) succeeding months, or over such longer time period as shall be consented to in writing by the Majority Holders, an amount equal to one sixth (1/6th) of such deficiency in the Lease Payment 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 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

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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.

(i) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the applicable subaccounts of the accounts of 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 appropriate subaccounts of the accounts of the Bond 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 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.

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

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 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 Rebate Fund, the Bond Fund, the Debt Service Reserve Fund, the Project Fund, the Repair and Replacement Fund, the Lease Payment Reserve Fund, the Revenue 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,

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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.

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 or the Organization 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 or the Organization 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 or the Organization 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 or the Organization has relocated its operations at the Facility Realty and at least 90% of its employees employed at the Facility Realty prior to the relocation, to another site

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(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 5.3, 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.

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within the City, (B) the Institution or the Organization 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 or the Organization 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 or the Organization 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 (10th) 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.

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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, use commercially reasonable efforts to promptly and diligently rebuild, replace, repair or restore the Facility to substantially its

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condition immediately prior to 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:

(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 and the Organization 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 under 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.

(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.

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 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 leasehold interest in the Mortgaged 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.

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.

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Notwithstanding the foregoing, with respect to Contractors providing lower price-point limited services (e.g. painting) with contracts of less than \$1 Million, the CGL threshold shall be reduced to \$1 Million per occurrence/\$2 Million per aggregate (without the requirement for an U/E) and completed operations coverage shall not be required.

(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 Insureds 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 shall 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 (provided, however the Property insurance required under the Mortgage may have a deductible not in excess of \$50,000).

(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

(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

(C) Workers' Compensation in accordance with the requirements in Section 8.1(b).

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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.

(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 Insureds;

(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;

(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 an 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.

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(x) Policies shall not be cancellable without at least thirty (30) days' prior written notice to the Issuer and the Trustee as additional insureds.

(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 an 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 an 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 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: 528 West 162nd Street, New York, New York 10032;

(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:

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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 attorney and consultant fees, investigation and laboratory fees, court costs, and 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,

(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,

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(A) Prior to the Closing Date, the Insured shall deliver to the Issuer and the Trustee the declarations page and the schedule of forms and endorsements pertinent thereto.

(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 or 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, an 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 an 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.

(iv) If insurance industry standards applicable to properties similar to the Facility Realty and/or operations similar to the operations of the Institution materially

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(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.

(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

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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 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 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 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 fees, charges, and expenses of the Trustee for extraordinary services rendered by it under the Indenture, including reasonable counsel fees, and

(iv) the reasonable fees, costs and expenses of the Bond Registrar.

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

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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.

(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

Personalty, (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. Provided that it is permissible under applicable law and the terms of the Lease Agreement, 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 Eric Adams*

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.

(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

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(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 (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;

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(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;

(v) such assignment or transfer shall not violate 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 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

(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) With the exception of Permitted Users, as defined in Section 8.9(d), the Institution shall not at any time lease all or substantially all of the Facility, except to the Organization pursuant to the Sublease Agreement, 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

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(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, other than "Permitted Users" defined as users of the Facility under an "Excluded Use Agreement".

(e) "Excluded Use Agreement" shall mean the following licenses, leases or other uses or occupancy agreements for a portion of the Facility entered into or consented to by the Institution: which (A) allow for the use of less than 20% of the Facility, aggregating all simultaneous Excluded Use Agreements, and (B) are for a term not greater than fifty (50) days, such period determined by aggregating the total number of days of use contemplated by the applicable agreement, and by measuring full days as the number of hours the Facility is available for use during a day.

(f) All Permitted Users under Section 8.9(e) shall (i) comply with all covenants, restrictions and limitations described in the Tax Regulatory Agreement including, without limitation, nongovernmental/private use and loan restrictions set forth in the Tax Regulatory Agreement, and (ii) the Institution's commercial general liability insurance shall cover all Permitted Users or the Institution shall require that all Permitted Users provide commercial general liability and excess/umbrella insurance covering such Permitted Users prior to the commencement of the applicable lease, license or other use or occupancy agreement and throughout the term of such agreement.

Section 8.10 Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of 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;

(vii) an Opinion of Counsel shall have been delivered and addressed to the Issuer and the Trustee, to the effect that such lease 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;

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(a) The Institution shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its leasehold title to or interest in the Facility, 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 and (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. Any purported disposition without such consents and opinion 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;

(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, the Trustee or the Institution in any Security Document, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens

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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 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

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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, the Trustee and the Organization 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 thereof. 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, and in the offices of such Register of the City, which financing statements shall be in accordance with Article 9 (Secured Transactions) of the New York State Uniform Commercial Code.

(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

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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.

(c) 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.

(d) 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.

(e) 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.

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, or (ii) 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

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(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 \$50,000 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.

(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:

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(h) employment information requested by the Issuer pursuant to Section 8.7(b); and

(i) information regarding non-discrimination requested by the Issuer pursuant to Section 8.8.

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 or the Organization, with respect to all or part of the Facility, at any time during the immediately preceding calendar year, the 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 or the Organization, 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

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(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 \$50,000 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 \$50,000 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 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;

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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 Project is a “covered project” and the Institution is a “covered developer,” each as defined under Section 22-1101 of the New York City Administrative Code (the “Construction Workforce Disclosure Law”). The Institution will comply with the Construction Workforce Disclosure Law in all respects, including that the Institution will provide all workforce disclosure records in a format that Issuer may request, which at a minimum will be sufficient to comply with the requirements of the Construction Workforce Disclosure Law.

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 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

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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 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, 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.

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(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,

(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,

(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

(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 and in compliance with the Organization’s safety policies applicable to visitors 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 and in compliance with the Organization’s safety policies applicable to visitors, 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 corporation constituting a Tax-Exempt Organization,

(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 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**”), 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 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,

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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, and

(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.

(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.

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) maintain the tax-exempt status of the Bonds.

Section 8.22 Securities Law Status. The Institution covenants that:

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(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.

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 and the Trustee 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 Reporting Information for the Trustee.

(a) The Institution shall furnish or cause to be furnished to the Trustee:

(i) as soon as available and in any event within one hundred twenty (120) 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

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(d) The Institution shall promptly 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.

(e) 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).

(f) The Trustee shall be under no obligation to review the financial statements received under this Section 8.26 for content and shall not be deemed to have knowledge of the contents thereof.

Section 8.27 Continuing Disclosure. The Institution shall, if required by Securities and Exchange Commission Rule 15c2-12(b)(5), enter into and comply with and carry out all of the provisions of a continuing disclosure agreement. Notwithstanding any other provision of this Agreement, failure of the Institution to comply with such continuing disclosure agreement 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 Covenants.

(a) The Organization shall continue to operate in compliance with its Charter issued by the New York State Education Department and the Charter Schools Act.

(b) The Institution covenants that the Organization shall not discriminate in admissions (except in connection with enrollment preferences permitted by the Charter Schools Act), hiring, the granting of scholarships or loans, or the administration of educational policies generally.

(c) The Institution covenants that the Sublease Agreement will at all times require the Organization to submit all payments under the Sublease Agreement for direct deposit to the account held under the Account Control Agreement commencing immediately after the Closing Date. The Institution covenants and agrees that such provisions of the Sublease Agreement shall remain in full force and effect at all times to ensure that all payments under the Sublease Agreement are submitted by direct deposit to the account held under the Account Control Agreement for so long as any of the Bonds remain outstanding or unsatisfied, and that such standing instructions to the Organization shall remain irrevocable so long as any of the obligations of the Institution under this Agreement remain outstanding or unsatisfied.

(d) The Institution agrees that it will not amend the provisions of the Sublease Agreement without the prior written consent of the Trustee (acting at the direction of the Majority

related statements of income, balances, earnings, retained earnings and changes in financial position for each such Fiscal Year, as audited by the Institution's Independent Accountant and prepared in accordance with GAAP, and

(ii) as soon as available and in any event within ninety (90) days after the close of each quarter of each Fiscal Year, 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, earnings, retained earnings and changes in financial position for such quarter, prepared in accordance with GAAP, certified by an Authorized Representative of the Institution, and

(iii) all information required by the Continuing Disclosure Agreement.

(b) The Institution shall deliver to the Trustee with each delivery of annual financial statements required by Section 8.26(a)(i):

(i) 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 in all material respects 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

(ii) 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.

(c) In addition, upon twenty (20) days prior written request by the Trustee, the Institution will execute, acknowledge and deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution either stating that to the knowledge of such Authorized Representative after due inquiry no default or breach exists hereunder or specifying each such default or breach of which such Authorized Representative has knowledge.

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Holders). Notwithstanding the foregoing, nothing herein shall restrict or prevent the Institution and Organization from amending the Sublease Agreement for the purposes of increasing the Base Rent (as defined in the Sublease Agreement) due thereunder in an amount equal to the cost of such Facility related operational and administrative expenses Borrower assumes.

(e) The Institution agrees that, if it desires to change the location of the account or any account number for any reason held under the Account Control Agreement, it shall first obtain the prior written consent of the Trustee (acting at the direction of the Majority Holders).

Section 8.29 HireNYC Program.

The Institution shall use its good faith efforts to achieve the hiring and workforce development goals of the HireNYC Program and shall perform the requirements of the HireNYC Program, all as set forth in Exhibit I. The Institution agrees to be bound by each of the provisions of the HireNYC Program set forth in Exhibit I, including without limitation, the payment of any liquidated damages and other enforcement provisions set forth therein.

Section 8.30 Living Wage.

(a) Institution acknowledges and agrees that it has received "financial assistance" as defined in the LW Law. Institution agrees to comply with all applicable requirements of the LW Law. 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 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 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 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) Institution, (b) a Site Affiliate, (c) a tenant, subtenant, leaseholder or subleaseholder of

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Institution or of an Affiliate of 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 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 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 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).

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 Institution or its Site Affiliates in respect of the direct Site Employees of 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 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 Institution in respect of the Site Employees of a Covered Counterparty that is not an Affiliate of 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 Institution is no longer receiving financial assistance under this Agreement or (b) the date that is ten years after the Facility commences operations.

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 1.03ⁿ, 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.

Owed Monies means, as the context shall require, either (a) the total deficiency of LW required to be paid by Institution or a Site Affiliate in accordance with this Section 8.30 to 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 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 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 Institution is a Covered Employer, Institution shall pay each of its direct Site Employees no less than an LW. During the LW Term, 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 Institution is a Covered Employer (or if and so long as a Site Affiliate is a Covered Employer, as applicable), 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 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 Institution is a Covered Employer (or if and for so long as a Site Affiliate is a Covered Employer, as applicable), 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 Institution is a Covered Employer, 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. 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 promptly upon written request. 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 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 been paid less than an LW, Institution shall deliver written notice to the Issuer, the DCA and the Comptroller within 30 days thereof.

(h) 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. 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. 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 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 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 Institution set forth in this Section 8.30 may not be amended, modified or rescinded by Institution without the prior written consent of the Issuer or the DCA.

(i) No later than 30 days after Institution's receipt of a written request from the Issuer, the DCA and/or the Comptroller, Institution shall provide to the Issuer, the DCA and the Comptroller (i) a certification stating that all of the direct Site Employees of Institution and its Site Affiliates are paid no less than an LW (if such obligation is applicable hereunder) and stating that 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 Institution or of any Site Affiliate (if applicable), and/or (iv) any other documents or information reasonably related to the determination of whether 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, 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 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

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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 Institution, 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 Institution or any Site Affiliate in respect of any direct Site Employees of Institution or of a Site Affiliate, at the direction of the Issuer or the DCA (but not both), (A) Institution shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of Institution or of a Site Affiliate to such direct Site Employees, and 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 Institution, 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 Institution or any Site Affiliate in respect of any direct Site Employees of Institution or of a Site Affiliate, if the aggregate amount of Owed Monies and Owed Interest paid or payable by Institution in respect of the direct Site Employees of 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 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), 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 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 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), 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 Institution.

(vi) 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 Institution from extending or renewing a Specified Contract pursuant to any renewal or extension options granted to the Covered Counterparty in the Specified

"Asserted Cure"). Upon Institution's receipt of the LW Violation Notice, 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. 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 Institution and deliver to 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 Institution's receipt of the LW Violation Initial Determination, 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, 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 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. 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 Institution or any Site Affiliate in respect of any direct Site Employees of Institution or of a Site Affiliate, at the direction of the Issuer or the DCA (but not both), (A) Institution shall pay the Owed Monies and Owed Interest in respect of such direct Site Employees of

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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 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 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 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 M/WBE Program

(a) Institution has submitted to Issuer an M/WBE Participation Plan which states Institution's proposed plans for participation by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs"), together with "MBEs" collectively referred to as "M/WBEs") in the Project Work until the Completion Deadline, and includes the M/WBE Participation Goal, defined as the target percentage of the Project Improvements Investment that will be paid to Certified Firms (as defined in Exhibit O-2). The M/WBE Participation Plan is attached hereto as Exhibit K-1.

(b) The Institution agrees that from the Indemnification Commencement Date until the Completion Deadline, Institution and its successors and assigns shall use good faith efforts to comply with the terms and conditions and reach the M/WBE Participation Goal set forth in Exhibit K-1, and to comply with the M/WBE Program Requirements set forth in Exhibit K-2. The Institution agrees to be bound by each of the provisions in M/WBE Participation Plan and the M/WBE Program Requirements, including without limitation, the provision of all Compliance Reports (as defined therein) and the payment of any liquidated damages set forth therein. Notwithstanding any other provision of this Loan Agreement to the contrary, the remedies available to the Issuer or NYCEDC for a violation of the provisions of this Section 8.31 or Exhibits K-1 and K-2, which are incorporated herein by reference, shall be limited to the remedies specified in Exhibit K-2.

Section 8.32 Repair and Replacement Fund

(a) The Institution shall, or shall cause the Organization to, have a consultant complete a capital needs assessment projecting the capital needs for the Facility and the total cost thereof for the five (5) year period commencing on the immediately following July 5 (each a "Capital Needs Assessment") no later than June 30, 2032, and every fifth anniversary thereafter as long as the Bonds are Outstanding. The total cost set forth in a Capital Needs Assessment less the amount then on deposit in the Repair and Replacement Fund, divided by 30, shall be the "Repair and Replacement Fund Requirement" for such five (5) year period; provided, however, that the Repair and Replacement Fund Requirement for any future period shall not be less than the initial Repair and Replacement Fund Requirement of \$200,000.

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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 pay any amount (except as set forth in Section 9.1(a)) 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, 8.26, 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;

(c) 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) or (b)) 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;

(d) 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;

(e) 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

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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;

(f) 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 Letter of Representation and Indemnity Agreement dated the Closing Date and delivered to the Issuer, the Trustee and the initial purchaser(s) of the Initial Bonds, or (iv) in the Tax Regulatory Agreement, or (v) by or on behalf of the Institution or any other Person in any Required Disclosure Statement, or (vi) 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;

(g) The commencement of proceedings to appoint a receiver or to foreclose any mortgage lien on or security interest in the Facility including the Mortgage;

(h) An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing.

(i) The occurrence of an LW Event of Default.

(j) Failure of the Institution to pay the amount required of it under Section 4.3(a)(vi) when required thereunder.

(k) Termination of the Lease Agreement or the Sublease Agreement.

(l) Revocation, loss or nonrenewal of the Charter of the Organization.

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(d) or (e), 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;

(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 to 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 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

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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, appraisalment, 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 written demand therefor pay to the Issuer or the Trustee, as the case may be, the reasonable 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).

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Security Document (other than through a forbearance) to which the Issuer is a party (a "Security Document Action") or (z) substituting for the Institution and/or the Organization, as applicable, a new Entity to either be a counterparty to the Issuer under this Agreement or as a user or lessee all or a portion of the Facility (a "Substitute Entity"), unless, in either case, a reasonable description of such Mortgage Restructuring, Security Document Action and/or Substitute Entity shall have been set forth in a writing delivered to the Issuer together with a request for approval and (i) the Mortgage Restructuring, Security Document Action and/or Substitute Entity shall be approved in writing by the Issuer, such approval not to be unreasonably withheld or delayed (and which approval may, in the sole discretion of the Issuer, be subject to action by the Issuer's Board of Directors), and (ii) there shall be delivered to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such Mortgage Restructuring, Security Document Action and/or Substitute Entity shall not cause the interest on any Outstanding Bonds to become subject to federal income taxation by reason of either such Mortgage Restructuring, Security Document Action and/or Substitute Entity. For the avoidance of doubt, no Issuer consent is required hereby for the entry into a forbearance agreement by the Trustee, the commencement of a foreclosure action under the Mortgage or the appointment of a receiver over the Institution or the Organization or any collateral for the Bonds. In connection with the retirement or surrender for cancellation of all of the Outstanding Bonds (other than as a result of the payment in full of all Outstanding Bonds), the Trustee hereby agrees to provide written notice to the Issuer of such retirement or cancellation no later than fourteen (14) Business Days after the occurrence of the earlier of: (A) the Trustee's receipt of direction to effectuate such retirement or cancellation, and (B) the Trustee's receipt of surrendered Bonds for cancellation.

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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 (11th) 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.

Section 9.10 Issuer Approval of Certain Nonforeclosure Remedies. Notwithstanding any provision hereof or of under any other Security Document, upon the occurrence of an Event of Default, no such remedy or other action (whether exercised by the Trustee, the Majority Holders or the Holders of the Bonds) shall have the effect of (x) continuing the exemption from the mortgage recording tax of the Mortgage upon any restructuring of the underlying indebtedness secured by the Mortgage (a "Mortgage Restructuring"), (y) amending or terminating any

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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. Section 10.3 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, and

(B) all other amounts due and payable under this Agreement and the other Security Documents,

(iii) 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.

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(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, 11.6, 12.4, 12.5, 12.6, 12.11, 12.13 and 12.14 shall survive such termination.

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.

ARTICLE XI

CERTAIN PROVISIONS RELATING TO THE BONDS

Section 11.1 Issuance of Additional Bonds. If a Series of Additional Bonds are 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 Series 2022A Bonds receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Series 2022A 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, the Institution shall pay to the Trustee an amount sufficient, when added to the amounts then in the Bond Fund 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.

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

(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 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. Except as provided in this Section, neither the Institution nor any Related Person (as defined in the Tax Regulatory Agreement) to the Institution shall purchase Bonds in an amount related to the amount of the Loan. The Institution shall have the option, at any time during the term of this Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof. The Bonds so purchased by the Institution or by any Affiliate of the Institution pursuant to this Section shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase unless the Institution shall deliver to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that the failure to surrender such Bonds by such date will not affect the exclusion of the interest on any Series 2022A Bonds then Outstanding from gross income for federal income tax purposes.

Section 11.7 Investment of Funds. Any moneys held as part of the Rebate Fund, the Lease Payment Reserve Fund, the Project Fund, the Bond Fund, the Debt Service Reserve 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.

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 5.3, 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 leasehold 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).

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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 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 Board Chair of the Institution at 528 West 162nd Street, New York, New York 10032, 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:

(A) if to the Issuer, to

Build NYC Resource Corporation
1 Liberty Plaza
New York, New York 10006
Attention: General Counsel

with a copy to

Build NYC Resource Corporation
1 Liberty Plaza
New York, New York 10006
Attention: Executive Director

(B) if to the Institution, to

Prior to the Completion Date:

Friends of WHIN Music Community Charter School, Inc.
517 West 164th Street
New York, New York 10032
Attention: Board Chair

with a copy to

Cohen Schneider Law P.C.
275 Madison Avenue
New York, New York 10016
Attention: Cliff Schneider, Esq.,

After the Completion Date:

Friends of WHIN Music Community Charter School, Inc.
528 West 162nd Street
New York, New York 10032
Attention: Board Chair

with a copy to

Cohen Schneider Law P.C.
275 Madison Avenue
New York, New York 10016
Attention: Cliff Schneider, Esq., and

(C) if to the Trustee, to

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The Bank of New York Mellon
240 Greenwich Street, Floor 7E
New York, New York 10286
Attention: Corporate Trust Administration

(D) 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

(E) 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,

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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 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 preferentum* doctrine, that would require interpretation of any ambiguities in this Agreement against the party that has drafted it.

[Remainder of Page Intentionally Left Blank]

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 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

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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: _____
Emily Marcus
Executive Director

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the ____ day of June, in the year two thousand twenty-two, before me, the undersigned, personally appeared **Emily Marcus**, 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/Commissioner of Deeds

Loan Agreement
Signature Page 1 of 2

**FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.**

By: _____
Arnold Adlin
Board Chair

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the ____ day of June, in the year two thousand twenty-two, before me, the undersigned, personally appeared **Arnold Adlin**, personally known to me or proved to me on the basis of satisfactory evidence to me 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

APPENDICES

Loan Agreement
Signature Page 2 of 2

EXHIBIT A

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of West 162nd Street, distant 300 feet easterly from the corner formed by the intersection of the easterly side of Broadway with said southerly side of West 162nd Street;

RUNNING THENCE southerly parallel with Broadway, and part of the distance through a party wall, 99 feet 11 inches to the center line of the block;

THENCE easterly along said center line of the block 74 feet 6 inches;

THENCE northerly parallel with Broadway 8/100 of a foot (1 inch per the survey):

THENCE easterly and parallel with West 162nd Street, 25 feet 6 inches;

THENCE northerly parallel with Broadway, 99 feet 9 inches (10 inches per the survey) to the said southerly side of West 162nd Street:

THENCE westerly along the said southerly side of West 162nd Street, 100 feet to the point or place of BEGINNING.

Note: Address, Block & Lot shown for informational purposes only.

Designated as Block 2120 Lot 18 and also known as 528 West 162nd Street, New York, NY 10032

EXHIBIT B

DESCRIPTION OF THE FACILITY PERSONALTY

The acquisition of fixtures and other equipment for incorporation or use at the building located at 528 West 162nd Street, New York, New York 10032, financed with the proceeds of the Build NYC Resource Corporation Revenue Bonds (WHIN Music Community Charter School Project), Series 2022, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefore, and all parts, additions and accessories incorporated therein or affixed thereto and shall include all property substituted for or replacing items and exclude all items so substituted for or replaced, and further exclude all items removed as provided in the Indenture and the Loan Agreement

EXHIBIT C**AUTHORIZED REPRESENTATIVE**

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Arnold Adlin	Board Chair	_____
Rosa Franco	Board Secretary	_____
Ed Brown	Board Treasurer	_____

EXHIBIT D**PRINCIPALS OF THE INSTITUTION**

<u>Name</u>	<u>Title</u>
Arnold Adlin	Board Chair
Rosa Franco	Board Secretary
Ed Brown	Board Treasurer

EXHIBIT E**PROJECT COST BUDGET**

	<u>Bond Proceeds</u>	<u>Funds of Institution</u>	<u>Total</u>
Land and Building Acquisition	\$0	\$ -	\$0
Project Improvements Investment	\$26,400,000.00		\$26,400,000.00
Equipment	\$500,000.00		\$500,000.00
Lease Payments	\$1,065,000.00		\$1,065,000.00
Working Capital	\$783,566.36		\$783,566.36
Debt Service Reserve Fund	\$3,321,075.00		\$3,321,075.00
Capitalized Interest	\$5,931,760.69		\$5,931,760.69
Costs of Issuance and Title	\$865,465.51		\$865,465.51
Fees/Other Soft Costs	\$4,730,838.74		\$4,730,838.74
Total	\$43,597,706.30	\$	\$43,597,706.30

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 June 1, 2022 between the Issuer and Friends of WHIN Music Community Charter School, Inc., a not-for-profit 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 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:

- ☐ 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

(vii) 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 materialmens’ 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 Issuer 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 _____, ____.

**FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.**

By: _____
Name:
Title:

**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 Friends of WHIN Music Community Charter School, Inc., a not-for-profit 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 June 1, 2022 (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) the Project Improvements Investment (as defined in the Loan Agreement) made by the Institution in connection with the Project is not less than \$_____, consistent with the Institution’s representation in Section 2.2(n) of the Loan Agreement;

(iii) 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, or
- ☐ amended certificate of occupancy, or
- ☐ letter of no objection;]

(iv) 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;

(v) the Facility is ready for occupancy, use and operation for the Approved Project Operations in accordance with all applicable laws, regulations, ordinances and guidelines;

(vi) check as applicable:

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.

\$[40,840,000][3,070,000]

June [29], 2022

SERIES 2022[A][B] PROMISSORY NOTE

FOR VALUE RECEIVED, FRIENDS OF WHIN MUSIC COMMUNITY CHARTER SCHOOL, INC., a not-for-profit 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 [FORTY MILLION EIGHT HUNDRED FORTY THOUSAND AND 00/100][THREE MILLION SEVENTY THOUSAND AND 00/100] DOLLARS (\$[40,840,000][3,070,000]), together with interest on the unpaid principal amount hereof, from the date of the issuance and delivery of the Series 2022[A][B] 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 Series 2022[A][B] Bonds, together with all Sinking Fund Installments and Redemption Price payments as and when due. All capitalized terms used but not defined in this Series 2022[A][B] 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 Trustee or its successor under the Indenture.

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 “Series 2022[A][B] Promissory Note” referred to in the Loan Agreement, dated as of June 1, 2022 (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 Series 2022[A][B] 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 June 1, 2022 (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 \$[40,840,000][3,070,000] in

aggregate principal amount of [Tax-Exempt][Taxable] Revenue Bonds, Series 2022[A][B] (WHIN Music Community Charter School Project) (the “**Series 2022[A][B] Bonds**”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture, the Loan Agreement and the Series 2022[A][B] Bonds are hereby incorporated as a part of this Series 2022[A][B] 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 Series 2022[A][B] 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 Series 2022[A][B] Promissory Note.

This Series 2022[A][B] 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.

**FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.**

By: _____
Name: Arnold Adlin
Title: Board Chair

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 Series 2022[A][B] 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 Series 2022[A][B] Promissory Note.

BUILD NYC RESOURCE CORPORATION

By: _____
Emily Marcus
Executive Director

Dated: June [29], 2022

EXHIBIT I

HireNYC

The Institution must collaborate with the New York City Department of Small Business Services or such other a New York City agency as may be designated by NYCEDC in a notice to the Institution (“**Designated City Agency**”). The Designated City Agency will assist the Institution in implementing the HireNYC Program including the screening of candidates from the target population (“**Target Population**”), defined as persons who have an income that is below two hundred percent (200%) of the poverty level as determined by the New York City Center for Economic Opportunity (a description of the income level meeting this threshold for each household size is available at http://www.nyc.gov/html/ceo/downloads/pdf/ceo_poverty_measure_2005_2013.pdf). The HireNYC Program will be in effect for a period of eight (8) years from the Operations Commencement Date (“**HireNYC Program Term**”).

The HireNYC Program will apply to the Institution, its successors and assigns, and to all tenants (which term also includes subtenants) at the Facility during the HireNYC Program Term.

I. Goals. The HireNYC Program includes, at a minimum, the following hiring and workforce development goals (collectively, the “**Goals**”):

Hiring Goal:	Fifty percent (50%) of all new permanent jobs created in connection with the Facility (including jobs created by tenants, but excluding jobs relocated from other sites) will be filled by members of the Target Population referred by the Designated City Agency for a period beginning, for each employer, at commencement of business operations and continuing through the end of the HireNYC Program Term. Notwithstanding the foregoing, the Hiring Goal shall only apply to hiring on occasions when the Institution (or a tenant) is hiring for five (5) or more permanent jobs.
Retention Goal:	Forty percent (40%) of all employees whose hiring satisfied the Hiring Goal will be retained for at least nine (9) months from date of hire.
Advancement Goal:	Thirty percent (30%) of all employees whose hiring satisfied the Hiring Goal will be promoted to a higher paid position within one (1) year of date of hire.
Training Goal:	Cooperation with NYCEDC and the Designated City Agency to provide skills-training or higher education opportunities to members of the Target Population.

II. Program Requirements. HireNYC Program includes all of the following requirements:

- Designation of a workforce development liaison by the Institution to interact with NYCEDC and the Designated City Agency during the course of the HireNYC Program.
- Commitment by the Institution to do the following:

- use good faith efforts to achieve the Goals;
- notify NYCEDC six (6) weeks prior to commencing business operations;
- with respect to initial hiring for any new permanent jobs associated with the commencement of business at the Facility (but only if initial hiring is for five (5) or more permanent jobs):
 - provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least three (3) months before commencing hiring; and
 - consider only applicants referred by the Designated City Agency for the first ten (10) business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;
- with respect to ongoing hiring on occasions when hiring for five (5) or more permanent jobs:
 - provide NYCEDC and the Designated City Agency with the approximate number and type of jobs that will become available, and for each job type a description of the basic job qualifications, at least one (1) month before commencing hiring or as soon as information is available, but in all cases not later than one (1) week before commencing hiring; and
 - consider only applicants referred by the Designated City Agency for the first five business days, until the Hiring Goal is achieved or until all open positions are filled, whichever occurs first;
- notify NYCEDC thirty (30) days prior to execution of any tenant lease at the Facility;
- provide NYCEDC with one (1) electronic copy of all tenant leases at the project location within fifteen (15) days of execution;
- submit to NYCEDC an annual HireNYC Employment Report in the form provided by NYCEDC (or quarterly reports at the discretion of NYCEDC);
- cooperate with annual site visits and, if requested by NYCEDC, employee satisfaction surveys relating to employee experience with the Institution’s HireNYC Program;
- provide information related to the HireNYC Program and the hiring process to NYCEDC upon request; and
- allow information collected by NYCEDC and the Designated City Agency to be included in public communications, including press releases and other media events.

III. General Requirements. The following are general requirements of the HireNYC Program

- The Institution is required to incorporate the terms of its HireNYC Program into all tenant leases obligating tenants to comply with the Goals and other requirements in the Institution’s HireNYC Program to the same extent as the Institution is required to comply with such Goals and other requirements.

2. Enforcement. In the event NYCEDC determines that the Institution or any of its tenants has violated any of the HireNYC Program requirements, including, without limitation, a determination that the Institution or any of its tenants, has failed to use good faith efforts to fulfill the Goals, NYCEDC shall notify the Issuer of the violation and the Issuer may (1) assess liquidated damages set forth immediately below; and/or (2) assert any other right or remedy it has under the Agreement.

3. Liquidated Damages. If the Institution or any of its tenants, does any of the following:

- (i) fail to comply with its obligations set forth in Section II(2) clauses (a)(with respect to the Hiring Goal), (c), and/or (d), and as a result the Designated City Agency was unable to refer applicants or participate in the hiring process as required by the program; or
- (ii) fail to comply with its obligations set forth in Section II(2) clauses, (f), (g), (h), (i), and/or (j) and such failure shall continue for a period of thirty (30) days after receipt of notice from NYCEDC.

then, in the case of clause (i), the Issuer may assess liquidated damages in the amount of \$2,500 for each position for which the Designated City Agency was unable to refer applicants or otherwise participate in hiring as required by the program; and in the case of clause (ii), the Issuer may assess damages for breach of each requirement in the amount of \$1,000. In view of the difficulty of accurately ascertaining the loss which the Issuer will suffer by reason of the Institution's failure to comply with Program requirements, the foregoing amounts are hereby fixed and agreed as the liquidated damages that the Issuer will suffer by reason of such failure, and not as a penalty. The Institution shall be liable for and shall pay to the Issuer all damages assessed against the Institution or any of its tenants at the project upon receipt of demand from the Issuer.

EXHIBIT J 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

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Affiliate has one or more direct Site Employees), (c) a 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 at 401 West 164th Street, New York, New York 10032.

"Institution" means Friends of WHIN Music Community Charter School, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal office at at 401 West 164th Street, New York, New York 10032, 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 1 Liberty Plaza, New York, New York 10006.

"LW" has the same meaning as the term "living wage" as defined in Section 6-134 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 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 Facility (as defined in the Project Agreement) commences operations; 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 1.03ⁿ, 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 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 June 1, 2022, 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 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

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(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 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 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.

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

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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 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

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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 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:

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 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, 1 Liberty Plaza, New York, NY, 10006, Attention: General Counsel, with a copy to Build NYC Resource Corporation, 1 Liberty Plaza, New York, NY, 10006, 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.

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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 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.

"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 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 at 401 West 164th Street, New York, New York 10032.

“Institution” means Friends of WHIN Music Community Charter School, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal office at 401 West 164th Street, New York, New York 10032, 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 1 Liberty Plaza, New York, New York 10006.

“LW” has the same meaning as the term “living wage” as defined in Section 6-134 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 Facility (as defined in the Project Agreement) commences operations; 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).

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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. 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

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“LW Violation Threshold” means \$100,000 multiplied by 1.03ⁿ, 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 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 June 1, 2022, 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

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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 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 counterparty 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

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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 "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

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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.

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 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) 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, 1 Liberty Plaza, New York, NY, 10006, Attention: General Counsel, with a copy to Build NYC Resource Corporation, 1 Liberty Plaza, New York, NY, 10006, 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

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EXHIBIT K-1

M/WBE PARTICIPATION PLAN

PARTICIPATION PLAN

Begins on next page.

v. Joint Ventures: A contractor, direct subcontractor or indirect subcontractor that is a qualified joint venture, as defined in Section 6-129(c)(24) of the Code, shall be permitted to count a percentage of its own participation toward fulfillment of the M/WBE Participation Goal. The value of such a contractor, direct subcontractor or indirect subcontractor's participation shall be determined by subtracting from this total dollar amount any amounts that the contractor, direct subcontractor or indirect subcontractor pays to subcontractors or suppliers, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an M/WBE partner is entitled pursuant to the joint venture agreement. If a contractor, direct subcontractor or indirect subcontractor claims credit for participation as a qualified joint venture, then upon NYCEDC's request, Institution must promptly provide a copy of the joint venture agreement for review and confirmation of the M/WBE partner's profit share as used in calculating credit toward fulfillment of the M/WBE Participation Goal.

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2. **Minority and Women-Owned Business Enterprises.** M/WBE firms must be certified by DBSBS or Empire State Development Corporation to credit such firms' participation toward attainment of the M/WBE Participation Goal ("**Certified Firms**"). Such certification must occur prior to the firms' commencement of work. A list of M/WBE firms may be obtained from the DBSBS website at www.nyc.gov/buycertified, by emailing DBSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DBSBS at One Liberty Plaza, New York, New York, 10006, 11th Floor. Eligible firms that have not yet been certified may contact DBSBS in order to seek certification by visiting www.nyc.gov/getcertified, emailing M/WBE@sbs.nyc.gov, or calling the DBSBS certification helpline at (212) 513-6311. No credit shall be given for participation by a graduate M/WBE, as defined in Section 6-129(c)(20) of the Code.

i. Contractors: The total dollar amount that Institution has paid or is obligated to pay to contractors that are Certified Firms for the Project Improvements Investment shall be credited toward fulfillment of the M/WBE Participation Goal, provided that the value of such a contractor's participation shall be determined by subtracting from this total dollar amount any amounts that the contractor has paid or is obligated to pay to direct subcontractors or suppliers upon completion of such subcontractors or suppliers work or services.

ii. Direct Subcontractors: The total dollar amount that a contractor has paid or is obligated to pay to subcontractors that are Certified Firms for the Project Improvements Investment shall be credited toward fulfillment of the M/WBE Participation Goal, provided that the value of such a direct subcontractor's participation shall be determined by subtracting from this total dollar value any amounts that the direct subcontractor has paid or is obligated to pay to indirect subcontractors or suppliers upon completion of such indirect subcontractors or suppliers work or services.

iii. Indirect Subcontractors: The total dollar amount that a subcontractor has paid or is obligated to pay to its subcontractors that are Certified Firms for the Project Improvements Investment shall be credited toward fulfillment of the M/WBE Participation Goal.

The Institution shall notify NYCEDC and request NYCEDC's approval of any proposed modifications to the contents of its M/WBE Participation Plan, including the dollar amount of the Project Improvements Investment, after initial submission (except for the M/WBE Participation Goal). Good faith efforts to meet the M/WBE Participation Goal shall be documented by Institution and such documentation shall be provided to NYCEDC upon NYCEDC's request. In determining whether the Institution has made good faith efforts to meet the M/WBE Participation Goal, NYCEDC will consider, along with any other relevant factors, evidence submitted by the Institution showing that the Institution or Institution's contractors or subcontractors, as appropriate, have without limitation, conducted the following:

i. Direct Outreach. The Institution, or Institution's contractors or subcontractors, as appropriate, (i) reached out to M/WBEs identified on the "Interested Subcontractor" list maintained by EDC on a website related to the Project, and provided timely notice to those identified M/WBEs and (ii) provided notice directly to M/WBEs or to business organizations made up of M/WBEs of specific opportunities to participate in the Project Work;

ii. NYCEDC Assistance. The Institution submitted timely requests for assistance to NYCEDC's M/WBE liaison officer and provided NYCEDC with a description of how NYCEDC's recommendations were acted upon and an explanation of how action upon such recommendations did not lead to the desired level of participation of M/WBEs:

iii. Advertised Opportunities. The Institution, or Institution's contractors or subcontractors, as appropriate, advertised opportunities to participate in the Project Work in general circulation media, trade and professional association publications, small business media and publications of M/WBE organizations:

iv. Follow Up with M/WBEs. The Institution, or Institution's contractors or subcontractors, as appropriate, as appropriate, sent timely written notices to advise M/WBEs that their interest in the Project Work was solicited and to follow up after an initial solicitation to determine whether such M/WBEs were interested in Project Work;

v. Substitution of Work. The Institution, or Institution's contractors or subcontractors, as appropriate, made efforts to identify portions of the Project Work that could be substituted for portions originally designated for the participation by M/WBEs in the M/WBE Participation Plan and for which the Institution claims an inability to retain M/WBEs.

vi. M/WBE Suppliers. The Institution, or Institution's contractors or subcontractors, as appropriate, made efforts to identify materials or supplies that could be purchased from suppliers that are Certified Firms:

vii. Meeting with M/WBEs. The Institution, or Institution's contractors or subcontractors, as appropriate, held meetings with M/WBEs prior to the date their

and agreed as the liquidated damages that NYCEDC and/or Issuer will suffer by reason of such failure, and not as a penalty.

9. Evaluations. The Institution's record in implementing its M/WBE Participation Plan shall be a factor in the evaluation of its performance. If Institution's compliance with its M/WBE Participation Plan and/or the M/WBE Program requirements is found to be unsatisfactory, including but not limited to, Institution's failure to use good faith efforts to fulfill its M/WBE Participation Goal, NYCECD may, after consultation with the Director of the Mayor's Office for Contracts, file an evaluation of the Institution's performance in the City's Procurement and Sourcing Solutions Portal (PASSport) (formerly known as VENDEX).

5. M/WBE Compliance Reports

In addition to the foregoing, the Institution shall submit a final, cumulative M/WBE Compliance Report to NYCEDC within thirty (30) days of the Project Completion Deadline. The Institution shall set forth in such final report the information required in prior M/WBE Compliance Reports, including information for all M/WBE contractors, subcontractors and suppliers who were paid for Project Improvement Investments.

7. **Enforcement.** If the event NYCEDC or Issuer determines that the Institution, its contractors or subcontractors have violated the M/WBE Program requirements set forth herein or the M/WBE Participation Plan including, without limitation, a determination that the Institution has failed to use good faith efforts to fulfill its M/WBE Participation Goal, NYCEDC or the Issuer may (i) assess liquidated damages set forth in Section 8, below; and/or (ii) bring an action for such liquidated damages, and/or injunctive relief or specific performance or any other non-monetary action at law or in equity, as may be necessary or desirable to enforce the performance or observance of any obligations, agreements or covenants of Institution hereunder.

8. Liquidated Damages. If the Institution fails to use good faith efforts to fulfill its M/WBE Participation Goal, NYCEDC or the Issuer may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of Project Improvements Investments required to be awarded to Certified Firms to meet the M/WBE Participation Goal and the dollar amount the Institution actually awarded and paid to such Certified Firms. In view of the difficulty of accurately ascertaining the loss which NYCEDC and/or Issuer will suffer by reason of the Institution's failure to meet the M/WBE Participation Goal, the foregoing amount is hereby fixed.

EXHIBIT L

Prevailing Wage for Construction

[illegible]

	Description of Public Funds	Dollar Value of Public Funds (PV)
<input type="checkbox"/>	The payment of money, by Issuer, or a third party acting on behalf of and for the benefit of Issuer, directly or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment. Description: NONE	\$ N/A
<input type="checkbox"/>	The savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatement, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the Issuer. Description: Mortgage Recording Tax Exemption and foregone interest income on the Tax-Exempt Bonds.	\$1,229,481 (MRT); and \$2,948,038 (foregone interest income) Total: \$4,177,519
<input type="checkbox"/>	Money loaned by the Issuer that is to be repaid on a contingent basis. Description: NONE	\$ N/A
<input type="checkbox"/>	Credits that are applied by the Issuer against repayment of obligations to the Issuer. Description: NONE	\$ N/A

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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 One Liberty Plaza,
New York, New York 10006,
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

INDENTURE OF TRUST

Dated as of June 1, 2022

\$40,840,000
Build NYC Resource Corporation
Tax-Exempt Revenue Bonds
(WHIN Music Community Charter School Project), Series 2022A

and

\$3,070,000
Build NYC Resource Corporation
Taxable Revenue Bonds
(WHIN Music Community Charter School Project), Series 2022B

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 One Liberty Plaza, New York, New York 10006, 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, 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, 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 and a taxable 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

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 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 Bond Resolution and this Indenture; and

WHEREAS, concurrently with the execution hereof, in order to further secure the Initial Bonds, (i) the Institution will grant a lien and security interest in the Pledged Collateral pursuant to the Pledge and Security Agreement in favor of the Trustee, subject only to the lien of the Mortgage; and (ii) the Institution will grant 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 will assign its right, title and interest under the Mortgage to the Trustee pursuant to the Assignment of Mortgage; and

WHEREAS, in connection with the issuance of the Initial Bonds, The Bank of New York Mellon, as depositary bank (the "**Depositary Bank**"), the Trustee and the Institution will execute and deliver an account control agreement dated as of June 1, 2022 (the "**Account Control Agreement**"). Pursuant to the Account Control Agreement, the Institution will grant a security interest in the Institution's operating account to the Trustee and also authorize the Trustee to transfer the amounts required under this Indenture and the Loan Agreement to the Revenue Fund; 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 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 Project Fund, the Renewal Fund, the Bond Fund, the Debt Service Reserve Fund, the Repair and Replacement Fund, the Lease Payment Reserve Fund or any special fund, and all investment earnings of any of the foregoing, subject to disbursements from the Revenue Fund, the Debt Service Reserve Fund, the Project Fund, the Repair and Replacement Fund, the Renewal Fund, the Lease Payment Reserve 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.

IV

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

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ARTICLE I

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 Control Agreement shall mean the Account Control Agreement, dated as of June 1, 2022, among the Institution, the Trustee and the Depositary Bank, as the same may be amended or supplemented from time to time or any successor Account Control Agreement entered into by a successor Depositary Bank, the Trustee, and the Institution.

Accounts shall mean the accounts of the special trust funds so designated, established pursuant to Section 5.01.

Additional Bonds shall mean one or more Series of additional bonds issued, executed, authenticated and delivered under this Indenture.

An **Affiliate** of a Person shall mean a Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such 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 528 West 162nd Street, New York, New York 10032, for use by the Institution in the providing of educational services for students in kindergarten through 8th grade.

Assignment of Mortgage shall mean collectively, (i) the Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Building Loan), and (ii) the Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (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 thereto and supplements thereto hereafter made in conformity therewith and with this Indenture.

Authorized Denomination shall mean, (i) in the case of the Initial Bonds, \$100,000 or any integral multiple of \$5,000 in excess thereof, and (ii) in the case of any Additional Bonds, such denominations as shall be set forth in the Supplemental Indenture executed and delivered in connection with such Additional Bonds.

Authorized Principal Amount shall mean, (i) in the case of the Series 2022A Bonds, \$40,840,000, (ii) in the case of the Series 2022B Bonds, \$3,070,000, and (iii) in the case of any Additional Bonds, such authorized principal amount as shall be set forth in the Supplemental Indenture executed and delivered in connection with such Additional Bonds.

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:

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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 Purchase Agreement shall mean the Bond Purchase Agreement, dated June 23, 2022, among the Institution, the Organization, the Issuer and the Underwriter.

Bond Registrar shall mean the Trustee acting as registrar as provided in Section 3.10.

Bond Resolution shall mean the resolution of the Issuer adopted on November 16, 2021, authorizing the issuance of the Initial Bonds.

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;

(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.

City shall mean The City of New York, New York.

Closing Date shall mean June 29, 2022, 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.

Completed Improvements Square Footage shall mean approximately 58,895 square feet, of the Improvements of the Project.

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.

Continuing Disclosure Agreement shall mean the Continuing Disclosure Agreement, dated June 29, 2022, between the Institution, the Organization and the Trustee.

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.

Covenant Agreement shall mean the Covenant Agreement, dated June 1, 2022, between the Organization and the Trustee.

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 fee; counsel fees (including bond counsel, counsel to the Underwriter, Trustee’s counsel, Issuer’s counsel, Institution’s counsel, Organization’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, the Institution or the Organization 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); Rating Agency fees; Trustee and Paying Agent fees; accountant fees and other expenses related to issuance of the Initial Bonds; printing costs (for the Initial Bonds and of the

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(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 or the Organization have participated or have been given the opportunity to participate, and which ruling or memorandum the Institution and/or the Organization, 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 or the Organization have 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 or the Organization;

in any case, after the Closing Date to the effect that the interest payable on the Series 2022A 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 Series 2022A 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 Series 2022A 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) hereof shall be considered to exist unless (1) the Holder or former Holder of the Series 2022A 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 Series 2022A 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 Series 2022A 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

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, as of any particular date of computation, an amount (which amount may take the form of cash, Qualified Investments or any combination thereof) equal to the lesser of:

(a) with respect to the Initial Bonds, as of any particular date of computation, an amount (which amount may take the form of cash, Qualified Investments or any combination thereof) equal to the lesser of:

(i) ten percent (10%) of the Stated Principal Amount (as defined in the Tax Regulatory Agreement) of the Initial Bonds;

(ii) 100% of the greatest amount required in the then current or any future calendar year to pay the sum of the scheduled principal and interest payable on Initial Bonds; or

(iii) 125% of the average annual amount required in the then current or any future calendar year to pay the sum of scheduled principal and interest on Initial Bonds.

(b) with respect to any Series of Additional Bonds, such amount as shall be set forth in the Supplemental Indenture entered into in connection with the issuance of such Additional Bonds.

Debt Service Reserve Fund Valuation Date shall mean June 15th and December 15th of each year, commencing on December 15, 2022.

Default Rate shall mean three percent (3%) in excess of the interest rate borne by the Initial 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 Agreement shall mean the Depository Agreement, dated as of June 1, 2022, between the Institution and the Depository Bank.

Depository Bank shall mean The Bank of New York Mellon, its successors and/or assigns.

Determination of Taxability shall mean:

inclusion of interest on any Series 2022A Bond in the computation of minimum or indirect taxes.

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.

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).

Event of Taxability shall mean the date specified in a Determination of Taxability as the date interest paid or payable on any Series 2022A Bond becomes includable for federal income tax purposes in the gross income of any Series 2022A Bondholder thereof as a consequence of any act, omission or event whatsoever, including any change of law, and regardless of whether the same was within or beyond the control of the Institution.

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, 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.

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.

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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 the leasehold interest of the Institution pursuant to the Lease Agreement in the following:

- (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 this Indenture of Trust, dated as of June 1, 2022, 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, and approved in writing by the Trustee (which approval shall not be unreasonably withheld).

Initial Bonds shall mean collectively, the Series 2022A Bonds and the Series 2022B Bonds authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

Institution shall mean Friends of WHIN Music Community Charter School, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York, and

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Article VIII (except for Section 8.26), Article IX, Article X and 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 the leasehold interest of the Institution pursuant to the Lease Agreement in that certain lot, piece or parcel of land in Block 2120 and Lot 18, generally known by the street address 528 West 162nd Street, 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.

Lease Agreement shall mean that certain Lease between the 528 W 162 LLC and the Institution, dated as of April 16, 2021, as amended by that certain First Amendment to Lease dated as of April 4, 2022, as the same may be further amended from time to time.

Lease Payment Reserve Fund shall mean the special trust fund so designated, established pursuant to Section 5.01 of this Indenture.

Lease Payment Reserve Requirement shall mean a total amount equal to \$1,263,111.24, payable in twelve (12) equal installments of \$105,259.27 beginning July 5, 2023.

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.

Limited Offering Memorandum shall mean the Limited Offering Memorandum dated June 23, 2022 relating to the Initial Bonds.

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 each January 5, March 5, May 5, July 5, September 5 and November 5 of each year.

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.

Institution Documents shall mean collectively, the Bond Purchase Agreement, this Agreement, each Promissory Note, the Mortgage, the Building Loan Agreement, the Continuing Disclosure Agreement, the Lease, the Depositary Agreement, the Pledge and Security Agreement, the Account Control Agreement, the Sublease Agreement, the Tax Regulatory Agreement, and any other Project Documents to which the Institution is a party, each as may be amended from time to time.

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, January 1 and July 1 of each year, commencing January 1, 2023, 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,

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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 other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

Mortgage shall mean, collectively, (i) the Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Building Loan), and (ii) the Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Indirect Loan), relating to the Facility, each dated as of even date herewith, 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 Nixon Peabody 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 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 Organization, 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.

Organization shall mean WHIN Music Community Charter School, a New York not-for-profit education corporation, exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Organization Documents shall mean, collectively, the Bond Purchase Agreement, the Use Agreement, the Tax Regulatory Agreement, the Covenant Agreement, the Continuing Disclosure Agreement and the Sublease Agreement.

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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.

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;

(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.

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(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 or performance mortgage 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;

(xiii) any lien, security interest, encumbrances or charge which exists in favor of the Trustee or to which the Trustee shall consent in writing; and

(xiv) a condominium declaration subjecting the leasehold interest created pursuant to the Lease Agreement to a leasehold condominium regime (the "Condominium"), together with floor plans of the Condominium, by-laws of the Condominium and such other documents as shall be required to form the Condominium (collectively, the "Condominium Documents"), by obtaining a No-Action Letter from the State Department of Law, it being agreed that neither the Mortgage nor the other Security Documents shall be subordinated to the Condominium, and so long as such Condominium Documents comply with Section 8.34 of the Loan Agreement, none of the Trustee or the Issuer shall have approval over the Condominium Documents; notwithstanding the foregoing, if requested by the Institution, the Trustee shall subordinate the lien of the Mortgage and the other Security Documents to the Condominium and the Condominium Documents provided the Trustee shall have approved (with the consent of the Majority Holders) the form of the Condominium Documents, not to be unreasonably withheld, conditioned or delayed, so long as such Condominium Documents comply with Section 8.34 of the Loan Agreement.

Person shall mean an individual or any Entity.

Pledge and Security Agreement shall mean the Pledge and Security Agreement, 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.

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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, the Lease Agreement, the Sublease 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) 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;

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Pledged Collateral shall have the meaning specified in Section 3.1 of the Pledge and Security Agreement.

Principal Account shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01.

Project shall mean (i) the construction, renovation, furnishing, and equipping of an existing 29,880 square foot, three-story, building (the "Existing Facility"), and the construction, furnishing and equipping of an approximately 25,015 square foot, five-story addition to the Existing Facility (the "Addition" and together with the Existing Facility, the "Facility"), for a total of approximately 54,895 square feet, located on a 9,992 square foot parcel of leased land at 528 West 162nd Street in New York, New York; (ii) capitalized interest and a debt service reserve fund, and (iii) the issuance costs of the Bonds.

Project Costs shall mean:

(i) all costs of engineering and architectural services with respect to the Project, 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;

(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;

(iii) the interest on the Bonds through July 1, 2024;

(iv) all costs of contract bonds and of insurance that may be required or necessary during the period of Project construction and renovation;

(v) the cost of lease payments for the Facility Realty during the period of construction and renovation of the Project through the Completion Deadline;

(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 during the period of construction and renovation of the Project;

(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, including any amounts required to reimburse the Institution for advances made for any item otherwise

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constituting a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Project; and

(x) all other costs and expenses relating to the completion of the Project or the issuance of a Series of Additional Bonds, including the payment of working capital in an amount not to exceed \$783,566.36 from the Series 2022B Bonds.

"Project Costs" shall not include (i) fees or commissions of real estate brokers, (ii) moving expenses, or (iii) operational costs (except as permitted by subsection (x) above).

Project Documents shall mean, collectively, the Institution Documents, the Organization Documents 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 Personality and any work required to install same.

Promissory Note shall mean, (i) with respect to the Initial Bonds, that certain Series 2022A Promissory Note and that certain Series 2022B Promissory Note each in substantially the form of Exhibit H to the Loan Agreement, each from the Institution to the Issuer and each endorsed by the Issuer to the Trustee, (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:

- (i) Government Obligations
- (ii) commercial paper having, at the time of investment or contractual commitment to invest therein, a rating from S&P and Moody's, of A1 and P1, respectively;
- (iii) repurchase and reverse repurchase agreements collateralized with Government Obligations, including those of the Trustee or any of its affiliates;

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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 November 16, 2021 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 of this Indenture.

Repair and Replacement Fund Requirement shall mean a total amount equal to \$200,000, payable in five equal annual installments of \$40,000 beginning July 5, 2027 and continuing annually for five (5) consecutive years, as may be increased in accordance with Section 8.32 of the Loan Agreement.

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.

S&P shall mean Standard & Poor's Financial Services LLC, a Delaware limited liability company which is a subsidiary of McGraw Hill Financial, Inc., a corporation organized and existing under the laws of the State, its successors and assigns, and if such limited liability company 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.

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-

(iv) investments in money market mutual funds having a rating at time of investment in the highest investment category granted thereby from S&P or Moody's, including, without limitation any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to this Indenture which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;

(v) demand deposits, including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits, and certificates of deposit or bankers acceptances of depository institutions, including the Trustee or any of its affiliates, rated in the AA long-term ratings category or higher by S&P or Moody's or which are fully FDIC-insured;

(vi) direct and general long-term obligations of any state of the United States on which the full faith and credit of the state is pledged and which are rated in either of the two highest rating categories by Moody's or S&P;

(vii) direct and general short-term obligations of any state of the United States on which the full faith and credit of the state is pledged and which are rated in the highest rating category by Moody's and S&P; and

(viii) other obligations, interest on which is excludable from gross income for purposes of federal income taxation, which are rated in the two highest rating categories by S&P and Moody's.

Rating Agency shall mean any of S&P, Moody's or Fitch and such other nationally recognized securities rating agency as shall have awarded a rating to the Initial Bonds.

Rating Category shall mean one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

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 (15th) 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.

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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, the Pledge and Security Agreement, this Indenture, the Account Control Agreement, the Depositary Agreement, the Lease, the Tax Regulatory Agreement, the Building Loan Agreement, the Use 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.

Series 2022A Bonds, means the Issuer's \$40,840,000 Tax-Exempt Revenue Bonds (WHIN Music Community Charter School Project), Series 2022A authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

Series 2022B Bonds, means the Issuer's \$3,070,000 Taxable Revenue Bonds (WHIN Music Community Charter School Project), Series 2022B authorized, issued, executed, authenticated and delivered on the Closing Date under the 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.

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.

Sublease Agreement shall mean that certain Sublease between the Institution and the Organization, dated as of June 15, 2021, as amended and restated by that certain First Amended and Restated Sublease dated as of June 29, 2022, as the same may be further amended from time to time.

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, the Institution and the Organization to the Trustee, and shall

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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.

Underwriter shall mean D.A. Davidson & Co., its successors and/or assigns.

Use Agreement shall mean the Use Agreement, dated as of June 1, 2022, among the Issuer, the Trustee and the Organization, as the same may be amended from time to time.

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.

(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”.

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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, transferred and pledged to the Revenue Fund, to the Bond Fund, to the Debt Service Reserve Fund, to the Renewal Fund, to the Repair and Replacement Fund, the Lease Payment Reserve 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). Pursuant to the terms of the Lease Agreement, the Institution has directed the Organization to make the Rent payments (as defined in the Lease Agreement) directly to Institution’s bank account that is subject to the Account Control Agreement. Pursuant to the terms of an Account Control Agreement, the Institution will grant a security interest in the Institution’s operating account to the Trustee. Further, the Institution has granted a lien and security interest in the Pledged Collateral to the Trustee pursuant to the Pledge and Security Agreement. 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

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(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.

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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.

(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:

<u>Series</u>	<u>Maturity Dates</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
Series 2022A Bonds	July 1, 2032	\$360,000	6.50%
	July 1, 2042	\$9,275,000	6.50%
	July 1, 2052	\$17,420,000	6.50%
	July 1, 2057	\$13,785,000	6.50%
Series 2022B Bonds	July 1, 2032	\$3,070,000	9.75%

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) If there shall occur, and for so long as there shall continue to exist, an Event of Default (other than by reason of a failure to redeem the Initial Bonds in whole if there shall occur a Determination of Taxability), the rate of interest on the Initial Bonds shall be the Default Rate commencing with the date of the occurrence of the Event of Default and any additional interest thereby due with respect to a period of time for which interest has already been paid shall be payable on the Interest Payment Date next following the Event of Default. Any former Bondholder who was a Bondholder commencing on or after the date of the occurrence of the Event of Default, but who subsequent to such date sold or otherwise disposed of its Initial Bonds or whose Initial Bonds were redeemed or matured, shall be entitled to receive from the Institution under the Loan Agreement the following, in an amount allocable to such period during which it held the Initial Bonds subsequent to the Event of Default and the date upon the Initial Bonds were sold, or otherwise disposed of, or redeemed or matured: the difference between the rate of interest borne by the Initial Bonds prior to the Event of Default and the rate borne by the Initial Bonds on and subsequent to such date.

(d) If there shall occur a Determination of Taxability, the rate of interest on the Series 2022A Bonds shall be the Default Rate commencing with the date of the Event of Taxability and any additional interest thereby due with respect to a period of time for which interest has already been paid shall be payable on the Interest Payment Date next following the Determination of Taxability. Any former Bondholder who was a Bondholder commencing on or after the date of the occurrence of an Event of Taxability, but who subsequent to such date sold or otherwise disposed of its Series 2022A Bonds or whose Series 2022A Bonds were redeemed or matured, shall be entitled to receive from the Institution under the Loan Agreement the following, in an amount allocable to such period during which it held the Series 2022A Bonds subsequent to the Event of Taxability and the date upon which the Series 2022A Bonds were

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sold, or otherwise disposed of, or redeemed or matured: the difference between the rate of interest borne by the Series 2022A Bonds prior to the Event of Taxability and the rate borne by the Series 2022A Bonds on and subsequent to such date.

(e) The Series 2022A Bonds shall be numbered from AR-1 upward in consecutive numerical order, the Series 2022B Bonds shall be numbered from BR-1 upward in consecutive numerical order. Each Bond 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 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 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 Regular Record Date for such interest, (1) by check or draft mailed to such registered owner at his or her 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 Regular 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 Regular 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 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)

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preceding such damage or destruction, (B) the Institution or the Organization 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 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.

(i) The Series 2022A Bonds maturing on July 1, 2042 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 date of redemption, 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 5.07(d) and (f):

Sinking Fund Installment Payment Date (July 1)	Sinking Fund Installment
2033	\$685,000
2034	730,000
2035	780,000
2036	830,000
2037	885,000
2038	940,000
2039	1,005,000
2040	1,070,000
2041	1,140,000

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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.

(i) The Series 2022A Bonds shall be subject to redemption, on or after July 1, 2032, 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 pursuant to Section 4.3(c) thereof), at the Redemption Price of one hundred percent (100%) of the principal amount of the Series 2022A Bonds or portions thereof to be redeemed, plus accrued interest to the date of redemption.

(ii) The Series 2022B Bonds are not subject to optional redemption.

(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 Redemption Price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the date of redemption, 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

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2042	<u>1,210,000</u>
	\$9,275,000

(ii) The Series 2022A Bonds maturing on July 1, 2052, 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 date of redemption, 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 5.07(d) and (f):

Sinking Fund Installment Payment Date (July 1)	Sinking Fund Installment
2043	\$1,290,000
2044	1,375,000
2045	1,465,000
2046	1,560,000
2047	1,660,000
2048	1,770,000
2049	1,885,000
2050	2,005,000
2051	2,135,000
2052	<u>2,275,000</u>
	\$17,420,000

(iii) The Series 2022A Bonds maturing on July 1, 2057 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 date of redemption, 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 5.07(d) and (f):

Sinking Fund Installment Payment Date (July 1)	Sinking Fund Installment
2053	\$2,420,000
2054	2,580,000
2055	2,745,000
2056	2,925,000
2057	<u>3,115,000</u>
	\$13,785,000

(iv) Mandatory Sinking Fund Installment Redemption. The Series 2022B Bonds maturing on July 1, 2032 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 date of redemption, 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 5.07(d) and (f):

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Sinking Fund Installment Payment Date (July 1)	Sinking Fund Installment
2026	\$365,000
2027	400,000
2028	440,000
2029	480,000
2030	530,000
2031	580,000
2032	275,000
	\$3,070,000

(d) Mandatory Redemption from Excess Proceeds and Certain Other Amounts. The Initial Bonds (or such Series of Bonds) shall be redeemed at any time in whole or in part by lot prior to maturity in the event and to the extent:

- (i) excess Series 2022A Bond proceeds shall remain after the completion of the Project shall be used to redeem only Series 2022A Bonds,
- (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 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,

in each case at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Initial Bonds (or such specified Series of Bonds) to be redeemed, together with interest accrued thereon to the date of redemption;

(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 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

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(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 5.07(d) and (f).

(3) Redemption shall be made pursuant to the mandatory redemption provisions of Section 2.03(d) at the earliest possible date 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 Bond Resolution;
- (b) an original executed counterpart of all Security Documents;
- (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

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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 date of redemption.

(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 percent (100%) of the principal amount thereof, together with accrued interest at the Default Rate from the occurrence of the Event of Taxability to the date of redemption. The Initial Bonds shall be redeemed in whole unless redemption of a portion of the Series 2022A Bonds Outstanding would have the result that interest payable on the Series 2022A Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of such Series 2022A Bond. In such event, the Series 2022A 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 Series 2022A Bonds for optional redemption and subject to Section 11.6 of the Loan Agreement, the Series 2022A 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 July 1, 2032 at a Purchase Price equal to the applicable Redemption Price for any optional redemption of such Series 2022A Bonds as provided in Section 2.03(a), plus accrued interest to the purchase date. Purchases of tendered Series 2022A Bonds may be made without regard to any provision of this Indenture relating to the selection of the Series 2022A Bonds in a partial optional redemption. The Series 2022A 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 Series 2022A 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 Series 2022A Bonds for purposes of federal income taxation, and (ii) such other opinions, certificates or documentation as the Issuer may require.

(h) Redemption of Series 2022A 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:

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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 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, and either (a) receipt by the Trustee of a certificate from the Organization showing satisfaction of the requirements of Section 5.1(a) of the Covenant Agreement, or (b) the prior written consent of the Holders of at least sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds shall have been obtained, 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,

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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, the Loan Agreement and the Mortgage, 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) evidence that the requirements of Section 5(l)(a) of the Covenant Agreement are satisfied;

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(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).

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(6) written evidence from each Rating Agency by which any Series of Outstanding Bonds are then rated, if any, to the effect that it has reviewed the documentation pertaining to the issuance of the Series of Additional Bonds, and that the issuance of such Series of Additional Bonds will not result in a withdrawal, a suspension or a reduction of the long and short-term ratings, if applicable, then assigned to any Series of Outstanding Bonds by such Rating Agency;

(7) an original, executed counterpart of the new Promissory Note and the amendment to each Security Document; and

(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.

(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

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(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 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

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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.

(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.

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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 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," and "THIS BOND MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY TO A PERSON CONSTITUTING A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OR AN "ACCREDITED INVESTOR" (AS DEFINED IN REGULATION D UNDER THE SECURITIES ACT OF 1933, AS AMENDED)." 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 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.

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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 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 or her 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 or her 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: (i) it is either a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933, as amended (the "**Securities Act**")) or an "accredited investor" (as defined in Regulation D under the Securities Act), and it has acquired such Bond for its own account or for the account of a qualified institutional buyer or an accredited investor, and (ii) it understands and acknowledges 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) and only to a Person meeting the requirements set forth in the preceding clause (i).

(b) 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 or her 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.

(c) 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 and Redemption Price, if any, of, Sinking Fund Installments for,

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and interest on such Bond and for all other purposes, and all payments made to any such registered owner or upon his or her 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.

(d) 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 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

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ARTICLE IV

APPLICATION OF BOND PROCEEDS

Section 4.01. Application of Proceeds of Initial Bonds.

(a) Upon the receipt by the Trustee of the original proceeds of the sale and delivery of the Series 2022A Bonds, the Trustee shall apply such proceeds as follows:

(i) \$5,517,037.27, shall be deposited in the Series 2022A Bonds Capitalized Interest Account of the Project Fund;

(ii) \$3,088,879.59, being an amount equal to the Debt Service Reserve Fund Requirement with respect to the Series 2022A Bonds, shall be deposited in the Series 2022A Account of the Debt Service Reserve Fund;

(iii) \$211,127.12, shall be deposited in the Costs of Issuance Account of the Project Fund and applied to Costs of Issuance;

(iv) \$31,756,712.32, being the balance of the proceeds of the Series 2022A Bonds, shall be deposited in the Project Fund and applied to Costs of the Project.

(b) Upon the receipt by the Trustee of the original proceeds of the sale and delivery of the Series 2022B Bonds, the Trustee shall apply such proceeds as follows:

(i) \$414,723.42, shall be deposited in the Series 2022B Bonds Capitalized Interest Account of the Project Fund;

(ii) \$232,195.41, being an amount equal to the Debt Service Reserve Fund Requirement with respect to the Series 2022B Bonds, shall be deposited in the Series 2022B Account of the Debt Service Reserve Fund;

(iii) \$519,235.43, shall be deposited in the Costs of Issuance Account of the Project Fund and applied to Costs of Issuance;

(v) \$1,857,795.74, being the balance of the proceeds of the Series 2022B Bonds, shall be deposited in the Project Fund and applied to Costs of the Project.

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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, Sinking Fund Installment and/or interest on the Bonds, or the date fixed for redemption of any Bonds, shall be a day other than a Business Day, then payment of such principal, 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 date fixed for redemption, as the case may be, except that interest shall continue to accrue on any unpaid principal.

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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) Revenue Fund

(2) Project Fund

(A) a Costs of Issuance Account, a Series 2022 Bonds Capitalized Interest Account and a Series 2022B Bonds Capitalized Interest Account;

(3) Bond Fund

(A) a Principal Account, and within such Principal Account, a Series 2022A subaccount and a Series 2022B subaccount;

(B) an Interest Account, and within such Interest Account, a Series 2022A subaccount and a Series 2022B subaccount;

(C) a Sinking Fund Installment Account, and within such Sinking Fund Installment Account, a Series 2022A subaccount and a Series 2022B subaccount;

(D) a Redemption Account, and within such Redemption Account, a Series 2022A subaccount and a Series 2022B subaccount;

(4) Renewal Fund;

(5) Rebate Fund;

(6) Repair and Replacement Fund;

(7) Lease Payment Reserve Fund;

(8) Debt Service Reserve Fund, and within such Debt Service Reserve Fund, a Series 2022A subaccount and a Series 2022B subaccount;

(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.

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Section 5.02. Payments into the Revenue Fund. Unless otherwise provided herein, the Trustee shall promptly deposit all amounts received from the Institution or the Organization on behalf of the Institution, or transferred pursuant to Sections 5.01(b), the Account Control Agreement, the Lease Agreement or the Loan Agreement into the Revenue Fund.

Section 5.03. Application of Revenue Fund Moneys.

(c) Amounts in the Revenue Fund shall be transferred by the Trustee on each Loan Payment Date commencing on the September 5, 2022 Loan Payment Date, to the following Funds and Accounts in the following manner and in the order of priority indicated, provided that in the event funds in on any Loan Payment Date are insufficient to make any one or more of such transfers, any and all of such deficiencies will be remedied prior to making any transfers to any subordinated funds (based on the following order of priority) on any future Loan Payment Date:

(i) First, to the Bond Fund:

(A) For deposit into the Interest Account of the Bond Fund, an amount equal (i) to one-third (1/3) (or such other pro-rated amount, adjusted as necessary) of the amount of interest that will become due on the Bonds on the next Interest Payment Date, including default interest (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 Bonds on such next succeeding Interest Payment Date); and

(B) commencing on that Loan Payment Date as shall precede the first principal payment date (including such principal as shall become due as a mandatory Sinking Fund Installment payment) by six (6) Loan Payment Dates, for deposit into the Principal Account of the Bond Fund, an amount equal to at least one-sixth (1/6) (or such other pro-rated amount, adjusted as necessary) of the amount of the principal payment or Sinking Fund Installment of the Bonds Outstanding becoming due;

(ii) Second, an amount equal to replenish any deficiencies in the Debt Service Reserve Fund, if any;

(iii) Third, to the Rebate Fund to pay any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement;

(iv) Fourth, to the Lease Payment Reserve Fund, an amount required to fund the monthly amount of the Lease Payment Reserve Fund Requirement (or such other pro-rated amount, adjusted as necessary) of the amount equal to the Lease Payment Reserve Fund Requirement;

(v) Fifth, to the Repair and Replacement Reserve Fund beginning on July 5, 2027, an amount required to fund the annual amount of the Repair and Replacement Fund Requirement (or such other pro-rated amount, adjusted as necessary) of the amount equal to the Repair and Replacement Fund Requirement; and

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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.

(b) 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.

(c) 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.

(d) 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 the Tax Regulatory Agreement and Section 5.09, be deposited by the Trustee in the Redemption Account of the Bond Fund for the Series 2022A Bonds. 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, shall, after making any such transfer to the Rebate Fund, and after depositing in the subaccounts of 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 the Series 2022A Bonds at the earliest practicable date. The Trustee shall promptly notify the Institution of any amounts so deposited in the Redemption Account of the Bond Fund pursuant to this Section 5.04(e).

(e) 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 Project Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Regulatory Agreement and Section 5.09) and in the subaccounts of the Debt Service Reserve Fund shall be deposited in the respective subaccounts of 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 Project Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Regulatory Agreement and Section 5.09) and in the subaccounts of the Debt Service Reserve Fund shall be deposited in the respective subaccounts of the Bond Fund as provided in Section 8.03.

(f) Except as provided in Section 5.06, all earnings on amounts held in the Project Fund (i) prior to the Project Completion Date, shall remain in the Project Fund, and (ii)

(vi) Sixth, all remaining funds shall be paid to the Institution and used for any authorized purpose.

Section 5.04. 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, 5.08 and 5.09 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 (including interest on the Bonds during the period of Project construction and renovation) to the extent requisitioned under subsection (b) hereto. The Trustee shall automatically transfer (i) amounts on deposit in the Series 2022A Bonds Capitalized Interest Account of the Project Fund to the Series 2022A subaccount of the Interest Account of the Bond Fund in an amount up to the amount of interest due and payable on the Series 2022A Bonds on the next succeeding Interest Payment Date on or prior to such Interest Payment Date, and (ii) amounts on deposit in the Series 2022B Bonds Capitalized Interest Account of the Project Fund to the Series 2022B subaccount of the Interest Account of the Bond Fund in an amount up to the amount of interest due and payable on the Series 2022B Bonds on the next succeeding Interest Payment Date on or prior to such Interest Payment Date.

(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 Project Fund for the Project Costs, upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Institution; 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 — "Form of Requisition from the Project Fund" and shall be submitted to the Trustee. The Trustee shall disburse amounts from the Project Fund not later than five (5) Business Days following the receipt of the executed requisition and accompanying bills or invoices, except that any such requisition and accompanying bills or invoices submitted on the Closing Date shall have disbursements made by the Trustee on such Closing Date. The Trustee 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 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

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after the Project Completion Date, shall be transferred by the Trustee and deposited in the Series 2022A Interest Subaccount of the Interest Account of the Bond Fund.

Section 5.05. 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 the Tax Regulatory Agreement and Section 5.09, 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 the Tax Regulatory Agreement and Section 5.09, 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 5.09, 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 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

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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 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 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 those encumbrances consented to by the Issuer and the Trustee.

(f) All earnings on amounts on deposit in the Renewal Fund shall be transferred by the Trustee and deposited in the Series 2022A Interest Subaccount of the Interest Account of the Bond Fund.

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(i) Amounts in the Renewal Fund required by Section 5.05 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 5.09 or to the subaccounts of the Debt Service Reserve Fund to the extent of any deficiency therein) to the applicable subaccounts of the Redemption Account of the Bond Fund pursuant to Section 5.05(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 subaccounts of the Debt Service Reserve Fund pursuant to Section 5.15, which shall be deposited in and credited to the respective subaccounts of 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 5.07. Application of Bond Fund Moneys. (a) The Trustee shall (i) on each Interest Payment Date pay or cause to be paid out of the applicable subaccount of the Interest Account in the Bond Fund the interest due on the Bonds, and (ii) further pay out of the applicable subaccounts 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 applicable subaccounts 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 applicable subaccounts of 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 applicable subaccounts of 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 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 subaccounts of 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 date of redemption. Any amount in the subaccounts of the Redemption Account not so

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(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 5.09, and after depositing in the subaccounts of the Debt Service Reserve Fund an amount equal to any deficiency therein, be transferred, on a pro rata basis, by the Trustee to the subaccounts of the Redemption Account of the Bond Fund.

Section 5.06. 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 respective Interest Account of the Bond Fund and applied to the payment of interest on such Series of Bonds.

(b) Amounts disbursed from the Project Fund for the payment of interest on the Bonds during the period of Project Work, which shall be credited to the Series 2022A Bonds Subaccount and the Series 2022B Subaccount of the Interest Account of the Bond Fund and applied to the payment of interest on the Initial Bonds;

(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 5.09, or to the subaccounts of the Debt Service Reserve Fund to the extent of any deficiency therein) (i) in the Redemption Account of the Bond Fund pursuant to Section 5.04(e) or the first sentence of Section 5.04(f), which shall be kept segregated from any other moneys within such Account, or (ii) in the accounts of the Bond Fund pursuant to the second sentence of Section 5.04(f).

(d) Loan payments received by the Trustee pursuant to Section 4.3(a)(i), (ii), (iii), (iv) or (v), or Section 4.3(i), of the Loan Agreement, or transfers from the Revenue Fund, which shall be deposited in and credited, to the extent necessary, pro rata, first to the subaccounts of the Interest Account, second to the subaccounts of Principal Account, and third to the subaccounts of the Sinking Fund Installment Account of the Bond Fund.

(e) Advance loan payments received by the Trustee pursuant to Section 4.3(c) of the Loan Agreement, which shall be deposited in and credited to the applicable subaccounts of the Redemption Account of the Bond Fund.

(f) Any amounts transferred from the Project Fund pursuant to Section 5.06(c), which shall be deposited in and credited pro rata to the applicable subaccounts of the Interest Account of the Bond Fund.

(g) The excess amounts referred to in Section 5.07(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 applicable subaccounts of 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.

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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 subaccounts of 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 subaccounts of 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 subaccounts of 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 related subaccount of the Redemption Account of the Bond Fund and the payment of accrued interest shall be made out of moneys deposited in the related subaccount of 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 5.07(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 subaccounts of the Sinking Fund Installment Account on the due date of such Sinking Fund Installment shall be reduced 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

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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 5.08. Reserved.

Section 5.09. 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 5.05, 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 Project Fund or the Renewal Fund, as applicable. 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 Series 2022A Subaccount of 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 each 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 Series 2022A Bonds as of the date of

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(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 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 5.11(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 5.011 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 Debt Service Reserve 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 the

such payment and (ii) notwithstanding the provisions of Article X, not later than thirty (30) days after the date on which all Series 2022A Bonds have been paid in full, 100% of the Rebate Amount as of the date of payment.

Section 5.10. 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 5.11. 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 Series 2022A Bonds shall be used, directly or indirectly, in such manner as to cause any Series 2022A Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. Except as may be provided in the Tax Regulatory Agreement, unexpended Series 2022A Bond proceeds transferred from the Project Fund to the Redemption Account of the Bond Fund pursuant to Section 5.04(e) may not be invested at a Yield (as defined in the Tax Regulatory Agreement) which is greater than the Yield on the applicable Series 2022A 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, and (iii) the Repair and Replacement Fund with respect to the investment of amounts held in the Repair and Replacement Fund, and (iv) as set forth in Section 5.05(f) with respect to the Renewal Fund, (v) to the Debt Service Reserve Fund with respect to the investment of amounts held in the Debt Service Reserve Fund, and (vi) to the Interest Account of the Bond 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.

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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.

(g) Although the Issuer and Institution each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, both the Issuer and the Institution agree that confirmations of Authorized Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered and that no statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

Section 5.12. 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 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 5.13. 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 5.14. 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 date fixed for redemption 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 or her 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

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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 thereof, and all obligations of the Trustee or such Paying Agent with respect to such moneys shall thereupon cease.

Section 5.15. Debt Service Reserve Fund. (a) If on any Interest Payment Date or redemption date on the Bonds the amount in the respective 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 Initial Bonds, or if on any principal payment date on the Initial Bonds the amount in the respective Principal Account shall be less than the amount of principal of the Initial Bonds then due and payable, or if on any Sinking Fund Installment payment date for the Initial Bonds the amount in the respective 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 Initial 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, the Trustee forthwith shall transfer moneys from the subaccounts of the Debt Service Reserve Fund, first, to the respective subaccount of the Interest Account, second to the respective subaccount of the Principal Account, and third, to the respective subaccount of the Sinking Fund Installment Account, all to the extent necessary to make good any such deficiency.

(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 respective subaccount of 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 Series 2022A 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 Series 2022A Bonds Outstanding.

Section 5.16. Repair and Replacement Fund.

(a) There shall be deposited into the Repair and Replacement Fund as and when received (a) all payments by the Institution pursuant to Sections 4.3(a)(iii) and 8.32 of the Loan Agreement and all transfers received pursuant to Section 5.03, (b) all other moneys deposited into the Repair and Replacement Fund pursuant to the Loan Agreement or this Indenture, and (c) all other moneys received by the Trustee when accompanied by directions not inconsistent with the Loan Agreement or this Indenture that such moneys are to be paid into the Repair and Replacement Fund. There shall also be retained in the Repair and Replacement

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Institution setting forth the amount and the payee for the purpose of paying rent or other amounts due under the Lease Agreement.

(d) Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Lease Payment Reserve Fund shall be credited to the Lease Payment Reserve Fund.

(e) Notwithstanding any provision hereof to the contrary, during the occurrence and continuance of an Event of Default, the Trustee may use any moneys on deposit in the Lease Payment Reserve Fund for payment of its fees and expenses as provided in Section 9.04 of this Indenture.

Fund, interest and other income received on investment of moneys in the Repair and Replacement Fund to the extent provided in this Section 5.16.

(b) The Repair and Replacement Fund shall be in the custody of the Trustee, and, absent an Event of Default hereunder, the Trustee is hereby authorized and directed to make each disbursement authorized or required by the provisions of this Section 5.16 and to issue its checks therefor. The Trustee shall keep and maintain adequate records pertaining to the Repair and Replacement Fund and all disbursements therefrom and shall annually file an accounting thereof with the Issuer and the Institution.

(c) Payments shall be made from the Repair and Replacement Fund upon receipt by the Trustee of a written requisition from an Authorized Representative of the Institution setting forth the amount and the payee for the purpose of paying the cost of maintenance and replacements which may be required to keep each Facility in sound condition, including but not limited to repair or replacement of equipment, repair or replacement of any roof or other structural component, painting, carpeting, flooring, and the repair or replacement of heating, air conditioning, plumbing and electrical equipment.

(d) Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Repair and Replacement Fund shall be credited to the Repair and Replacement Fund.

(e) Notwithstanding any provision hereof to the contrary, during the occurrence and continuance of an Event of Default, the Trustee may use any moneys on deposit in the Repair and Replacement Fund for payment of its fees and expenses as provided in Section 9.04 of this Indenture.

Section 5.17. Lease Payment Reserve Fund.

(a) There shall be deposited into the Lease Payment Reserve Fund as and when received (a) all payments by the Institution pursuant to Sections 4.3(a)(viii) of the Loan Agreement and all transfers received pursuant to Section 5.03, (b) all other moneys deposited into the Lease Payment Reserve Fund pursuant to the Loan Agreement or this Indenture, and (c) all other moneys received by the Trustee when accompanied by directions not inconsistent with the Loan Agreement or this Indenture that such moneys are to be paid into the Lease Payment Reserve Fund. There shall also be retained in the Lease Payment Reserve Fund, interest and other income received on investment of moneys in the Lease Payment Reserve Fund to the extent provided in this Section 5.17.

(b) The Lease Payment Reserve Fund shall be in the custody of the Trustee, and, absent an Event of Default hereunder, the Trustee is hereby authorized and directed to make each disbursement and to issue its checks if any amounts due and payable under the Lease Agreement are not made when due. The Trustee shall keep and maintain adequate records pertaining to the Lease Payment Reserve Fund and all disbursements therefrom and shall annually file an accounting thereof with the Issuer and the Institution.

(c) Payments shall be made from the Lease Payment Reserve Fund upon receipt by the Trustee of a written requisition from an Authorized Representative of the

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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 date fixed for redemption 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

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person at the Trustee) and specifying the principal amounts of the Bonds or portions thereof to be 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 date fixed for redemption, 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

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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 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 8.26(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.

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Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the 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 date of redemption, direct that payments of Redemption Price and accrued interest to the date of redemption 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.

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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. 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 the Pledged Collateral 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 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.

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

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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 in the City of Albany, 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 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

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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 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.

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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 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

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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 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 date of redemption 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 Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding (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(d) or (e) 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.

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(d) The right of the Trustee or of the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding to make any such declaration as aforesaid, however, is subject to the condition that if, at any time before such declaration, all overdue installments of principal and 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.

(f) Pursuant to the Account Control Agreement, upon the happening and continuance of any Event of Default, the Trustee, as Secured Party under the Account Control Agreement, shall withdraw any funds on deposit in the Accounts (as defined in the Account Control Agreement, but subject to the limitations in Section 8.02(d)) which are required to pay, and such funds shall be applied to pay, principal, Purchase Price or Redemption Price of, Sinking Fund Installments for, and interest on the Bonds.

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 Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding 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

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Second - To the payment to the Persons entitled thereto of the unpaid principal 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 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)(B) 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

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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 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 Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding, 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 shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, 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

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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 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, her, 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,

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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.

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.

Section 8.12. Issuer Approval of Certain Nonforeclosure Remedies. Notwithstanding any provision hereof or of under any other Security Document, upon the occurrence of an Event of Default, no such remedy or other action (whether exercised by the Trustee, the Majority Holders or the Holders of the Bonds) shall have the effect of (x) continuing the exemption from the mortgage recording tax of the Mortgage upon any restructuring of the underlying indebtedness secured by the Mortgage (a "Mortgage Restructuring"), (y) amending or terminating any Security Document (other than through a forbearance) to which the Issuer is a party (a "Security Document Action") or (z) substituting for the Institution and/or the Organization, as applicable, a new Entity to either be a counterparty to the Issuer under the Loan

Agreement or as a user or lessee all or a portion of the Facility (a "Substitute Entity"), unless, in either case, a reasonable description of such Mortgage Restructuring, Security Document Action and/or Substitute Entity shall have been set forth in a writing delivered to the Issuer together with a request for approval and (i) the Mortgage Restructuring, Security Document Action and/or Substitute Entity shall be approved in writing by the Issuer, such approval not to be unreasonably withheld or delayed (and which approval may, in the sole discretion of the Issuer, be subject to action by the Issuer's Board of Directors), and (ii) there shall be delivered to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such Mortgage Restructuring, Security Document Action and/or Substitute Entity shall not cause the interest on any Outstanding Bonds to become subject to federal income taxation by reason of either such Mortgage Restructuring, Security Document Action and/or Substitute Entity. For the avoidance of doubt, no Issuer consent is required hereby for the entry into a forbearance agreement by the Trustee, the commencement of a foreclosure action under the Mortgage or the appointment of a receiver over the Institution or Organization or any collateral for the Bonds. In connection with the retirement or surrender for cancellation of all of the Outstanding Bonds (other than as a result of the payment in full of all Outstanding Bonds), the Trustee hereby agrees to provide written notice to the Issuer of such retirement or cancellation no later than fourteen (14) Business Days after the occurrence of the earlier of: (A) the Trustee's receipt of direction to effectuate such retirement or cancellation, and (B) the Trustee's receipt of surrendered Bonds for cancellation.

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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 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

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 or her 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

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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 or interest on any Bonds, upon the revenues (but not including any amounts held by the Trustee under Section 5.14, 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.

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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

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

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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 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

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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.

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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.

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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.

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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 in the Opinion of Counsel is not materially adverse to the interests of the Bondholders.

(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

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securities laws of the United States of America or of any of the states of the United States of America, and, if they so 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, redemption premium, if any, or interest on any Outstanding Bonds, a change in the terms of redemption or maturity of the principal of or the interest on any Outstanding Bonds, or a reduction in the principal amount of 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 or the 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 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 thereof (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.

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; and (vi) 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

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.

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 or her 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 or her 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 or her 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 or her 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:

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.

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 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 to 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

- (1) if to the Issuer, to

Build NYC Resource Corporation
One Liberty Plaza
New York, New York 10006
Attention: General Counsel

with a copy to

Build NYC Resource Corporation
One Liberty Plaza
New York, New York 10006
Attention: Executive Director

- (2) if to the Institution, to

Prior to the Completion Date:

Friends of WHIN Music Community Charter School, Inc.
517 West 164th Street
New York, New York 10032
Attention: Board Chair

with a copy to

Cohen Schneider Law P.C.
275 Madison Avenue
New York, New York 10016
Attention: Cliff Schneider, Esq.,

After the Completion Date:

Friends of WHIN Music Community Charter School, Inc.
528 West 162nd Street
New York, New York 10032
Attention: Board Chair

with a copy to

Cohen Schneider Law P.C.
275 Madison Avenue
New York, New York 10016
Attention: Cliff Schneider, Esq., and

- (3) if to the Trustee, to

The Bank of New York Mellon
240 Greenwich Street, Floor 7E

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 or her individual capacity, and no recourse shall be had for the payment of the principal 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 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 Indenture Over Liens. This Indenture and the Mortgage are given in order to secure funds to pay for the Project and by reason thereof, it is intended that this Indenture and 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.

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 preferentum* doctrine, that would require interpretation of any ambiguities in this Indenture against the party that has drafted it.

[Remainder of Page Intentionally Left Blank]

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 and its corporate seal to be hereunto affixed, all as of the day and year first above written.

BUILD NYC RESOURCE CORPORATION

By: _____
Noah Schumer
Deputy Executive Director

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the ____ day of June, of the year two thousand twenty-two, before me, the undersigned, personally appeared **Noah Schumer** 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

Indenture of Trust
Signature Page 1 of 2

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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 June, in the year two thousand twenty-two, 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

Indenture of Trust
Signature Page 2 of 2

EXHIBIT A

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of West 162nd Street, distant 300 feet easterly from the corner formed by the intersection of the easterly side of Broadway with said southerly side of West 162nd Street;

RUNNING THENCE southerly parallel with Broadway, and part of the distance through a party wall, 99 feet 11 inches to the center line of the block;

THENCE easterly along said center line of the block 74 feet 6 inches;

THENCE northerly parallel with Broadway 8/100 of a foot (1 inch per the survey);

THENCE easterly and parallel with West 162nd Street, 25 feet 6 inches;

THENCE northerly parallel with Broadway, 99 feet 9 inches (10 inches per the survey) to the said southerly side of West 162nd Street;

THENCE westerly along the said southerly side of West 162nd Street, 100 feet to the point or place of BEGINNING.

Note: Address, Block & Lot shown for informational purposes only.

Designated as Block 2120 Lot 18 and also known as 528 West 162nd Street, New York, NY 10032

EXHIBIT B

DESCRIPTION OF THE FACILITY PERSONALTY

The acquisition of fixtures and other equipment for incorporation or use at the building located at 528 West 162nd Street, New York, New York 10032, financed with the proceeds of the Build NYC Resource Corporation Revenue Bonds (WHIN Music Community Charter School Project), Series 2022, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefore, and all parts, additions and accessories incorporated therein or affixed thereto and shall include all property substituted for or replacing items and exclude all items so substituted for or replaced, and further exclude all items removed as provided in the Indenture and the Loan Agreement

EXHIBIT C

FORM OF FULLY REGISTERED INITIAL BOND

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. THIS BOND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO AN "ACCREDITED INVESTOR" AS SUCH TERM IS DEFINED IN RULE 501 OF REGULATION D OF THE SECURITIES ACT OF 1933 OR A "QUALIFIED INSTITUTIONAL BUYER" AS THAT TERM IS DEFINED UNDER RULE 144A OF THE SECURITIES EXCHANGE COMMISSION.

BUILD NYC RESOURCE CORPORATION
[TAX-EXEMPT][TAXABLE] REVENUE BONDS
(WHIN MUSIC COMMUNITY CHARTER SCHOOL PROJECT), SERIES 2022 [A][B]

Bond Date: June [29], 2022

Maturity Date: [July 1, 2032][2042][2052][2057][July 1, 2032]

Registered Owner: Cede & Co.

Principal Amount: \$[360,000][9,275,000][17,420,000][13,785,000][3,070,000]

Interest Rate: [6.50%][9.75%]

Bond Number: R-[A-1][A-2][A-3][A-4][B-1]

CUSIP: [12008E SR8] [12008E SS6] [12008E ST4] [12008E SU1] 12008E SV9]

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 January 1 and July

1 in each year, commencing January 1, 2023 (or, if such day is not a Business Day, the immediately succeeding Business Day). 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.

If there shall occur, and for so long as there shall continue to exist, an Event of Default (other than by reason of a failure to redeem the Bonds in whole if there shall have occurred a Determination of Taxability), the annual rate of interest on the Bonds shall be the Default Rate commencing with the date of the occurrence of the Event of Default and any additional interest thereby due with respect to a period of time for which interest has already been paid shall be payable on the Interest Payment Date next following the Event of Default. Any former Bondholder who was a Bondholder commencing on or after the date of the occurrence of the Event of Default, but who subsequent to such date sold or otherwise disposed of its Bonds or whose Bonds were redeemed or matured, shall be entitled to receive from the Institution under the Loan Agreement (as such terms are hereinafter defined) the following, in an amount allocable to such period during which it held the Bonds subsequent to the Event of Default and the date upon which the Bonds were sold, or otherwise disposed of, or redeemed or matured: the difference between the rate of interest borne by the Bonds prior to the Event of Default and the rate borne by the Bonds on and subsequent to such date.

If there shall occur a Determination of Taxability, the annual rate of interest on the Series 2022A Bonds shall be the Default Rate commencing with the date of the Event of Taxability and any additional interest thereby due with respect to a period of time for which interest has already been paid shall be payable on the Interest Payment Date next following the Determination of Taxability. Any former Bondholder who was a Bondholder commencing on or after the date of the occurrence of an Event of Taxability, but who subsequent to such date sold or otherwise disposed of its Series 2022A Bonds or whose Series 2022A Bonds were redeemed or matured, shall be entitled to receive from the Institution under the Loan Agreement the following, in an amount allocable to such period during which it held the Series 2022A Bonds subsequent to the Event of Taxability and the date upon which the Series 2022A Bonds were sold, or otherwise disposed of, or redeemed or matured: the difference between the rate of interest borne by the Series 2022A Bonds prior to the Event of Taxability and the rate borne by the Series 2022A Bonds on and subsequent to such 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 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 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 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 Regular Record Date for such interest, (1) by check or draft mailed to such registered owner at his or her 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 Regular 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 Regular 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 [Tax-Exempt][Taxable] Revenue Bonds, Bonds (WHIN Music Community Charter School Project), Series 2022[A][B]" (the "[**Series 2022A**][**Series 2022B**] Bonds") issued in the aggregate principal amount of \$[40,840,000][3,070,000]. The Series 2022[A][B] 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 November 16, 2021, authorizing the issuance of the Series 2022 Bonds and under and pursuant to an Indenture of Trust, dated as of June 1, 2022 (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 and equipping, as applicable, by the Issuer consisting of (i) the construction, renovation, furnishing, and equipping

of an existing 29,880 square foot, three-story, building (the "**Existing Facility**"), and the construction, furnishing and equipping of an approximately 25,015 square foot, five-story addition to the Existing Facility (the "**Addition**" and together with the Existing Facility, the "**Facility**"), for a total of approximately 54,895 square feet, located on a 9,992 square foot parcel of leased land at 528 West 162nd Street in New York, New York; (ii) capitalized interest and a debt service reserve fund, and (iii) the issuance costs of the Bonds (the "**Project**") on behalf of Friends of WHIN Music Community Charter School, Inc., a not-for-profit corporation, organized 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 June 1, 2022, between the Issuer and the Institution (as the same may be amended or supplemented, the "**Loan Agreement**"), and the Institution has executed certain Promissory Notes each dated the date of original issuance of the Bonds in favor of the Issuer (collectively, 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 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, the Pledge and Security Agreement hereinafter referred to, 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 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 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 further secured by a lien and security interest in the Pledged Collateral pursuant to a certain Pledge and Security Agreement, dated as of June 1, 2022, from the Institution to the Trustee (as the same may be amended or supplemented, the "**Pledge and Security Agreement**"). The Bonds are also secured by mortgage liens on and security interests in the Institution's leasehold interest in the Facility pursuant to (i) the Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Indirect Loan), relating to the Facility, each dated as of even date herewith, 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 (as defined in the Indenture), 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

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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 in the Covenant Agreement or upon 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.

Redemption of Bonds. (A) General Optional Redemption. (A)(i) The Series 2022A Bonds shall be subject to redemption, on or after July 1, 2032, 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 pursuant to Section 4.3(c) thereof), at the Redemption Price of one hundred percent (100%) of the principal amount of the Series 2022A Bonds or portions thereof to be redeemed, plus accrued interest to the date of redemption.

(ii) The Series 2022B Bonds are not subject to optional redemption.

(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 the Indenture, at a Redemption Price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the date of redemption, 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 one year 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 one year 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 one year 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) Mandatory Sinking Fund Installment Redemption.

(i) The Series 2022A Bonds maturing on July 1, 2042 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 date of redemption, 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 5.07(d) and (f) in the Indenture:

Sinking Fund Installment
Payment Date (July 1)
2033

Sinking Fund
Installment
\$685,000

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2034	730,000
2035	780,000
2036	830,000
2037	885,000
2038	940,000
2039	1,005,000
2040	1,070,000
2041	1,140,000
2042	<u>1,210,000</u>
	\$9,275,000

(ii) The Series 2022A Bonds maturing on July 1, 2052, 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 date of redemption, 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 5.07(d) and (f) in the Indenture:

Sinking Fund Installment Payment Date (July 1)	Sinking Fund Installment
2043	\$1,290,000
2044	1,375,000
2045	1,465,000
2046	1,560,000
2047	1,660,000
2048	1,770,000
2049	1,885,000
2050	2,005,000
2051	2,135,000
2052	<u>2,275,000</u>
	\$17,420,000

(iii) The Series 2022A Bonds maturing on July 1, 2057 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 date of redemption, 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 5.07(d) and (f) in the Indenture:

Sinking Fund Installment Payment Date (July 1)	Sinking Fund Installment
2053	\$2,420,000
2054	2,580,000
2055	2,745,000
2056	2,925,000

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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, 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 date of redemption.

(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 percent (100%) of the principal amount thereof, together with accrued interest at the Default Rate from the occurrence of the Event of Taxability to the date of redemption. The Bonds shall be redeemed in whole unless redemption of a portion of the Series 2022A Bonds Outstanding would have the result that interest payable on the Series 2022A Bonds remaining Outstanding after such redemption would not be includable in the gross income of any holder of a Series 2022A 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 the Series 2022A Bonds for optional redemption and subject to Section 11.6 of the Loan Agreement, the Series 2022A 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 July 1, 2032 at a Purchase Price equal to the applicable Redemption Price for any optional redemption of such Series 2022A Bonds as provided in Section 2.03(a), plus accrued interest to the purchase date. Purchases of tendered Series 2022A 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 Series 2022A 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 Series 2022A 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

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2057	3,115,000
	<u>\$13,785,000</u>

(iv) Mandatory Sinking Fund Installment Redemption. The Series 2022B Bonds maturing on July 1, 2032 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 date of redemption, 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 5.07(d) and (f) in the Indenture:

Sinking Fund Installment Payment Date (July 1)	Sinking Fund Installment
2026	\$365,000
2027	400,000
2028	440,000
2029	480,000
2030	530,000
2031	580,000
2032	<u>275,000</u>
	\$3,070,000

(D) Mandatory Redemption from Excess Proceeds and Certain Other Amounts. The Bonds (or such Series) shall be redeemed at any time in whole or in part by lot prior to maturity in the event and to the extent:

(i) excess Series 2022A Bond proceeds shall remain after the completion of the Project shall be used to redeem only Series 2022A Bonds,

(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,

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

(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

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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 date fixed for redemption 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 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.

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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 or her 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 or her 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 purpose of receiving payment of, or on account of, the principal 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 or her 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.

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: (i) it is either a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933, as amended (the "**Securities Act**")) or an "accredited investor" (as defined in Regulation D under the Securities Act), and it has acquired this bond for its own account or for the account of a qualified institutional buyer or an accredited investor, and (ii) it understands and acknowledges 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 transfer restrictions set forth in this bond and in the legend appearing hereon and only to a Person meeting the requirements set forth in the preceding clause (i).

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.

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.

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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 [Series 2022A][Series 2022B] Bonds of the issue described in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON,
as Trustee

By: _____
Authorized Signatory

Date of Authentication: June [29], 2022

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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

 Authorized Signature
 (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]

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(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 November 16, 2021, 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

Form of Requisition from the Project Fund

REQUISITION NO. _____

TO: The Bank of New York Mellon, as Trustee

FROM: Friends of WHIN Music Community Charter School, Inc.

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 June 1, 2022 (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 Friends of WHIN Music Community Charter School (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;

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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.

Attached to this Requisition is a schedule of or a copy of bills, invoices or other documents evidencing and supporting this Requisition.

Dated: _____

FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.

By: _____
 Authorized Representative

FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.By: _____
Authorized Representative

Date: _____

Amount	Payee (with address or wire information)	Purpose
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COVENANT AGREEMENT
between
WHIN MUSIC COMMUNITY CHARTER SCHOOL,
(the “Charter School”)

and
THE BANK OF NEW YORK MELLON,
as Trustee

Dated as of June 1, 2022

Relating to:

BUILD NYC RESOURCE CORPORATION
REVENUE BONDS
(WHIN MUSIC COMMUNITY CHARTER SCHOOL PROJECT)

CONSISTING OF

\$40,840,000
TAX-EXEMPT REVENUE BONDS
SERIES 2022A

\$3,070,000
TAXABLE REVENUE BONDS
SERIES 2022B

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COVENANT AGREEMENT

This COVENANT AGREEMENT, dated as of June 1, 2022 (this “**Covenant Agreement**”) is made by WHIN MUSIC COMMUNITY CHARTER SCHOOL, a New York not-for-profit education corporation and 501(c)(3) organization (the “**Charter School**”), for the benefit of THE BANK OF NEW YORK MELLON, a national banking organization (the “**Trustee**”), not in its individual or corporate capacity but solely as trustee under that certain Indenture of Trust, dated as of June 1, 2022 (the “**Indenture**”), between the Trustee and the Issuer, as hereinafter defined.

WHEREAS, Build NYC Resource Corporation, a local development corporation created pursuant to 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 (the “**Issuer**”), has agreed to issue its (a) Tax-Exempt Revenue Bonds (WHIN Music Community Charter School Project) Series 2022A (the “**Series 2022A Bonds**”), in the aggregate principal amount of \$40,840,000; and (b) Taxable Revenue Bonds (WHIN Music Community Charter School Project) Series 2022B (the “**Series 2022B Bonds**”) and together with the Series 2022A Bonds, the “**Initial Bonds**”), in the aggregate principal amount of \$3,070,000; and

WHEREAS, the Initial Bonds and any Additional Bonds are collectively referred to herein as the “**Bonds**”; and

WHEREAS, the Initial Bonds will be issued by the Issuer pursuant to the terms of (i) the resolution of the governing body of the Issuer (the “**Resolution**”) and (ii) the Indenture; and

WHEREAS, the proceeds of the Initial Bonds will be loaned by the Issuer to Friends of WHIN Music Community Charter School, Inc., a New York not-for-profit corporation (the “**Institution**”) pursuant to a Loan Agreement, dated as of June 1, 2022 (the “**Loan Agreement**”); and

WHEREAS, proceeds of the Initial Bonds will be used by the Institution for the purposes of: (a)(i) financing the construction, renovation, furnishing and equipping of an existing three-story 29,880 square foot building located on a 9,992 square foot parcel of land located at 528 West 162nd Street, New York, New York, to serve as a new educational facility thereon (the “**Existing Facility**”), to be used by the Charter School (defined herein) as its school building serving students in kindergarten through 5th grade, eventually expanding to 8th grade; (ii) financing the construction, furnishing and equipping of an addition to the Existing Facility consisting of a five-story approximately 25,000 square foot addition (the “**Addition**”) and, together with the Existing Facility, the “**Facility**”); (b) funding a debt service reserve fund for the benefit of the Series 2022 Bonds; (c) funding capitalized interest on the Series 2022 Bonds; (d) refinancing the NFF Loan and (d) paying for certain costs related to the issuance of the Initial Bonds (collectively, the “**Project**”); and

WHEREAS, The Facility is owned by 528 W 162 LLC (the “**Landlord**”) and leased by the Landlord to the Borrower pursuant to a Lease dated as of April 16, 2021 (the “**Original Lease**”), as amended by that certain First Amendment of Lease dated as of April 4, 2022 (the “**First Amendment**”), together with the Original Lease, the “**Lease**”). The term (the “**Term**”) of the Lease is forty-eight (48) years, commencing sixty (60) days after the issuance of the Series 2022 Bonds,

along with two (2), successive five (5) year renewal options exercisable by to extend the Term. The Borrower has entered into a Sublease with the Charter School dated as of June 15, 2021 (the “**Original Sublease**”), as amended by the certain First Amended and Restated Sublease Agreement dated as of June 29, 2022 (together with the Original Sublease, as further amended and supplemented from time to time, the “**Sublease**”), pursuant to which the Borrower will sublease the Facility to the Charter School subject to the terms and conditions of the Premises Lease, with a term that will commence simultaneously with the Lease; and

WHEREAS, in connection with the issuance of the Initial Bonds, the Charter School will also enter into (i) the Sublease, (ii) this Covenant Agreement; (iv) the Tax Regulatory Agreement; and (v) the Continuing Disclosure Agreement (collectively, the “**School Documents**”); and

WHEREAS, the Initial Bonds were issued pursuant to the Indenture; and

WHEREAS, in consideration of the issuance of the Initial Bonds by the Issuer and the entry into the Indenture by the Trustee, the Organization is required to deliver this Covenant Agreement to the Trustee and the Organization has agreed to fulfill certain covenants and agreements set forth in this Covenant Agreement in order to provide additional security for the timely payments of amounts due by the Organization under the Sublease;

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

Section 1. **Defined Terms.** Capitalized terms shall have the meanings defined herein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Sublease Agreement, the Loan Agreement, or the Indenture.

“**Accountant**” means initially, Mengel Metzger Barr & Co LLP, or thereafter any other Independent certified public accounting firm licensed to practice in the State (which may be the firm of accountants that regularly audits the books and accounts of the Charter School) from time to time selected by the Charter School.

“**Accountant’s Certificate**” means a report, certificate or opinion by the Accountant.

“**Additional Bonds**” means any additional bonds issued and secured in accordance with the Indenture on a parity with the Outstanding Initial Bonds.

“**Annual Debt Service Requirements**” of any specified Person means, for any Fiscal Year, the principal of (and premium, if any) and interest and other debt service charges (which include for purposes hereof, any fees or premiums for any letter of credit, surety bond, policy of insurance, bond purchase agreement, or any similar credit or liquidity support secured in connection therewith payable in such Fiscal Year) on all Indebtedness of such Person coming due during such Fiscal Year, and, for such purposes, any one or more of the following rules shall apply:

(1) In the case of Balloon Debt that bears interest at a variable rate, then for the purpose of calculating what future annual debt service requirements will be, the weighted average rate of interest borne by such variable rate Balloon Debt during the ninety (90) day period ending on the date prior to the date of calculation shall be presumed to apply for all

future dates and, any installment of principal of (and premium, if any) and interest and other debt service charges on such Balloon Debt shall be evenly allocated over the life of the Balloon Debt with equal principal payments plus the calculated rate of interest deemed due each year;

(2) Principal of (and premium, if any) and interest and other debt service charges on Indebtedness, or portions thereof, shall not be included in the computation of the Annual Debt Service Requirements for any Fiscal Year for which such principal, premium, interest, or other debt service charges are payable from funds irrevocably deposited or set aside in trust for the payment thereof at the time of such calculations (including without limitation capitalized interest, amounts held in a reserve fund, and accrued interest so deposited or set aside in trust or escrowed with the Trustee, or any Independent Person approved by the Trustee);

(3) As to any Indebtedness other than Balloon Debt that bears interest at a variable interest rate, then for the purpose of calculating what future annual debt service requirements will be, an interest rate equal to the weighted average rate of interest born by such Indebtedness during the preceding ninety (90) day period ending on the date prior to the date of calculation shall be presumed to apply for all future dates and the principal shall be amortized based upon the established payment schedule for such variable rate Indebtedness; and

(4) In the case of any guarantees or other Indebtedness described in clause (c) of the definition of Indebtedness, the principal of (and premium, if any) and interest and other debt service charges on such Indebtedness for any Fiscal Year shall be deemed to be 25% of the principal of (and premium, if any) and interest and other debt service charges on the Indebtedness guaranteed due in such Fiscal Year; provided, however, that if the Charter School is actually required to make any payment in respect of such Indebtedness, the total amount payable by the Charter School in respect of such guarantee or other obligation in such Fiscal Year shall be included in any computation of the Annual Debt Service Requirements of the Charter School for such year and the amount payable by the Charter School in respect of such guarantee or other obligation in any future Fiscal Year shall be included in any computation of the estimated Annual Debt Service Requirements for such Fiscal Year.

“**Authorized Representative**” in the case of the Institution has the meaning assigned to it in the Loan Agreement.

“**Authorized Representative of the Charter School**” means a person named in Exhibit 1(A) — “Authorized Representative”, or any other officer or employee of the Charter School who is authorized to perform specific duties hereunder or under any other School Documents and of whom another Authorized Representative of the Charter School has given written notice to 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 Covenant Agreement, 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.

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“**Construction Window**” means the period between the Closing Date and ending on the date on which the Institution receives a temporary certificate of occupancy for the entirety of the Facility.

“**Continuing Disclosure Agreement**” means as to the Initial Bonds, the Continuing Disclosure Agreement dated as of June 1, 2022, entered into by the Charter School, the Institution, and the Dissemination Agent, and as to any Series of Additional Bonds, the continuing disclosure undertaking or agreement entered into by the Charter School and the Institution in connection with such Series of Additional Bonds.

“**Dissemination Agent**” means The Bank of New York Mellon, and its successors and assigns or any successor Dissemination Agent appointed by the Charter School pursuant to the provisions of the Continuing Disclosure Agreement.

“**EMMA**” means the Electronic Municipal Market Access facility for municipal securities disclosure of the MSRB.

“**Environmental Damages**” means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, Liens, privileges, costs, and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ fees and expert consultants’ fees and disbursements, any of which are incurred at any time as a result of the existence of Regulated Chemicals upon, about, beneath or migrating, or threatening to migrate, onto or from the Facility, or the existence of a violation of Environmental Requirements pertaining to the Facility, regardless of whether or not such Environmental Damages were caused by or within the control of the Charter School.

“**Environmental Law**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1976, 42 U.S.C. §§ 6901 et seq., Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by SARA, 42 U.S.C. §§ 1820 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1810 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§ 6901, et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251, et seq., the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the National Environmental Policy Act of 1975, 42 U.S.C. § 4321 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651, et seq., and the Clean Air Act, 42 U.S.C. §§ 7412 et seq., and any other applicable federal or state laws pertaining to the protection of the environment, as any such laws may be amended, modified or supplemented and any regulations promulgated pursuant to any of the foregoing.

“**Environmental Report**” means any Environmental Assessment Tests (each as defined in Section 6 hereof), or other environmental report or audit conducted at the Facility for any reason.

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“**Authorizer**” means the Board of Regents of the State of New York on behalf of the New York State Education Department, or any successor thereto.

“**Balloon Debt**” means Indebtedness where the principal of (and premium, if any) and interest and other debt service charges on such Indebtedness due (or payable in respect of any required purchase of such Indebtedness by such Person on demand) in any Fiscal Year either (i) are equal to at least 25% of the total principal of (and premium, if any) and interest and other debt service charges on such Indebtedness or (ii) exceed by more than 50% the greatest amount of principal of (and premium, if any) and interest and other debt service charges on such Indebtedness due in any preceding or succeeding Fiscal Year.

“**Board**” means the Board of Trustees of the Charter School.

“**Bond Buyer Revenue Bond Index**” shall mean the daily index of municipal bond prices created by the Chicago Board of Trade and published by The Bond Buyer, based on the prices of 40 recently issued and actively traded long-term municipal bonds.

“**Bond Counsel**” means Nixon Peabody 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.

“**Bonds**” means the Initial Bonds and any Additional Bonds.

“**Capital Improvements**” means the acquisition of land, easements, facilities, and equipment (other than ordinary repairs and replacements), and the construction or reconstruction of improvements, betterments, and extensions which, under Generally Accepted Accounting Principles as prescribed by the Governmental Accounting Standards Board, are properly chargeable as capital items.

“**Cash on Hand**” means the sum of unrestricted cash, unrestricted cash equivalents, unrestricted liquid investments and unrestricted marketable securities (valued at the lower of cost or market) of the Charter School. Cash on Hand shall not include any Trustee-held funds or proceeds of Indebtedness.

“**Charter Contract**” means the charter agreement between Charter School and the Authorizer, as revised and accepted by the Authorizer, together with any subsequent applications to modify or renew the Charter Contract.

“**Charter Schools Act**” means Article 56 of the New York Education Law, as amended.

“**City**” means New York City.

“**Code**” means the Internal Revenue Code of 1986, as amended; each reference to the Code is deemed to include (i) any successor internal revenue law and (ii) the applicable regulations whether final, temporary or proposed under the Code or such successor law. Any reference to a particular provision of the Code is deemed to include any successor provision of any successor internal revenue law and applicable regulations, whether final, temporary or proposed, under such provision or successor provision.

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“**Environmental Requirements**” means all applicable federal, State, regional or local laws, statutes, rules, regulations or ordinances, concerning public health, safety or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601, et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§ 6901, et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251, et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601, et seq., the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, et seq., the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401, et seq., the National Environmental Policy Act of 1975, as amended, 42 U.S.C. § 4321, et seq., the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401 et seq., the Endangered Species Act of 1973, as amended 16 U.S.C. §§ 1531, et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651, et seq., the Safe Drinking Water Act of 1974, as amended 42 U.S.C. §§ 300(f), et seq., and all rules, regulations, policies and guidance documents promulgated or published thereunder, and any State, regional or local statute, law, rule, regulation or ordinance relating to public health, safety or the environment, including, without limitation those relating to:

- (a) releases, discharges, emissions or disposals to air, water, land or groundwater;
- (b) the withdrawal or use of groundwater;
- (c) the use, handling, or disposal of polychlorinated biphenyls (“PCBs”), asbestos or urea formaldehyde;
- (d) the transportation, treatment, storage, discharge, disposal, release or management of hazardous substances or materials (including, without limitation, petroleum, its derivatives, by-products or other hydrocarbons), and any other solid, liquid, or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Facility or any property adjacent to or surrounding the Facility;
- (e) the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances; and
- (f) any Regulated Chemical.

“**Event of Default**” means those events of default specified in Section 7 hereof.

“**Facility**” means the same as defined in the recitals of this Covenant Agreement.

“**Facilities Consultant**” means an Independent firm of professional property inspection consultants qualified to conduct a physical needs assessment of charter school facilities and assess the good repair, working order and condition of real property and having a favorable reputation for skill and experience in the field of property inspection consultation and which may include a firm with whom the Charter School transacts business.

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“**Financial Product Agreement**” means any type of financial management instrument or contract, which shall include, but not be limited to, (a) any contract known as or referred to or which performs the function of an interest rate swap agreement, currency swap agreement, forward payment conversion agreement or futures contract; (b) any contract providing for payments based on levels of, or changes or differences in, interest rates, currency exchange rates, or stock or other indices; (c) any contract to exchange cash flows or payments or a series of payments; (d) any type of contract called, or designed to perform the function of, interest rate floors or caps, options, puts or calls, to hedge or minimize any type of financial risk, including, without limitation, payment, currency, rate or other financial risk forward supply agreements; and (e) any other type of contract or arrangement that the governing body of the Charter School determines is to be used, or is intended to be used, to manage or reduce the cost of debt (including but not limited to a bond insurance policy), to convert any element of debt from one form to another, to maximize or increase investment return, to minimize investment return risk or to protect against any type of financial risk or uncertainty.

“**Fiscal Year**” shall mean a year of 365 or 366 days, as the case may be, commencing on July 1 of each calendar year and ending on June 30 of the next calendar year, or such other Fiscal Year of similar length used by the Charter School for accounting purposes.

“**GAAP**” means those accounting principles applicable in the preparation of financial statements of the Charter School, consistently applied, as in effect from time to time and promulgated by the Governmental Accounting Standards Board or such other body recognized as authoritative by the American Institute of Certified Public Accountants.

“**Gross Revenues**” means all funds, money, grants, donations or other distributions received by the Charter School from the State, the City or any other sources, together with all other revenues, income or receipts of any kind whatsoever.

“**Hazardous Materials**” means: (a) any substances defined as “hazardous substances,” “pollutants,” “contaminants,” “hazardous materials,” “hazardous wastes,” or “hazardous or toxic substances” or related materials as now or hereafter defined in any Environmental Law; (b) those substances listed or otherwise identified as substances of the type referred to in the preceding subsection (a) in the regulations adopted and publications issued pursuant to any Environmental Law, as the same may be amended, modified or supplemented; (c) any friable asbestos, airborne asbestos in excess of that generally found in the atmosphere, respectively, where the Facility is located, or any substance or material containing asbestos, excluding any such materials located on the Facility prior to the date hereof so long as such materials are contained, maintained, abated or removed in compliance with all applicable Environmental Laws; and (d) any substance the presence of which on the Facility is prohibited by any applicable Environmental Law; provided that Hazardous Material shall not include any such substances used in or resulting from the ordinary operation of the Facility, for the cleaning of the Facility or used in connection with the Charter School’s programming, provided that such substances are stored, handled and disposed of in compliance with all applicable Environmental Laws and other applicable laws and regulations.

“**Indebtedness**” means, with respect to the Charter School, (a) obligations for the payment of borrowed money incurred or assumed by the Charter School, (b) capital or operating lease obligations of the Charter School, including the obligations of the Charter School under the

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“**Lease Payment Reserve Fund Requirement**” shall mean a total amount equal to \$1,263,111.24, payable in twelve (12) equal installments of \$105,259.27 beginning July 5, 2023.

“**Liabilities**” means any causes of action (whether in contract, tort or otherwise), claims, costs, damages, demands, judgments, liabilities, losses, suits and expenses (including, without limitation, reasonable costs of investigation, and attorney’s fees and expenses) of every kind, character and nature whatsoever.

“**Lien**” means any mortgage or pledge of, security interest in, or lien or encumbrance on, any property which secures any Indebtedness or other obligation of the Charter School or which secures any obligation of any Person other than an obligation to the Charter School, excluding Liens created by a Security Document.

“**Majority Holder**” shall have the meaning assigned to it in the Indenture.

“**Maximum Annual Debt Service**” means, as of any date of calculation, the highest Annual Debt Service Requirements with respect to all outstanding Indebtedness for any succeeding Fiscal Year.

“**MSRB**” means the Municipal Securities Rulemaking Board.

“**Net Income Available for Debt Service**” means, for any period of determination thereof, Gross Revenues for such period minus its total Operating Expenses for such period.

“**NYCDOE**” means the New York City Department of Education, its successors and assigns.

“**Operating Expenses**” means all reasonable and necessary expenses of the Charter School paid or accrued, to operate a public charter school and provide educational services, including without limitation (a) salaries and administrative expenses, (b) the cost of instructional supplies and materials, (c) insurance premiums, and (d) professional services; provided however, there shall be excluded from Operating Expenses: (i) any allowance for depreciation, (ii) expenses incurred in connection with Capital Improvements, (iii) deposits to and expenses paid from the Repair and Replacement Fund and the Lease Payment Reserve Fund, (iv) expenses paid from grants from state, federal or local sources, or from any Person, which were included as part of Gross Revenues, (v) expenses paid from the proceeds of any insurance or condemnation awards, (vi) interest expenses and facility lease payments, and (vii) to the extent it is considered an Operating Expense, amortization of debt service costs on the Bonds.

“**Permitted Encumbrance**” shall have the meaning assigned to it in the Indenture.

“**Person**” includes an individual, association, corporation, partnership, joint venture or a government or an agency or a political subdivision thereof.

“**Project Development Consultant**” means Schoolhouse Project, or any other Independent, individual, licensed architect or engineer or independent, licensed engineering or architectural firm (which may be an individual or an engineering or architectural firm retained by the Charter School for other purposes) selected by the Charter School as evidenced to the Trustee

Sublease, (c) all indebtedness of any type, including capitalized lease obligations, guaranteed, directly or indirectly, in any manner by the Charter School, or in effect guaranteed, directly or indirectly, by the Charter School through an agreement, contingent or otherwise, to purchase any such indebtedness or to advance or supply funds for the payment or purchase of any such indebtedness or to purchase property or services primarily for the purpose of enabling the debtor or seller to make payment of such indebtedness, or to assure the owner of the indebtedness against loss, or to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether or not such property is delivered or such services are rendered), or otherwise; (d) any other guaranties or like obligations, and (e) any other obligation for the payment of money secured by any mortgage, lien, charge, encumbrance, pledge or other security interest upon the Facility or property related thereto owned or leased by the Charter School whether or not the Charter School has assumed or become liable for the payment thereof.

“**Indemnified Persons**” means the Registered Owners, the Beneficial Owners and the Trustee, their successors, assigns, trustees, directors, officers, employees, agents, contractors, subcontractors, licensees, and invitees.

“**Indenture**” means the Trust Indenture, dated as of June 1, 2022, between the Issuer and the Trustee, including any indentures supplemental thereto made in conformity therewith, pursuant to which the Bonds are authorized to be issued and secured.

“**Independent**” when used with respect to any specified Person means such a Person who (i) does not have any direct financial interest or any material indirect financial interest in the Charter School or the Institution, and (ii) is not connected with the Charter School or the Institution as an officer, employee, promoter, member of the board of trustees or directors, partner or person performing similar functions.

“**Independent Consultant**” means an Independent management consultant or certified public accountant selected by the Charter School experienced in the management, operation and/or financing of charter schools in the State.

“**Initial Bonds**” means the same as defined in the recitals of this Covenant Agreement.

“**Insurance Consultant**” means an Independent insurance consultant and/or risk management firm or an insurance broker or commercial insurance agent (which may be a consultant, firm, broker or agent with whom the Charter School regularly transacts business) selected by the Charter School and with a reputation for providing commercial insurance services to entities of similar complexity to the Charter School.

“**Landlord**” means the same as defined in the recitals of this Covenant Agreement.

“**Lease**” means the same as defined in the recitals of this Covenant Agreement.

“**Lease Payment Reserve Fund**” shall mean the special trust fund so designated, established pursuant to the Indenture.

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by a written certificate containing the specimen signature of the authorized signatory for the Project Development Consultant’s firm.

“**Project Development Consultant’s Certificate**” means a written opinion or report signed by the Project Development Consultant.

“**Regulated Chemicals**” means any substance, the presence of which requires investigation, permitting, control, monitoring or remediation under any federal, State or local statute, regulation, ordinance or order, including without limitation:

(a) any substance defined as a “**hazardous waste**” under the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.);

(b) any substance defined as a “**hazardous substance**” under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. §§ 9601 et seq.);

(c) any substance defined as a “**hazardous material**” under the Hazardous Materials Transportation Act (49 U.S.C. §§ 1800 et seq.);

(d) any substance defined under any New York statute analogous to (a), (b) or (c), to the extent that said statute defines any term more expansively;

(e) asbestos;

(f) urea formaldehyde;

(g) polychlorinated biphenyls;

(h) perfluoroalkyl substances, and any related derivatives;

(i) petroleum, or any distillate or fraction thereof;

(j) any hazardous or toxic substance designated pursuant to the laws of the State; and

(k) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

“**Rents**” has the meaning assigned to it in the Sublease.

“**Rental Assistance**” means the rental assistance payments granted to certain charter schools (including the Charter School) located in New York City under the Charter Schools Act.

“**Repair and Replacement Fund**” shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

“**Repair and Replacement Fund Requirement**” means an amount specified in the Indenture.

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“**School Documents**” means the same as defined in the recitals of this Covenant Agreement.

“**Security Documents**” shall have the meaning ascribed in the Indenture.

“**Series 2022A Bonds**” means the same as defined in the recitals of this Covenant Agreement.

“**Series 2022B Bonds**” means the same as defined in the recitals of this Covenant Agreement.

“**Series 2022 Taxable Bonds**” means the Series 2022B Bonds.

“**Series 2022 Tax-Exempt Bonds**” means the Series 2022A Bonds.

“**Short-Term Indebtedness**” means Indebtedness with a maturity date less than a year from the date of incurrence of such Indebtedness.

“**Sublease**” means the same as defined in the recitals of this Covenant Agreement.

“**Taxable Bonds**” means the Series 2022 Taxable Bonds and any other such Additional Bonds that may be issued as taxable bonds under the Indenture.

“**Tax-Exempt Bonds**” means the Series 2022 Tax-Exempt Bonds and any Additional Bonds the interest on which is intended to be excluded from gross income for federal income tax purposes.

“**Tax Regulatory Agreement**” has the meaning assigned to it in the Indenture.

“**Underwriter**” means D.A. Davidson & Co.

Section 2. Term of Agreement; Compliance with the Sublease Agreement; Compliance with Tax Regulatory Agreement.

(A) This Covenant Agreement shall remain in full force and effect from the date of delivery hereof until such time as all of the payments on the Bonds shall have been fully paid or provision is made for full payment of the Bonds pursuant to the Indenture and all reasonable and necessary fees and expenses of the Trustee accrued and to accrue through final payment of the Bonds, all fees and expenses of the Issuer accrued and to accrue through final payment of the Bonds and all other liabilities of the Institution or Charter School accrued and to accrue through final payment of the Bonds under the Indenture have been paid or provision is made for such payments pursuant to the Indenture; *provided*, however, notwithstanding any other provision hereof (a) the indemnification provisions of Sections 5(C) and 6(A) hereof and the agreements contained in Section 8(C) hereof shall survive the termination of the term of this Covenant Agreement for the periods of times set forth therein; (b) all agreements, representations and certifications by the Charter School as to the excludability from gross income of interest on the Tax-Exempt Bonds shall survive termination hereof until the expiration of statutes of limitation applicable to the

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existence under the laws of the State, and it will not do, suffer or permit any act or thing to be done whereby its right to transact its functions might or could be terminated or its activities restricted.

(B) As of the date of this Covenant Agreement, the Charter School is an organization organized and operated (A) exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code, (B) not for pecuniary profit, and (C) in a manner that no part of the net earnings of which inures to the benefit of any person, private stockholder or individual, all within the same meaning, respectively, of 15 U.S.C. Section 77(c)(a)(4), Section 3(a)(4) of the Securities Act of 1933, as amended, and of 15 U.S.C. Section 78l(g)(2)(D), Section 12(g)(2)(d) of the Securities Exchange Act of 1934, as amended, and the Charter School shall not perform any act or enter into any agreement which shall adversely affect such status as set forth in this paragraph (b) which would cause the Charter School to lose its exemption from federal income taxes.

(C) The Charter School is organized under and operated pursuant to the Charter Schools Act for the purpose of operating a public charter school, and with the power to own, develop, construct, rehabilitate, operate, equip, and maintain its charter school facilities, the Charter School has been duly authorized to execute each of the School Documents and consummate all of the transactions contemplated thereby, and the execution, delivery, and performance of the School Documents will not conflict with or constitute a breach of or default by the Charter School under any other instrument or agreement to which the Charter School is a party or to which its property is bound.

(D) The Charter School’s Board of Trustees- the governing body of the Charter School- has, in a public meeting duly called in accordance with State law, approved the execution and delivery of this Covenant Agreement and the other Security Documents to which the Charter School is a party. Each of the Security Documents to which the Charter School is a party are the legal, valid and binding obligations of the Charter School, enforceable in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency or general principles of equity. The Charter School’s execution, delivery, and performance of the Charter School Documents shall not constitute a violation of any order, rule, or regulation of any court or governmental agency having jurisdiction over the Charter School.

(E) There are no pending or, to the Charter School’s knowledge, threatened actions, suits, or proceedings of any type whatsoever affecting the Charter School, the Charter School’s property, or the Charter School’s ability to execute, deliver, and perform with respect to any of the School’s Documents.

(F) The Facility will be used by the Charter School as a public charter school, and such use is permissible within the provisions of the Charter Schools Act.

(G) Neither the representations of the Charter School contained in the Security Documents to which it is a party nor any oral or written statements, furnished by the Charter School, nor written statements furnished on behalf of the Charter School, to the Issuer, Bond Counsel or the Underwriter in connection with the transactions contemplated hereby,

liability of the Beneficial Owners of such Bonds for federal and state income taxes with respect to interest on the Tax-Exempt Bonds; and (c) upon the defeasance of the Indenture, all such indemnification provisions shall be enforceable by the Issuer Indemnified Persons, and all such agreements, representations and certifications regarding the excludability from gross income of the interest on the Tax-Exempt Bonds shall be enforceable by the Beneficial Owners of such Bonds, directly against the Charter School until the expiration of statutes of limitation applicable to the liability of the Beneficial Owners of such Bonds for federal and state income taxes with respect to the interest on the Tax-Exempt Bonds.

(B) The Charter School shall ensure that the Sublease remains in force and effect for the term of the Bonds.

(C) The Charter School shall materially comply with all provisions of the Sublease, including but not limited to the payment of Rents on the dates and in the amounts required under the terms of the Sublease.

(D) The Charter School shall make or cause to be made all payments required under the Sublease by electronic funds transfer (wire transfer, Automated Clearing House, direct debit, or other electronic method) in accordance with the terms of the Sublease.

(E) The Charter School shall comply with all provisions of the Tax Regulatory Agreement so that the Tax-Exempt Bonds at all times maintain the excludability from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes.

(F) The Charter School hereby acknowledges receipt of each of the Security Documents, has read and approved the same and agrees to be bound by the respective terms thereof and accepts all obligations and duties imposed on the Charter School thereby.

Section 3. Representations and Warranties. The Charter School represents and covenants as follows:

(A) As of the date of this Covenant Agreement and so long as this Covenant Agreement shall remain in force and effect, that the Charter School: (i) is and shall continue to be exempt from federal income taxes under Section 501(a) of the Code or any future section resulting in exemption from such taxes; (ii) it shall not perform any act or enter into any agreement which shall adversely affect such federal income tax status; (iii) it shall not perform any act, enter into any agreement or use or permit the Facility to be used in any manner (including in any unrelated trade or business) which would adversely affect the excludability from gross income of interest on the Tax-Exempt Bonds; (iv) it shall not carry on or permit to be carried on in the Facility or permit the Facility to be used in or for any trade or business the conduct of which is not substantially related to the exercise of performance by the Charter School of the purposes or functions constituting the basis for its exemption under Section 501 of the Code to the extent that such use of the Facility would adversely affect the excludability from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes; and (v) it is duly organized and existing as a not-for-profit education corporation under the laws of the State, it is in good standing and authorized to transact business in the State, it will maintain, extend and renew its corporate

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contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not misleading. There are no facts that the Charter School has not disclosed to the Issuer and the Underwriter of the Bonds in writing that materially and adversely affect or in the future may (so far as the Charter School can now reasonably foresee) materially and adversely affect the properties, business, prospects, income, or condition (financial or otherwise) of the Charter School, or the ability of the Charter School to perform its obligations under the School Documents or any documents or transactions contemplated hereby or thereby.

(H) To the best of the Charter School’s knowledge, the use of the Facility, as it is proposed to be operated, complies with all applicable zoning, development, pollution control, water conservation, environmental, and other laws, regulations, rules, and ordinances of the federal government and the State and the respective agencies thereof and the political subdivisions in which the Facility is located.

(I) The Charter School will prior to taking occupancy of the Facility obtain or cause to be obtained all necessary approvals of and licenses, permits, consents, and franchises from federal, state, county, municipal, or other governmental authorities having jurisdiction over the Facility to acquire, construct, improve, equip, rehabilitate, and operate the Facility, and to enter into, execute, and perform its obligations under this Covenant Agreement and the other School Documents.

(J) The Facility, as designed and operated or caused to be operated by the Charter School, and when constructed or rehabilitated in accordance with such design, will meet all material requirements of law, including requirements of any federal, state, county, city or other governmental authority having jurisdiction over the Facility or its use and operation.

(K) As of the Closing Date, there has been no material adverse change in the financial condition, prospects, or business affairs of the Charter School or to the best of the Charter School’s knowledge, the feasibility or physical condition of the Facility subsequent to the date on which the Issuer adopted its resolution approving the issuance of the Bonds.

(L) The Charter School (i) understands the nature of the structure of the transactions related to the financing of the Project; (ii) is familiar with all the provisions of the Security Documents (whether or not the Charter School is a party thereto) and such other instruments related to such financing to which the Charter School or the Issuer is a party or which the Charter School is a beneficiary; (iii) understands the risk inherent in such transactions, including, without limitation, the risk of loss of the Facility; and (iv) has not relied on the Issuer or the Trustee for any guidance or expertise in analyzing the financial consequences of such financing transactions or otherwise relied on the Issuer or the Trustee in any manner, except to issue the Bonds in order to provide funds for the Loan.

(M) The Charter School represents and warrants that it has read and approved each of the Security Documents, as applicable, and agrees to be bound by the respective terms thereof and accepts all obligations and duties specifically imposed on the Charter School thereby.

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(N) All representations of the Charter School contained herein or in any certificate or other instrument delivered by the Charter School pursuant hereto, to the Indenture, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale, and delivery of the Bonds as representations of facts existing as of the date of execution and delivery of the instrument containing such representation.

(O) The Charter School covenants and agrees to pay, or cause the Institution to pay, when due, all costs and expenses of the Issuer incurred in connection with the Bonds or the Project not paid from the Cost of Issuance Accounts of the Project Fund, including, without limitation, each and all of the following:

- (i) all indemnity payments;
- (ii) all expenses incurred by the Issuer in connection with the Project, the Bonds, the Indenture, or any of the School Documents, including, without limitation, its attorneys' fees and expenses and its advisors' fees and expenses; and
- (iii) the fees and expenses of the Rebate Analyst.

(P) Except as otherwise approved in writing by the Majority Holders or as otherwise permitted in the Security Documents, the Charter School will not grant any Liens on the Facility other than the Lien granted by the Institution against the Facility effected by the Security Documents and Permitted Encumbrances.

(Q) Intentionally Omitted.

(R) The Charter School covenants to comply fully and in all material respects with the provisions of the Charter Schools Act and its Charter Contract so long as any Bonds remain Outstanding.

(S) The Charter School hereby represent and warrant:

(i) *Condition of Facility.* To the best of its knowledge, solely based on reports and information previously supplied to the Charter School, the Facility including all personal property, is free from contamination by Regulated Chemicals, including, but not limited to, friable asbestos, and there has not been thereon a release, discharge or emission, or a threat of release, discharge or emission, of any Regulated Chemical on, under, in, or about the Facility, nor has any such Regulated Chemical migrated or threatened to migrate from other properties upon, about or beneath the Facility. The Charter School does hereby and specifically represent and warrant that it has no affirmative knowledge or reason to believe that any condition, previous use, compliance or violation of Environmental Requirements are contrary to the representations contained in this subsection.

(ii) *Property Adjoining Facility.* To the best of its knowledge, solely based on reports and information previously supplied to the Charter School, any adjoining property has not been used as a manufacturing, storage or disposal site

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Institution 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 thereof.

(a) The Charter School 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:

- (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any part thereof or interest therein, or against any of the loan payments or other amounts payable under the Sublease or this Covenant Agreement,
- (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost,
- (3) none of the Charter School, 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
- (4) the Lien has not already been discharged by security or bond, the Charter School shall have furnished such security, if any, as may be required by a court in such proceedings or as may be reasonably requested by the Trustee.

(B) *Taxes, Other Governmental Charges and Utility Charges.* The Charter School will pay, or cause to be paid, as the same become due, (1) all taxes and governmental charges of any kind whatsoever or payments in lieu of taxes that may at any time be lawfully assessed or levied against or with respect to the Facility or any interest therein, or any machinery, equipment, or other property installed or brought by the Charter School thereon or thereon which, if not paid, will become a Lien on the Facility prior to or on a parity with the charge thereon under this Covenant Agreement, (2) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Facility and (3) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a Lien on the Facility provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Charter School shall be obligated to pay only such installments as may have become due during the term of this Covenant Agreement.

(i) The Charter School may, at its own expense, but only if no Event of Default hereunder has occurred and is continuing, diligently prosecute and in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges contested to

for Regulated Chemicals nor is any other property adjoining the Facility affected by a violation of Environmental Requirements.

Section 4. Maintenance, Taxes and Insurance.

(A) *Maintenance and Modifications of Facility by Charter School.*

(i) The Charter School agrees that during the term of this Covenant Agreement the Facility shall be operated and maintained, in compliance with all governmental laws, building codes, ordinances, and regulations and zoning laws as shall be applicable to the Facility, unless the same are being contested in good faith by appropriate proceedings which operate to stay any action to foreclose or otherwise realize on any property of the Charter School. The Charter School agrees that during the term of this Covenant Agreement it will keep or will cause, under the Sublease, the Institution or the Landlord, as applicable, to (a) keep the Facility in a safe condition required by law and (b) keep the Facility in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof all of which shall be accomplished in a workmanlike manner in accordance with all applicable laws.

(ii) The Charter School may also, at its own expense or the expense of the Institution or the Landlord, as applicable, make from time to time any additions, modifications or improvements to the Facility it may deem desirable for its purposes that do not substantially reduce its value; provided that all such additions, modifications and improvements made by the Charter School which are affixed to the Facility (as opposed to furniture, equipment and movable trade fixtures) shall become a part of the Facility. The Charter School will not permit the removal of any personal property from the Facility unless such personal property affixed to the Facility is *de minimis*, obsolete, sold for fair market value or will be replaced with personal property of an equal or greater value as may be required by the Charter School in connection with its operations from time to time.

(iii) 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 Facility or any part thereof or the interest therein of the Institution or the Interest therein of the Landlord or against any of the amounts payable under the Sublease or this Covenant Agreement, other than Liens for Impositions not yet payable, Permitted Encumbrances, Liens being contested as permitted by this Section or in connection with the Institution's obligations in connection with the Project (in which case the Institution shall be responsible), the Charter School 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, the Trustee and the

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remain unpaid during the period of such contest and any appeal, such taxes, assessments or charges shall be paid promptly.

(ii) The Charter School will do, or cause to be done, all things required by the appropriate government authority to obtain and maintain exemption from payment of real property taxes.

(C) *Insurance Required.* Throughout the term of this Covenant Agreement, the Charter School shall keep, or cause to be kept, the Facility insured as required under the Loan Agreement.

(D) *Access to Facility.* As of the date of this Covenant Agreement, the Charter School hereby represents that the Institution has entered into written agreements with the owners of the properties adjacent to the Facility granting permission to access such properties during the construction of the Project, and the Charter School has no actual knowledge of existing challenges to such agreements that would cause access to all or any properties adjacent to the Facility to be denied during construction of the Project.

Section 5. Additional Covenants. During the term of the Sublease, the Charter School shall perform the covenants and agreements imposed under the Sublease Agreement, the Continuing Disclosure Agreement, and this Covenant Agreement and the ongoing notice and reporting requirements contained therein, including but not limited to:

(A) *Consolidation, Merger, Sale or Conveyance.* The Charter School agrees that during the term of this Covenant Agreement it will maintain its corporate existence, will continue to be a not-for-profit education corporation duly qualified to do business in the State, will not merge or consolidate with, or sell or convey, all or substantially all of its assets to, any Person.

(B) *Audits; Financial Statements; Reports; Annual Certificate.*

(i) Continuing Disclosure. The Charter School agrees to furnish or cause to be furnished to the Dissemination Agent the documents required pursuant to the Continuing Disclosure Agreement in compliance with the Rule.

(ii) Financial Covenants. Charter School shall, not later than November 30 of each year hereafter, beginning November 30, 2023, file with the Trustee, the Issuer and the Dissemination Agent, with instructions to post such certificate on EMMA, a certificate stating that Charter School is in compliance with the Cash on Hand and Net Income Available for Debt Service requirements of Sections 5(K) and 5(L), respectively, and setting forth the calculations therefor. The Trustee shall have no duty to review or analyze the financial statements, reports and information delivered pursuant to this Section 5 and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or any Event of Default which may be disclosed therein in any manner.

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(iii) Compliance Certificate. Charter School shall, not later than June 30 of each year hereafter, beginning June 30, 2023, file with the Trustee, the Issuer and the Dissemination Agent, with instructions to post such certificate on EMMA, a compliance certificate stating that Charter School is in compliance with the Security Documents, in the form attached hereto as *Exhibit 5(C)(x)* hereto.

(iv) Construction Reports. The Charter School shall cause all reports of the Project Development Consultant to be prepared and delivered to the Dissemination Agent, with instructions to post such reports on EMMA, by the fifteenth day of each month during the Construction Window. Such reports shall contain the following information:

- (a) brief description of construction activity for applicable reporting period, including:
 - (1) construction work performed on site during reporting period,
 - (2) status of procurement of equipment,
 - (3) material issues with vendor performance (including delivery issues, performance problems or material cost overruns);
- (b) adherence to expected construction timeline (including estimated number of days ahead or behind);
- (c) adherence to expected construction budget (including material work order, dollar or percentage deviation from budget); and
- (d) promptly upon sending or receipt, copies of any material correspondence between the Institution or the Landlord, as applicable, and any governmental entity regarding compliance with Environmental Regulations, potential material violations of state or local law, or other material correspondence relating to the Institution's construction or operations of the Facility.

Neither the Trustee nor the Dissemination Agent shall have any duty regarding such information delivered in accordance with this subsection other than to retain any such information that it receives and transmit same in accordance herewith.

(C) Release and Indemnification Covenants.

(i) To the extent not satisfied in full by the Institution, the Charter School agrees to pay, defend, protect, indemnify, and hold each of the Indemnified Persons harmless for, from and against any and all Liabilities for which the Charter School is responsible and directly or indirectly arising from or relating to its responsibilities under the Loan, the Sublease, this Covenant Agreement, the Project, the Mortgages, and the Tax Regulatory Agreement, and any and all

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Bonds, and (B) any fraud or misrepresentations or omissions contained in the proceedings of the Issuer relating to the issuance of the Bonds or pertaining to the financial condition of the Charter School which, if known to the original purchaser of the Bonds or the Underwriter, might be considered a material factor in such Person's decision to purchase the Bonds.

(iii) Paragraphs (i) and (ii) above are intended to provide indemnification to each Indemnified Party for his or her active or passive negligence or misconduct; provided, however, nothing in paragraphs (i) and (ii) above shall be deemed to provide indemnification to any Indemnified Party with respect to any Liabilities arising from the successful allegation of fraud, gross negligence, or willful misconduct of such party.

(iv) Any party entitled to indemnification hereunder shall notify in writing the Charter School of the existence of any claim, demand, or other matter to which the Charter School's indemnification obligation applies, and shall give the Charter School a reasonable opportunity to defend the same at its own expense and with counsel reasonably satisfactory to the Indemnified Party (insurance counsel appointed by the Charter School's insurance carrier(s) shall be deemed acceptable), as applicable, provided that the Indemnified Party shall at all times also have the right to fully participate in the defense. If the Indemnified Party is advised in an Opinion of Counsel that there may be legal defenses available to either of them which are materially different from or in addition to those available to the Charter School or if the Charter School shall, after receiving notice of the Charter School's indemnification obligation and within a period of time necessary to preserve any and all defenses to any claim asserted, fails to assume the defense or to employ counsel for that purpose satisfactory to the Indemnified Party, as applicable, the Indemnified Party, as applicable, shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk of, the Charter School. The Charter School shall be responsible for the reasonable counsel fees, costs, and expenses of the Indemnified Party in conducting its defense.

Notwithstanding the foregoing, the Charter School shall not be considered an "Indemnified Party" for purposes of this Section.

(D) Authority of Authorized Representative of the Charter School. Whenever under the provisions of this Covenant Agreement, the Sublease Agreement, the Loan Agreement or the Indenture the approval of the Charter School is required, or the Trustee is required to take some action at the request of the Charter School, such approval or such request shall be made by the Authorized Representative of the Charter School unless otherwise specified in this Covenant Agreement or the Indenture. The Trustee shall be authorized to act on any such approval or request and the Charter School shall have no complaint against the Trustee as a result of any such action taken in accordance with such approval or request. The execution of any document or certificate required under the provisions of this Covenant Agreement or the Indenture by an Authorized Representative

Liabilities directly or indirectly arising from or relating to the Bonds, the Indenture or any document related to the issuance and sale of the Bonds, including, but not limited to, the following:

- (a) Any injury to or death of any person or damage to property in or upon the Facility or growing out of or connected with the use, non-use, condition, or occupancy of the Facility or any part thereof;
- (b) Violation of any agreement, covenant, or condition of any of the Security Documents;
- (c) Violation of any agreement, contract, or restriction relating to the Project;
- (d) Violation of any law, ordinance, or regulation affecting the Facility or any part thereof or the ownership, occupancy, or use thereof;
- (e) The issuance and sale of the Bonds or any of them;
- (f) Any statement, information, or certificate furnished by the Charter School to the Issuer or the Trustee which is misleading, untrue, incomplete, or incorrect in any material respect;
- (g) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering or disclosure document or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds, or any omission or alleged omission from any offering or disclosure document or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;
- (h) any declaration of taxability of interest on the Tax-Exempt Bonds, or allegations that interest on the Tax-Exempt Bonds is taxable or any regulatory audit or inquiry regarding whether interest in the Tax-Exempt Bonds is taxable; and
- (i) the Trustee's acceptance or administration of the trust of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party.
- (ii) The Charter School also agrees to pay, defend, protect, indemnify, and hold each of the Indemnified Persons harmless for, from, and against any and all Liabilities directly or indirectly arising from or relating to (A) any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by or to the Issuer pertaining to the

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of the Charter School shall be on behalf of the Charter School and shall not result in any personal liability of such Authorized Representative of the Charter School.

(E) Licenses and Qualifications. The Charter School 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, or cause its lessees to comply, with such permits, licenses and other governmental approvals necessary for operation of the Facility as a charter school (as defined in the Charter Schools Act), including at all times maintain its Charter Contract.

(F) Right to Inspect. The Charter School will permit the Trustee and its duly authorized agents, at all reasonable times upon reasonable advance written notice (but no more than once every calendar quarter), in observance of the Charter School's reasonable school safety and security protocols in place at the Facility and in such as fashion as to minimize interference to the Charter School's operations, 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 Charter School will further permit the Issuer, or its duly authorized agent, upon reasonable advance written notice, at all reasonable times (but no more than once every calendar quarter), and in observance of the Charter School's reasonable school safety and security protocols in place at the Facility and in such as fashion as to minimize interference to the Charter School's operations, to enter the Facility, but solely for the purpose of assuring that the Charter School is operating the Facility, or is causing the Facility to be operated, in a manner consistent with the Sublease Agreement, Use Agreement and this Covenant Agreement. The permissive rights of the Trustee under this Section 5 shall not be construed as duties.

(G) Sublease or other Disposition of the Facility. Except as permitted under the Sublease, the Charter School shall not sublease any part of the Facility to any other Person nor assign its rights in the Sublease to any other Person, without the prior written consent of the Majority Holders.

(H) Nonsectarian Use. The Charter School covenants to operate the Facility in accordance with the Charter Schools Act. The Charter School will comply with all applicable state and federal laws concerning discrimination on the basis of race, creed, color, sex, sexual orientation, national origin, or religious belief and will respect, permit, and not interfere with the religious beliefs of persons working for the Charter School. The Charter School may rely upon the Opinion of Counsel acceptable to the Trustee in order to determine whether it is in compliance from time to time with the covenants contained in this paragraph.

(I) Incurrence of Indebtedness. The Charter School shall not incur, assume, or otherwise become liable for any capital or operational lease obligations or cause any additional Indebtedness secured in whole or in part by the Facility, to be issued for its benefit, other than as follows (collectively, "Permitted Indebtedness"):

- (i) Additional Indebtedness. Indebtedness issued upon delivery of the following:

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(1) No Default. A certificate signed by an Authorized Representative of the Charter School stating that no Event of Default is then existing under the Security Documents or any debt outstanding or any agreement entered into by the Charter School in conjunction with such debt; and

(2) Historical Coverage on Outstanding Indebtedness. A certificate signed by an Authorized Representative of the Charter School stating that, for the Charter School's most recently completed Fiscal Year immediately preceding the issuance of the Permitted Indebtedness, the Charter School's Net Income Available for Debt Service was equal to at least 1.10 times Annual Debt Service Requirements; and

(3) Projected Coverage for Additional Indebtedness. Delivery of a report of an Accountant stating that the estimated Maximum Annual Debt Service for all Indebtedness then outstanding, including the proposed Indebtedness to be incurred, is less than twenty percent of estimated Gross Revenue for the most recent fiscal year for which a budget has been adopted. The report shall take into account (i) the audited results of operations and verified enrollment of the Project for the most recently completed Fiscal Year and (ii) the projected enrollment for the Fiscal Year immediately following the completion of the planned Capital Improvements Project, and shall assume that the proposed additional Indebtedness shall have been outstanding for the entire year.

(ii) Alternate Coverage for Additional Indebtedness. In lieu of the requirements described above, the Charter School may deliver a certificate of an Authorized Representative of the Charter School stating that, based on the audited results of the operations for the most recently completed Fiscal Year, the Charter School's Net Income Available for Debt Service equals at least 1.10 times Maximum Annual Debt Service on the aggregate of all parity Indebtedness then Outstanding plus the proposed additional Indebtedness.

(iii) Refunding Indebtedness. If additional Indebtedness is being issued for the purpose of refunding any Outstanding Indebtedness, the reports required by paragraphs be (i)(2) and (i)(3) above to be delivered shall not apply so long as both the total debt service requirements and Maximum Annual Debt Service Requirements on all Outstanding Indebtedness after issuance of the additional Indebtedness will not exceed both the total debt service requirements and the Maximum Annual Debt Service Requirements on all Outstanding Indebtedness prior to the issuance of such additional Indebtedness.

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the Charter School as such Independent Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The Charter School agrees to consider any recommendations by the Independent Consultant and, to the fullest extent practicable, provided such recommendations are consistent with the Charter Schools Act and the Charter Contract, to adopt and carry out such recommendations.

So long as the Charter School is otherwise in full compliance with its obligations under the Covenant Agreement, including following, to the fullest extent practicable, the recommendations of the Independent Consultant, it shall not constitute a default if the Charter School's Net Income Available for Debt Service is less than 1.10 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date as described above. Notwithstanding the foregoing, in the event that the Charter School's Net Income Available for Debt Service is less than (i) 1.10 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date for two (2) consecutive years; or (ii) 1.0 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date, an Event of Default shall be deemed to have occurred under the Covenant Agreement.

(M) Investor Calls. The Charter School hereby agrees that within thirty (30) days following receipt by the Dissemination Agent of the audited financial statements of the Charter School for the Fiscal Year ended June 30, 2023 and within thirty (30) days following receipt by the Dissemination Agent of the audited financial statements for each Fiscal Year thereafter, the Charter School shall organize and schedule a conference call for the benefit of the Beneficial Owners of the Bonds. The Charter School shall cause notice of such conference calls setting forth the date, time and call-in information of such conference calls to be given to the Dissemination Agent, the Issuer, the then current Beneficial Owners of the Bonds and to the public in general and shall provide or cause the Dissemination Agent to provide notice of such conference calls to be posted on the EMMA website in a timely manner but in no event less than ten (10) Business Days prior to the dates set for such conference calls.

(N) Capital Needs Assessment. The Charter School shall cause a Facilities Consultant to complete a capital needs assessment of the Charter School projecting the Charter School's capital needs for the Facility and the total cost thereof for the five-year period commencing on the immediately following July 5 (each a "**Capital Needs Assessment**") no later than June 30, 2032, and every fifth (5th) anniversary thereafter as long as the Bonds are Outstanding. The total cost set forth in a Capital Needs Assessment less the amount then on deposit in the Repair and Replacement Funds, divided by 30, shall be the new "**Repair and Replacement Fund Requirement**" for such five-year period. The Repair and Replacement Requirement for each future period shall be at least the amount provided for in the definition of Repair and Replacement Fund Requirement for the Facility.

(O) Repair and Replacement Fund Deposits. The Charter School hereby covenants to cause to be deposited into the Repair and Replacement Fund, a portion of the Rents due under the Sublease Agreement to fund the Repair and Replacement Fund on the dates set forth therein, beginning July 5, 2027, until the annual amount of such deposits

(J) No Guarantees or Loans. Notwithstanding any provision hereof to the contrary, the Charter School shall not guarantee the Indebtedness or obligations of any other Person, nor make loans to any other Person.

(K) Covenant as to Cash on Hand. The Charter School hereby agrees to maintain unrestricted Cash on Hand in its operations fund sufficient to cover at least forty (40) days of its Operating Expenses, interest expenses and facility lease payments. The Cash on Hand shall be tested on June 30 of each year, commencing June 30, 2023, and the Charter School shall provide a certificate and supporting calculations to the Dissemination Agent (as that term is defined in the Continuing Disclosure Agreement), within sixty (60) days of the end of each Fiscal Year evidencing that the Cash on Hand met the requirements set forth in the Covenant Agreement. Amounts on deposit in such operation fund may be used for any lawful purpose. The foregoing is subject to the qualification that if applicable state or federal laws or regulations, or the rules and regulations of agencies having jurisdiction, do not permit the Charter School to maintain such level of Cash on Hand, then the Charter School shall, in conformity with the then prevailing laws, rules or regulations, maintain its Cash on Hand equal to the maximum permissible level.

If the Cash on Hand for any testing date is less than forty (40) days of the Charter School's Operating Expenses, interest expenses and facility lease payments for the prior Fiscal Year, then the Charter School will promptly employ an Independent Consultant to review and analyze the operations and administration of the Charter School, inspect the Facility, and submit to the Charter School written reports, and make such recommendations as to the operation and administration of the Charter School as such Independent Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The reports shall be made available to Bondholders at their written request. The Charter School agrees to consider any recommendations by the Independent Consultant and, to the fullest extent practicable, provided such recommendations are consistent with the Charter Schools Act and the Charter Contract, to adopt and carry out such recommendations.

It shall constitute an Event of Default if the Cash on Hand is less than forty (40) days on the June 30 testing date for two (2) consecutive Fiscal Years.

(L) Coverage Ratio Covenant. The Charter School hereby covenants to maintain Net Income Available for Debt Service in an amount equal to at least 1.10 times Annual Debt Service Requirements for the applicable Fiscal Year, commencing June 30, 2025 on all Indebtedness then outstanding. Such covenant will be tested annually based upon the results of the annual audited financial statements of the Charter School, commencing with the audit for the Fiscal Year ending June 30, 2023.

In the event that the Charter School's Net Income Available for Debt Service is less than 1.10 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date, the Charter School shall engage, at the Charter School's expense, an Independent Consultant to review and analyze the operations and administration of the Charter School, inspect the Facility, and submit to the Charter School written reports, and make such recommendations as to the operation and administration of

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total the Repair and Replacement Fund Requirement for such year. The Charter School shall replenish any draws made on the Repair and Replacement Fund by causing to be paid to the Trustee for deposit in the Repair and Replacement Fund in thirty (30) equal bi-monthly amounts as required by the Indenture and Loan Agreement until the Repair and Replacement Fund Requirement is met; provided, however, if amounts on deposit in the Repair and Replacement Fund are in excess of the Repair and Replacement Fund Requirement, the Charter School shall not be required to replenish draws on the Repair and Replacement Fund; and, provided, further, however, nothing contained herein, shall prohibit the Charter School from depositing amounts into the Repair and Replacement Fund in excess of the Repair and Replacement Fund Requirement.

(P) Selection of Consultants. For any provision of this Covenant Agreement that requires the Charter School to engage an independent expert to assist it, such as an Project Development Consultant or Independent Consultant (but not including its Accountant), the Charter School shall provide notice of the proposed retention of an Independent consultant within five (5) Business Days of such retention to the Trustee, who will provide notice to the Bondholders, which notice shall specify the identity of the proposed consultant to be retained by the Charter School. If within twenty-one (21) calendar days of the providing such notice the Majority Holders notify the Trustee in writing that they object to the retention of such proposed consultant, such Independent Consultant shall not be retained by the Charter School and the Charter School shall provide notice of the proposed retention of a different Independent Consultant in the same manner. The process shall continue until the Charter School has proposed retention of an Independent Consultant that is not objected to by the Majority Holders. The Charter School shall promptly retain any consultant not objected to by the Majority Holders; provided, however, that the fees charged by any such Independent Consultant shall be commercially reasonable.

(Q) Financial Product Agreements. The Charter School shall not enter into any Financial Product Agreement.

(R) Subordination of Management Fees. The management, operating or license fee, as applicable ("**Management Fee**") required to be paid by the Charter School to any manager, operator or other third party that would provide comprehensive management services to the Charter School such as the services typically provided by a charter management organization (a "**CMO**") pursuant to the terms of a management agreement or other related agreement are and shall be subordinate to the timely payment by Charter School to Institution of all amounts payable under the Sublease, and such Management Fee with respect to the Facility may only be paid to such third party if no Event of Default under the Sublease exists; provided, however, if the annual Rental Assistance is expected to be less than the annual Debt Service on the Bonds, any structure whereby the Charter School is obligated to pay the Management Fees as Rents under the Sublease shall be waived, and the Charter School may elect to pay such amounts from other sources in its sole discretion. Such Management Fee not timely paid by Charter School shall remain due and payable, though deferred, and shall be paid by Charter School when no Event of Default exists under the Sublease and at the earliest possible time that funds are available for such payment. For the avoidance of doubt, Charter School covenants and agrees to

pay any and all amounts due under the Sublease prior to the payment of all or any portion of a Management Fee. As of the date hereof, the Charter School is neither responsible for nor has contracted to in the future be responsible for the payment of any Management Fees, nor are there any Management Fees included in the form of Rent or otherwise under the Sublease.

(S) *Continuing Disclosure Agreement.* The Charter School shall comply with the terms of the Continuing Disclosure Agreement.

(T) *State and City Funding.* On or before the deadline as provided by applicable State law, City ordinance or regulation as amended from time to time, make all applications or submissions and provide all supporting documentation to the NYCDOE or the Education Department (or its successor), as applicable, that are necessary to receive full funding from the State and the City for all legally available general student aid funds, Rental Assistance, special education funding or other funding sources included in the Charter School's annual budgeted operating revenues.

(U) *Federal Funding.* The Charter School shall use commercially reasonable efforts to make all necessary applications or submissions, including all supporting documentation, to receive any federal monies included in the Charter School's annual budgeted operating revenues.

(V) *Notice of Default.* The Charter School shall provide notice to the Issuer, Trustee, the Institution and the Beneficial Owners of (i) any notices from the Authorizer to the Charter School of material noncompliance with or determination not to renew the Charter Contract within ten (10) days of receipt of such notice by the Charter School and (ii) any default under any Security Document and the steps to be taken by the Charter School to remedy such default, promptly after such default occurs.

(W) *Rental Assistance Payments.* If necessary, under New York law, the Charter School shall make application as required to the applicable regulatory body for Rental Assistance Payments.

(X) *Tax-Exempt Status.* The Charter School shall maintain its existence as a Tax-Exempt Organization, and maintain the Charter School as described in the Charter Schools Act under its Charter Contract and not dissolve or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it without the prior written consent of the Trustee.

(Y) *Subordination of Sublease.* The Charter School hereby covenants and agrees that while the Bonds are outstanding: (1) the Sublease at all times shall automatically be subordinate to each Mortgage, (2) Charter School shall attorn to the Trustee and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Facility by any purchaser at a foreclosure sale or by the mortgagee pursuant to the Mortgage (the "**Beneficiary**") in any manner; (3) to execute such further evidences of attornment and subordination as a mortgagee or any

purchaser at a foreclosure sale may from time to time in writing request, including a subordination, nondisturbance and attornment agreement in standard form and substance acceptable to the Beneficiary or any purchaser in its sole discretion; (4) the Sublease shall not be terminated by foreclosure or any other transfer of the Facility, unless directed by the Beneficiary or any purchaser in its sole reasonable discretion; (5) after a foreclosure sale of the Facility, a Beneficiary or any other purchaser at such foreclosure sale may, at the Beneficiary's or such purchaser's option, accept or terminate the Sublease and/or Security Documents, as applicable, unless the Sublease was terminated in accordance with its terms prior to any such foreclosure sale, in which case, this subsection shall not be applicable; and (6) the Charter School shall, upon receipt after the occurrence of an Event of Default of a written request from the Beneficiary, pay all Rents payable under the Sublease Agreement to the Beneficiary.

(Z) *Rents.* The Charter School agrees that it will not amend the Sublease or the Rents schedule in any way that would cause Rents to equal an amount less than the Annual Debt Service Requirements on the Initial Bonds.

(AA) *Lease Payment Reserve Fund Deposit.* The Charter School hereby covenants to cause to be deposited into the Lease Payment Reserve Fund, a portion of the Rents due under the Sublease Agreement to fund the Lease Payment Reserve Fund, monthly installments, commencing July 5, 2023, of \$105,259.27 until the amount held in the Lease Payment Reserve Fund equals the Lease Payment Reserve Fund Requirement. Such monthly payment will be transferred to the Trustee pursuant to the Depositary Agreement.

(BB) *Further Assurances.* The Charter School agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Covenant Agreement.

Section 6. Environmental Indemnity and Covenants.

(A) *Environmental Indemnity*

(i) Charter School and its successors and assigns, shall and do hereby indemnify and hold harmless and assume the duty to defend the Indemnified Persons, the Registered Owners of the Bonds, the Beneficial Owners and the Trustee, their successors, assigns, trustees, directors, officers, employees, agents, contractors, subcontractors, licensees, and invitees (collectively referred to in this Section 6 as "**Indemnified Persons**"), for, from and against any and all Environmental Damages that the Indemnified Persons may incur as well as any and all loss, costs, damages, exemplary damages, natural resources damages, Liens, and expenses, (including, but not limited to, reasonable attorneys' fees, environmental professional's fees and any and all other costs incurred in the investigation, defense and settlement of claims) that Indemnified Persons may incur as a result of or in

connection with the assertion against Indemnified Persons, or against all or a portion of the Facility, of any claim, civil, criminal or administrative, which:

(a) arises out of the actual, alleged or threatened discharge, dispersal, release, storage, treatment, generation, disposal or escape of any Regulated Chemical on or about the Facility, including, but not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, medical waste and waste (including materials to be recycled, reconditioned or reclaimed); or

(b) actually or allegedly arises out of the use of any Regulated Chemical on or about the Facility, the existence or failure to detect the existence or proportion of any Regulated Chemical in the soil, air, surface water or groundwater, or the performance or failure to perform the abatement or removal of any Regulated Chemical or of any soil, water, surface water, groundwater or soil gas vapor containing any Regulated Chemical; or

(c) arises out of the actual or alleged existence of any Regulated Chemical on, in, under, or affecting all or a portion of the Facility; or

(d) arises out of any misrepresentations of Charter School concerning any matter involving Regulated Chemicals or Environmental Requirements; or

(e) arises out of Charter School's failure to provide or cause to be provided all information, make all submissions and filings, and take all steps required by appropriate government authority under any applicable environmental law, regulation, statute or program, whether federal, state or local, whether currently existing or hereinafter enacted.

(ii) Without prejudice to the survival of any other agreements of the Organization hereunder, this indemnification shall survive any termination, payment or satisfaction of the indebtedness and the termination of this Covenant Agreement, and any foreclosure or any other transfer of any kind of the Facility, and shall continue and survive until the earlier of: (a) the provision of the Environmental Report by an Independent Person confirming the absence of Hazardous Materials on the Premises; and (b) five (5) years following and termination, payment or satisfaction of the Bonds and termination of this Covenant Agreement.

(iii) Charter School's indemnification contained herein shall be effective not only with any existing Environmental Requirements affecting the Charter School, Indemnified Persons and/or the Facility, but also for any hereinafter enacted environmental law, regulation, statute or program, whether federal, state or local affecting Charter School, Indemnified Persons and/or the Facility.

(iv) Charter School's indemnification contained herein shall extend to any and all like claims which arise from the acts or omissions of any user, tenant, lessee, agent or invitee of Charter School.

(v) The obligations under this Section shall not be affected by any investigation by or on behalf of Indemnified Persons, or by any information which Indemnified Persons may have or obtain with respect thereto.

(vi) Charter School's indemnification shall include the duty to defend any and all claims, through counsel designated by the Charter School with the consent of the Indemnified Person, which shall not be unreasonably withheld (counsel appointed by the Charter School's insurance carrier(s) shall be deemed approved), and Indemnified Persons may participate in the defense of any claim without relieving Charter School of any obligation hereunder. This duty to defend shall apply and constitute an obligation of Charter School regardless of any challenge by Charter School to this provision, the indemnification contained herein, or any other provision of this Covenant Agreement. This duty to defend shall apply regardless of the validity of Charter School's indemnification, as may ultimately be determined by a court of competent jurisdiction.

(vii) Notwithstanding anything to the contrary contained in this Section no indemnification shall be required for any Environmental Damages incurred solely as the result of the gross negligence or willful misconduct of the party seeking indemnification or Environmental Damages caused by or through the party seeking indemnification.

(B) *Environmental Covenants.*

(i) *Use of Facility.* The Charter School will not intentionally or unintentionally conduct, or allow to be conducted, any business, operation, or activity on, under, or in the Facility, or employ or use the Facility or allow for it to be employed or used, to manufacture, transport, treat, store, discharge, emit or dispose of any Regulated Chemical which would violate or potentially violate Environmental Requirements, including, but not limited to, any action which would:

(a) bring the Charter School, or the Facility, within the ambit of, or otherwise violate, the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§ 6901, et seq.;

(b) cause, or allow to be caused, a release or threat of release, of hazardous substances on, under, in, or about the Facility as defined by, and in violation of, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601, et seq.;

(c) violate the Clean Air Act of 1970, as amended, 42 U.S.C. §§ 7401, et seq., or other similar state, regional or local statute, law, regulation, rule or ordinance, including without limitation, the laws of the State, or any other statute providing for the financial responsibility for the assessment, investigation and cleanup for the release or threatened release of substances provided for thereunder.

(d) The Charter School will not do or permit any act or thing, business or operation that materially increases the dangers, or poses an unreasonable risk of harm, or impairs, or may impair, the value of the Facility, or any part thereof.

(ii) *Maintenance of Facility.* The Charter School shall maintain the Facility free from contamination by Regulated Chemicals and shall not intentionally or unintentionally allow the storage, treatment, disposal, or release, discharge or emission, or threat of release, discharge or emission, of any Regulated Chemical on, under, in or about the Facility, and shall not permit the migration or threatened migration from other properties upon, about or beneath the Facility to the extent within the Charter School's control.

(iii) *Notice of Environmental Problem.* Charter School and/or any tenant and/or sublessee shall promptly provide a copy to Trustee, and in no event later than fifteen (15) days from Charter School's and/or any tenants' and/or sublessee's receipt or submission, of any notice, letter, citation, order, warning, complaint, inquiry, claim or demand that:

(a) the Charter School and/or any tenants or sublessees have violated, or are about to violate, any federal, state, regional, parish or local environmental, health, or safety statute, law, rule, regulation, ordinance, judgment or order;

(b) there has been a release, or there is a threat of release, of any Regulated Chemical from the Facility;

(c) the Charter School and/or any tenants or sublessees may be or are liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a release of any Regulated Chemical;

(d) any portion of the Facility is subject to a Lien in favor of any governmental entity for any liability, costs or damages, under Environmental Requirements arising from, or costs incurred by such governmental entity in response to, a release of any Regulated Chemical.

(iv) *Response Action.* The Charter School shall take all appropriate responsive action, including any removal and remedial action ("**Response Action**"), in the event of a release, emission, discharge or disposal of any Regulated Chemical in, on, under or about the Facility, so as to remain in compliance with the above, and to keep the Facility free from, and unaffected by, Regulated Chemicals.

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School specifically agrees and acknowledges that any action permitted under this Section shall not be construed to be the management or control of the Facility by the Trustee.

Section 7. Events of Default.

(A) *Events of Default Defined.* The following shall be "**Events of Default**" under this Covenant Agreement and the term "**Event of Default**" shall mean, whenever it is used in this Covenant Agreement, any one or more of the following events beyond their respective notice and cure periods, if applicable:

(i) Failure by the Charter School to pay the Rents required to be paid under the Sublease and Section 2 hereunder.

(ii) Failure by the Charter School to maintain its status as a 501(c)(3) organization under the Internal Revenue Code.

(iii) Any event of default under the Indenture.

(iv) Any event of default under the Security Documents.

(v) Failure by the Charter School or by the Institution on behalf of the Charter School, as the case may be, to observe and perform any covenant, condition or agreement on its part to be observed or performed herein other than as referred to in subsection (i) of this Section hereof, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, shall have been given to the Charter School and the Institution by the Issuer or the Trustee; provided, with respect to any such failure covered by this subsection (vi), no Event of Default shall be deemed to have occurred so long as a course of action adequate in the judgment of the Trustee to remedy such failure shall have been commenced within such 30-day period and shall thereafter be diligently prosecuted to completion and the failure shall be remedied thereby within ninety (90) days of such occurrence.

(vi) The dissolution or liquidation of the Charter School, or failure by the Charter School promptly to contest and have lifted any execution, garnishment, or attachment of such consequence as will impair its ability to meet its obligations with respect to the Facility or to make any payments under this Covenant Agreement. The phrase "**dissolution or liquidation of the Charter School**," as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Charter School resulting either from a merger or consolidation of the Charter School into or with another domestic corporation or a dissolution or liquidation of the Charter School following a transfer of all or substantially all of its assets under the conditions permitting such actions contained in Section 5(A) hereof.

(vii) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Charter School in an involuntary case under the

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The Charter School shall (i) provide Trustee, within ten (10) days after providing the notice required under Section 6(B)(iii) above, with a bond, letter of credit or similar financial assurance which is equal to the cost of the Response Action and which may be drawn upon by the Trustee for the purpose of completing the Response Action if an Event of Default occurs or if the Response Action is not completed within six (6) months of the issuance of the financial assurance and (ii) discharge any assessment, Lien or encumbrance which may be established on the Facility as a result thereof.

(v) *No Liens or Encumbrances.* The Charter School shall prevent the imposition of any Liens or encumbrances against the Facility for the costs of any response, removal, or remedial action or cleanup of any Regulated Chemicals. Should such a Lien or encumbrance be levied on the Facility, the Charter School shall follow the procedure set forth in subsection (d) above.

(vi) *Compliance with Environmental Requirements.* The Charter School shall carry on the business and operations at the Facility to comply in all respects and will continue to remain in compliance with all applicable Environmental Requirements and maintain all permits and licenses required thereunder.

(vii) *Additional Environmental Reports.* As long as there are any Bonds Outstanding, the Charter School shall provide the Trustee and the Issuer with a copy of any Environmental Report performed during that time.

(viii) *Right of Inspection.* Charter School will cooperate with the consultants and supply to the consultants such historical and operational information as may be reasonably requested by the consultants, together with any notices, permits or other written communications pertaining to violations of Environmental Requirements and any and all necessary information and make available personnel having knowledge of such matters as may be required by the Trustee, Trustee's Agents, consultants and engineers to complete an Environmental Assessment.

(ix) *Event of Default.* If an Environmental Assessment reveals any violations of Environmental Requirements (other than violations, if any, revealed to the Trustee in writing prior to the date hereof or in any Environmental Assessment provided to the Trustee prior to the date hereof) or the Charter School receives a notice of a violation of Environmental Requirements, and the Charter School fails to cure or cause the violation to be cured to the extent required by law in the time period and the manner specified in Section 8(A) hereof, such action will constitute an Event of Default.

(x) *No Assumption of Risk.* The Trustee's rights under this Section shall be exercised by it in its sole discretion and not for the benefit of the Charter School. The Trustee shall have no obligation (unless directed and indemnified as provided in the Indenture) to enter into the Facility thereon or to take any other action which is authorized by this Article for the protection of its security interest. The Charter

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federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Charter School or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days.

(viii) The commencement by the Charter School of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Charter School or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the failure of the Charter School generally to pay its debts as such debts become due, or the taking of corporate action by the Charter School in furtherance of any of the foregoing.

(ix) Failure of the Charter School to comply with any covenants of the Charter School contained in the Tax Regulatory Agreement.

(x) (a) the Charter School's Cash on Hand is less than forty (40) days on the June 30 testing date for two (2) consecutive Fiscal Years as specified in Section 5(K) hereof, and (b) the Charter School's Net Income Available for Debt Service is less than (i) 1.10 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date for two (2) consecutive years; or (ii) 1.0 times the Annual Debt Service Requirements on all Indebtedness then outstanding on any testing date, as specified in Section 5(L) hereof.

(xi) Any representation or warranty made by the Charter School herein or made by the Charter School in any statement or certificate furnished by the Charter School either required hereby or in connection with the execution and delivery of this Covenant Agreement and the sale and the issuance of the Bonds, shall prove to have been untrue in any material respect as of the date of the issuance or making thereof.

(xii) Judgment for the payment of money in excess of \$250,000.00 (which is not covered in full by insurance) is rendered by any court or other governmental body against the Charter School, and the Charter School does not discharge same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within sixty (60) days from the date of entry thereof, and within said sixty-day period or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal, while providing such reserves therefor as may be required under GAAP.

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(xiii) Any of Charter School's representations and warranties herein or in any of the other Security Documents with respect to environmental matters are false in any material respect.

(xiv) The occurrence and continuation of any event of default under any Indebtedness of the Charter School for nonpayment, or the occurrence and continuation of any event of default under any agreement in connection with or securing any Indebtedness of the Charter School if, as a result of such event of default, the holder of such Indebtedness would have the right to declare the principal thereof to be immediately due and payable.

(xv) The Charter School ceases operations or the Charter School's Charter Contract is terminated, revoked, expires or is not renewed, or Charter School receives written notice of an Authorizer's intent to nonrenew the Charter School's Charter Contract or notice of probation or similar status with respect to its Charter Contract; provided, however the Charter School shall have the period of time established by the Authorizer to cure any probation imposed by its Authorizer or notice of intent to non-renew following the initial date thereof.

Section 8. Remedies on Default.

(A) *Remedies.* Whenever an Event of Default referred to in Section 7 hereof shall have occurred and is continuing, the Trustee, where so provided herein, may, and at the direction of the Majority Holders (which shall include satisfactory indemnification for the Trustee) shall, take any one or more of the following remedial steps:

(i) The Trustee may declare the Rent payable under the Sublease Agreement to be immediately due and payable, whereupon the same shall become due and payable.

(ii) The Trustee may exercise the power of sale or foreclosure under the Mortgages on the property subject thereto and may exercise all the rights and remedies of a secured party under the New York Uniform Commercial Code with respect thereto and with respect to all assets secured by the Mortgages.

(iii) Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Registered Owners of the Bonds, the Trustee shall be entitled as a matter of right to the appointment of a receiver or receivers of the Charter School and the Facility, pending such proceedings, but, notwithstanding the appointment of any receiver, trustee or other custodian, the Trustee shall be entitled to the possession and control of any cash, securities or other instruments at the time held by, or payable or deliverable under the provisions of the Sublease, the Mortgages, or this Covenant Agreement to the Trustee.

(iv) The Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance or observance of any obligations,

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(C) *Agreement to Pay Attorneys' Fees and Expenses.* In the event the Charter School should breach any of the provisions of this Covenant Agreement and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of Rent or the enforcement of performance or observance of any obligation or agreement on the part of the Charter School herein contained, the Charter School agrees that it will on demand therefor pay or cause to be paid to the Issuer or the Trustee, as the case may be, the reasonable fees of such attorneys and such other reasonable expenses incurred by the Issuer or the Trustee. The obligations of the Charter School arising under this Section shall continue in full force and effect notwithstanding the final payment of the Bonds or the termination of this Covenant Agreement for any reason.

(D) *Waiver.* In the event any agreement contained in this Covenant Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder. The Issuer shall have no power to waive any Event of Default hereunder without the consent of the Trustee and the Majority Holders.

(E) *Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Charter School or any other obligor upon the Bonds or the property of the Trustee (irrespective of whether the principal of the Bonds shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuer and/or the Charter School for the payment of overdue principal or interest) shall be entitled and empowered, by intervention of such proceeding or otherwise,

(i) to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Bonds then Outstanding and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Bondholders allowed in such judicial proceeding; and to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

(ii) and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Bondholder to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Bondholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel.

So long as Bonds are outstanding the Trustee is appointed under the terms of the Indenture, and the successive respective Bondholders of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee, the true and lawful attorney in fact of the respective Bondholders of the Bonds, with authority to make or file, in the respective names of the Bondholders of the Bonds or on behalf of all Bondholders of the

agreements, or covenants of the Charter School under this Covenant Agreement and all other Security Documents.

Notwithstanding the foregoing, prior to the exercise by the Trustee of any remedy that would prevent the application of this paragraph, the Charter School may, at any time, pay all accrued payments hereunder (exclusive of any such payments accrued solely by virtue of declaration pursuant to subsection (a) of the first paragraph of this Section) and fully cure all defaults, and in such event, the Charter School shall be fully reinstated to its position hereunder as if such Event of Default had never occurred.

In the event that the Charter School fails to make or cause to be made any payment required hereby, the payment so in default shall continue as an obligation of the Charter School until the amount in default shall have been fully paid and shall accrue interest at the Default Rate.

Whenever any Event of Default has occurred and is continuing under this Covenant Agreement, the Trustee may, but except as otherwise provided in the Indenture shall not be obligated to, exercise any or all of the rights provided under this Article. In addition, the Trustee shall have available to it all of the remedies prescribed in the Indenture and any other Security Document. If the Trustee is not enforcing the Issuer's rights in a manner to protect the Issuer or is otherwise taking action that brings adverse consequences to the Issuer, then the Issuer may, without the consent of the Trustee, take whatever action at law or in equity may appear necessary or appropriate to enforce the Issuer's rights under this Covenant Agreement. Any amounts collected pursuant to action taken under this paragraph, after reimbursement of any costs incurred by the Issuer or the Trustee in connection therewith, shall be applied in accordance with the provisions of the Indenture.

If the Issuer or the Trustee, shall have proceeded to enforce their rights under this Covenant Agreement or any other Security Document and such proceedings 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 Charter School, the Issuer and the Trustee shall be restored to their respective positions and rights hereunder, and all rights, remedies and powers of the Charter School, the Issuer and the Trustee shall continue as though no such proceedings had been taken.

(B) *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Covenant Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein or by applicable law. Such rights and remedies given the Trustee hereunder shall also extend to the Beneficial Owners and the Registered Owners of the Bonds, subject to the Indenture.

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Bonds, as a class, any proof of debt, amendment to proof of debt, petition or other documents and to execute any other papers and documents and to do and perform any and all acts and things for and on behalf of all Bondholders of the Bonds as a class, as may be necessary or advisable in the opinion of the Trustee, in order to have the respective claim of the Bondholders of the Bonds against the Issuer, the Charter School or any other obligor allowed in receivership, insolvency, liquidation, bankruptcy or other proceeding, to which the Issuer, the Charter School or any other obligor, as the case may be, shall be a party. The Trustee shall have full power of substitution and delegation in respect of any such powers.

(F) *Treatment of Funds in Bankruptcy.* The Charter School acknowledges and agrees that in the event Charter School commences a case under the United States Bankruptcy Code located at 11 U.S.C. §§ 101 et. seq. (the "**Bankruptcy Code**") or is the subject of an involuntary case that results in an order for relief under the Bankruptcy Code: (i) amounts on deposit in any of the Funds are not, nor shall they be deemed to be, property of Charter School's bankruptcy estate as defined by § 541 of the Bankruptcy Code; (ii) that in no event shall Charter School assert, claim or contend that amounts on deposit in any of the Funds are property of Charter School's bankruptcy estate; and (iii) that amounts on deposit in any of the Funds are held in trust solely for the benefit of the Registered Owners of the Bonds and the Beneficial Owners, shall be applied only in accordance with the provisions of the Indenture and the Charter School has no legal, equitable nor reversionary interest in, or right to, such amounts.

Section 9. Termination. This Covenant Agreement shall terminate and any amounts on deposit in the Funds and Accounts (other than the Rebate Fund) shall be delivered or transferred to the Institution upon the Institution providing for payment in full of amounts due with respect to the Bonds, whether at their stated maturity or by earlier prepayment and redemption.

Section 10. Severability. In the event any provision of this Covenant Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11. Governing Law. The obligations of the parties under this Covenant Agreement shall be governed by and construed in accordance with the State of New York.

Section 12. Third Party Beneficiaries. Each of the Indemnified Persons are intended "Third Party Beneficiaries" of this Covenant Agreement. Nothing in this Covenant Agreement shall confer any right upon any person other than parties hereto, and those specifically designated as Third Party Beneficiaries of this Covenant Agreement.

Section 13. Prior Agreements Superseded. This Covenant Agreement, together with all agreements executed by the parties concurrently herewith or in conjunction with the initial issuance of the Bonds, shall completely and fully supersede all other prior understandings or agreements, both written and oral, regarding the matters covered herein.

Section 14. Charter School Statements, Representations and Warranties. It is understood by the Charter School that all such statements, representations and warranties made in

this Covenant Agreement shall be deemed to have been relied upon by the Issuer as an inducement to issue the Bonds and by the Trustee as a condition of its entry into the Indenture, and that if any such statements, representations and warranties were false at the time they were made or (with respect to those representations and warranties which are to continue) are breached during the term hereof, such misrepresentation or breach shall constitute a breach of this Covenant Agreement which may give rise to an event of default hereunder.

Section 15. Headings. Section headings in this Covenant Agreement are for convenience of reference only and shall not govern, or be used in, the interpretation of any of the provisions of this Covenant Agreement.

Section 16. Execution and Counterparts. This Covenant Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute but one and the same document.

Section 17. No Waiver; Cumulative Remedies. The Trustee shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by the Trustee, and then only to the extent therein set forth. A waiver by the Trustee of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Trustee would otherwise have on any further occasion. No failure to exercise nor any delay in exercising by the Trustee of any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any right, power or privilege. The rights and remedies herein provided are cumulative and may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

Section 18. Waivers, Amendments. None of the terms or provisions of this Covenant Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by the Trustee (acting only with the consent of the Majority Holders) and the Charter School.

Section 19. Notices. Unless otherwise provided for in this Covenant Agreement, any notice required or permitted to be given under this Covenant Agreement may be given by certified or registered mail, return receipt requested, or by commercial overnight delivery service, postage prepaid, addressed as follows:

(1) if to the Charter School, to:

WHIN Music Community Charter School
1086 St. Nicholas Avenue
New York, New York, 10032

with a copy to:

Cohen Schneider Law, P.C.
275 Madison Avenue

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IN WITNESS WHEREOF, the parties hereto have executed this Covenant Agreement as of the date first above written.

**WHIN MUSIC COMMUNITY CHARTER
SCHOOL**

By: _____
Gregory David, Board Chair

(Signature page to Covenant Agreement – WHIN Music Community Charter School 2022)

New York, New York 10016
Attention: Cliff S. Schneider

(4) if to the Trustee, to:

The Bank of New York Mellon
240 Greenwich Street, Floor 7E
Attention: Corporate Trust Administration

Notices dispatched as provided in this Section shall be deemed effective on the second Business Day after mailing or shipping. Refusal of delivery shall constitute receipt of notice on the date of refusal of delivery. The Charter School and the Trustee may designate by writing delivered to the addresses stated in or pursuant to this Section 19, any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notices required to be sent to the Issuer and the Institution shall be at the addresses set forth in Section 12.5 of the Loan Agreement.

Section 20. Electronic Signatures. The parties agree that the electronic signature of a party to this Covenant Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Covenant Agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

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**THE BANK OF NEW YORK MELLON, as
Trustee**

By: _____
Name: _____
Its: _____

(Signature page to Covenant Agreement – WHIN Music Community Charter School 2022)

ACKNOWLEDGMENT OF INSTITUTION

The undersigned hereby consents to and acknowledges the foregoing Covenant Agreement dated as of June 1, 2022, between WHIN Music Community Charter School and The Bank of New York Mellon.

**FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.**

By: _____
Arnold Adlin, Board Chair

**EXHIBIT A(1)
AUTHORIZED REPRESENTATIVES OF THE CHARTER SCHOOL**

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Gregory David	Board Chair	_____
Ivonne Norman	Secretary	_____
Josh Bederman	Treasurer	_____
Charlie Ortiz	Executive Director	_____

(Signature page to Covenant Agreement – WHIN Music Community Charter School 2022)

Exhibit 5(C)(x)

FORM OF COMPLIANCE CERTIFICATE

The undersigned, _____ of WHIN Music Community Charter School (the “Charter School”) hereby certifies as follows, with respect to the Covenant Agreement dated as of June 1, 2022 (the “Covenant Agreement”), between the Charter School and The Bank of New York Mellon, as trustee, that during the period July 1, ____ through June 30, _____. All capitalized terms used herein, but not defined herein, have the meaning given in the Covenant Agreement.

(a) The Charter School has not used any portion of the Bond proceeds except for the Facility in furtherance of its purposes consistent with Section 501(c)(3) of the Code and no portion has been used for purposes which will produce “unrelated trade or business income” of Charter School as defined in Section 513(a) of the Code.

(b) The Charter School has not, except with the Issuer’s, Trustee’s or Majority Holders’ written approval, substantially subtracted from any real or personal property of the Facility.

(c) The Charter School has not permitted the use of any part of the Facility for any purpose other than as a public charter school and uses incidental thereto pursuant to the Charter Schools Act as amended, consistent with the Covenant Agreement and the Tax Regulatory Agreement.

(d) The Charter School has not allowed any Person or organization, other than the Charter School, to become a user of the Facility, or any portion thereof, nor has the Charter School transferred any portion of the Facility, except as follows: _____.

(e) Charter School is and continues to be an organization qualified under Section 501(c)(3) of the Code and has received no notice to the contrary from the Internal Revenue Service.

(f) The Charter School is in compliance with all other provisions of the Sublease Agreement, the Covenant Agreement and the Tax Regulatory Agreement, and all representations contained in the Sublease Agreement, the Covenant Agreement and the Tax Regulatory Agreement continue to be true and correct in all respects, except as follows: _____.

DATED: _____

**WHIN MUSIC COMMUNITY CHARTER
SCHOOL**

By: _____

Name: _____

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USE AGREEMENT

USE AGREEMENT

Dated as of June 1, 2022

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 One Liberty Plaza, New York, New York 10006, as “**Issuer**”, and

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, Floor 7E, New York, New York 10286, together with any successor trustee at the time serving as such under the Indenture of Trust referred to herein, as “**Trustee**”,

and

WHIN MUSIC COMMUNITY CHARTER SCHOOL,

a not-for-profit education corporation organized under the laws of the State of New York, currently having its principal office at 517 West 164th Street, New York, New York 10032, as “**School**”, and

\$40,840,000

Build NYC Resource Corporation
Tax-Exempt Revenue Bonds

(WHIN Music Community Charter School Project), Series 2022A

and

\$3,070,000

Build NYC Resource Corporation
Taxable Revenue Bonds

(WHIN Music Community Charter School Project), Series 2022B

This **USE AGREEMENT**, dated as of June 1, 2022 (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 One Liberty Plaza, New York, New York 10006 (the “**Issuer**”), and **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 the Indenture of Trust referred to herein (the “**Trustee**”), having a corporate trust office at 240 Greenwich Street, Floor 7E, New York, New York 10286, parties of the first part, and **WHIN MUSIC COMMUNITY CHARTER SCHOOL**, a not-for-profit educational corporation organized under the laws of the State of New York (the “**School**”), currently having its principal office at 517 West 164th Street, New York, New York 10032, 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, Friends of WHIN Music Community Charter School, a not-for-profit corporation (the “**Borrower**”) has entered into negotiations with officials of the Issuer for the Issuer’s assistance with a tax-exempt bond transaction, the proceeds of which will be used by the Borrower for the Project; 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 (capitalized terms used but not defined in this Agreement shall have the respective meanings assigned to such terms in the Indenture, the Loan Agreement or the Tax Regulatory Agreement, as each are defined below):

Agreement shall mean this Use Agreement, dated as of June 1, 2022, between the Issuer and the Trustee and the School, and shall include any and all amendments hereto and supplements hereto hereafter made in conformity herewith and with the Indenture.

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 School, a person named in Exhibit A – “Authorized Representative of the School”, or any other officer or employee of the School who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the School 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.

Borrower shall mean Friends of WHIN Music Community Charter School, Inc., a not-for-profit corporation organized 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.

Claims shall have the meaning set forth in Section 10.5.

Closing Date shall mean June 29, 2022, the date of the initial issuance and delivery of the Initial Bonds.

Conduct Representation shall mean any representation by the Borrower under Section 2.2(y) of the Loan Agreement, by the School under Section 2.1(u), or by any other Person in any Required Disclosure Statement delivered to the Issuer.

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 5.1.

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 School for accounting purposes as to which the School shall have given prior written notice thereof to the Issuer and the Trustee at least ninety (90) days prior to the commencement thereof; it being understood that the Borrower and the School shall maintain the same Fiscal Year.

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 School, 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.

Incorporated Loan Agreement Provision shall mean a Section of the Loan Agreement which, if referenced within this Agreement as an "Incorporated Loan Agreement Provision", shall mean that the School is covenanting and agreeing within this Agreement (for the benefit of the Issuer and the Trustee) as a direct obligation of the School hereunder, to take such actions, or not to take such actions, or otherwise pay and perform the payments, obligations, covenants and agreements of the Borrower under the cited Section of the Loan Agreement (including, without limitation, any exhibit to the Loan Agreement included within such cited Section), as if such Section were restated in its entirety within this Agreement, and as if the obligated party thereunder were stated to be the School. For purposes of clarification, any such Incorporated Loan Agreement Provision which provides either for the Borrower to cause the School to take, or not take, a particular action, or provides that the School is intended to directly take, or not take, such action, if referenced within this Agreement as an obligation of the School, shall mean that the same constitutes a direct obligation of the School under this Agreement. The Loan Agreement is hereby incorporated in full within this Agreement as if fully set forth herein.

Indemnified Parties shall have the meaning set forth in Section 4.5(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 Accountant shall mean Mengel Metzger Barr & Co. LLP, or such other Independent certified public accountant or firm of Independent certified public accountants selected by the School and licensed to practice in the State.

Initial Bonds shall mean shall mean collectively, the Series 2022A Bonds and the Series 2022B Bonds authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

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Security Documents shall mean, collectively, this Agreement, the Loan Agreement, the Promissory Notes, the Indenture, the Tax Regulatory Agreement, the Indenture, the Mortgage and the Assignment of Mortgage.

Series 2022A Bonds, means the Issuer's \$40,840,000 Tax-Exempt Revenue Bonds, (WHIN Music Community Charter School Project), Series 2022A authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

Series 2022B Bonds, means the Issuer's \$3,070,000 Taxable Revenue Bonds, (WHIN Music Community Charter School Project), Series 2022B authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

State shall mean the State of New York.

Sublease Agreement shall mean that certain Sublease between the Institution and the Organization, dated as of June 15, 2021, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with Section 3.4.

Transfer shall mean a disposition of all or substantially all of the Property, business or assets of the School.

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.

Section 1.2. Construction. In this Agreement, unless the context otherwise requires:

(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

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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.

Lease Agreement shall mean that certain Lease between the 528 W 162 LLC and the Borrower, dated as of April 16, 2021, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with Section 3.4.

Liability shall have the meaning set forth in Section 4.5(a) of this Agreement.

Loan Agreement shall mean the Loan Agreement, dated as of the date hereof, between the Issuer and the Borrower, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

Merge or Merger shall mean, in the case of the School, a consolidation with or merger into another Entity of the School, or permitting one or more Entities to consolidate with or merge into the School.

Project Documents shall mean, collectively, the Lease Agreement, the Sublease Agreement, the Continuing Disclosure Agreement, the Tax Regulatory Agreement and the Security Documents.

Property shall mean any and all rights, titles and interests in and to any and all property, whether real or personal, tangible or intangible, and wherever situated.

School shall mean WHIN Music Community Charter School, a not-for-profit education corporation and a charter school organized 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 School under Sections 3.3 or 4.7.

School Payment Obligation shall mean any obligation of the School under this Agreement to make payments under Sections 4.2, 4.3, 4.4, 4.5, 4.6, 4.14, 4.17, 4.18, 5.2(b), 5.6 or 6.1 of this Agreement.

School Payment Obligation Event of Default shall mean, Section 5.1(a) of this Agreement.

School Performance Obligation shall mean any obligation of the School under this Agreement to observe and perform any covenant, condition or agreement on its part other than as shall constitute a School Payment Obligation.

School Performance Obligation Event of Default shall mean, Section 5.1(b).

School IRS Determination Letter shall mean that certain ruling letter dated March 17, 2017, issued by the IRS to the School confirming that the School is a Tax-Exempt Organization.

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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.

(j) Where the character or amount of any asset or liability or item of income or expense is required to be determined or any consolidation, combination or other accounting computation is required to be made for purposes of this Agreement or any agreement, document or certificate executed and delivered in connection with or pursuant to this Agreement, such determination or computation shall be done in accordance with GAAP in effect on, at the sole option of an Authorized Representative of the School, (i) the date such determination or computation is made for any purpose of this Agreement or (ii) the Closing Date if an Authorized Representative of the School delivers a certificate to the Trustee describing why the then current GAAP is inconsistent with the intent of the parties on the Closing Date.

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ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE SCHOOL

Section 2.1. Representations and Warranties of the School.

The School hereby represents and warrants to the Issuer and the Trustee as follows:

(a) The School is a not-for-profit education corporation authorized to operate a public charter school within the State in accordance with the terms of its Organizational Documents duly organized, validly existing and in good standing under the laws of the State, is not in violation of any provision of its Organizational Documents, 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) The School is authorized to purchase and hold Property, to participate in the financing and refinancing of the same, is not in violation of any provisions of its Organizational Documents and has full legal right, power and authority to own or lease its Property, to carry on its business as now being conducted by it and to consummate all transactions contemplated by this Agreement and the other Project Documents.

(c) This Agreement and the other Project Documents to which the School is a party (x) have been duly authorized by all necessary action on the part of the School, (y) have been duly executed and delivered by the School, and (z) constitute the legal, valid and binding obligations of the School, enforceable against the School in accordance with their respective terms.

(d) The execution, delivery and performance of this Agreement and each other Project Document to which the School 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 School, or any indenture, agreement or other instrument to which the School 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.

(e) No consent or approval of any trustee or holder of any Indebtedness of the School or any guarantor of Indebtedness or of other provider of credit or liquidity to the School, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Project Documents to which the School is a party, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect. All material certificates, approvals, permits and authorizations of applicable governmental authorities have

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(m) Except as permitted by Section 8.9 of the Loan Agreement, no Person other than the Borrower or the School is or will be in use, occupancy or possession of any portion of the Facility.

(n) The School 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. No consent or approval of any trustee or holder of any indebtedness of the School or any guarantor of indebtedness or of other provider of credit or liquidity to the School, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Project Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

(o) Once the Project is completed and the School occupies the Facility, the operation of the Facility will be in compliance with all applicable Legal Requirements.

(p) The School will comply, with all applicable Legal Requirements relating to the Project.

(q) The School has delivered, or has caused the Borrower to deliver to the Issuer a true, correct and complete copy of the Environmental Audit.

(r) Once the Project is completed and the School occupies the Facility, the School will not use 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 knowledge of the School, 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.

(s) Subject to Section 3.5 and Article VI of the Loan Agreement, no property constituting part of the Facility shall be located at any site other than at the Facility Realty.

(t) The Fiscal Year is true and correct.

(u) None of the School, the Principals of the School, or any Person that is an Affiliate of the School:

(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;

been obtained with respect to the effectuation of the Project and operation of the Facility, other than those certificates, approvals, permits and authorizations which the School reasonably anticipates to be received without hindrance in the ordinary course of business without undue delay.

(f) There is no action, proceeding, inquiry or investigation, pending or, to the best of the knowledge of the School, after diligent inquiry, threatened, by or against the School, by or before any court, administrative agency or federal, state, municipal or other governmental authority, (i) that would adversely affect the ability of the School to perform its respective obligations under this Agreement or any other Project Document to which it is or shall be a party, (ii) in any way contesting or adversely affecting the authority for or the validity of any of the Project Documents to which the School is or shall be a party or the corporate existence of the School, (iii) that would reasonably be expected to have a material adverse effect on the financial condition, operation or business of the School, (iv) contesting the status of the School as a Tax-Exempt Organization, or (v) contesting or questioning the status of the School as a public charter school under the Charter School Act.

(g) The School is not in default with respect to any order or decree of any court binding against the School or any order, regulation or demand of any governmental authority binding against the School, which default would reasonably be expected to have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Project Documents, or the financial condition, assets, Property or operations of the School.

(h) The School is not in default in the payment of principal of, or interest on, any indebtedness or in default under any instrument under which, or subject to which, any indebtedness has been incurred, and no event has occurred and is continuing under the provisions of any agreement involving the School that, with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

(i) All tax returns (federal, state or local) required to be filed by or on behalf of the School have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the School in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the Audited Financial Statements of the School.

(j) The financial assistance provided by the Issuer to the Borrower to finance and refinance the Facility to be used by the School as contemplated by this Agreement and the Loan Agreement is necessary to induce the School to proceed with the Project.

(k) 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.

(l) The Facility will be the Approved Facility.

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(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.

(v) 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.

(w) The Principals of the School, and their respective titles, as set forth in Exhibit B — “Principals of the School”, are true, correct and complete.

(x) The representations, warranties, covenants and statements of expectation of the School set forth in the Tax Regulatory Agreement are by this reference incorporated in this Agreement as though fully set forth herein.

(y) 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.

(z) 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.

(aa) Once the Project is completed and the School takes occupancy of the Facility, the School shall enjoy the peaceable and undisturbed possession of all Facility which is material to its operation as provided for under the Sublease Agreement.

(bb) The School has a valid subleasehold interest in the Facility pursuant to the Sublease Agreement, and the Sublease Agreement is in full force and effect without default on the part of the Borrower or the School thereunder, and the Sublease Agreement expires on June 30, 2070, subject to renewals, extensions and amendments. The School has no present intention to sell, directly or indirectly, in whole or in part, its interest in the Facility.

(cc) The School 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.

(dd) The School is exempt from federal income taxes under Section 501(a) of the Code.

(ee) The School is an organization described in Section 501(c)(3) of the Code and has received the School IRS Determination Letter. The facts and circumstances which form the basis of the School IRS Determination Letter continue substantially to exist as represented to the Internal Revenue Service. The School IRS Determination Letter has not been modified, limited or revoked, and the School is in compliance with all terms, conditions and limitations, if any, contained in or forming the basis of the School IRS Determination Letter.

(ff) The School 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. The School will (i) conduct its operations in a manner that will result in its continued qualification as a Tax-Exempt Organization, and (ii) timely file or cause to be filed all materials, returns, reports and other documents which are required to be filed with the IRS.

(gg) The School is not a "private foundation", as defined in Section 509 of the Code.

(hh) The School has a provisional charter in good standing from the New York State Board of Regents. The School has been duly established as a public charter school under the Charter School Act, and its Charter to operate which it intends to operate at the Facility has been duly issued thereunder and expires on June 30, 2027, and the Charter has not been amended, revoked, surrendered or terminated, nor are there any pending or threatened proceedings to effect any such revocation, surrender or termination. The School is in compliance in all material respects with all of the terms and provisions of the Charter School Act, including, without limitation, all reporting requirements thereunder.

(ii) The School 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 acquisition, construction, equipping or furnishing of the Facility or the financing of the Project.

(jj) The School has not made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment. The School has instituted and maintained policies and procedures designed to promote and achieve compliance with all applicable conflict of interest/code of ethics related laws and regulations.

(kk) The School (i) understands the nature and structure of the transactions relating to the financing of the Project, (ii) is familiar with the provisions of all of the documents and instruments relating to such financing, (iii) understands the risks inherent in such transactions, and (iv) has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Project Documents or otherwise relied on the Issuer for any advice.

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(b) Notwithstanding Section 3.2(a), the School may Merge or participate in a Transfer following the Operations Commencement Date if the following conditions are satisfied on or prior to the Merger or Transfer, as applicable:

(i) when the School is the surviving, resulting or transferee Entity,

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

(2) the School shall continue to be a Tax-Exempt Organization, and an education corporation constituting a validly existing public charter school under the Charter School Act,

(3) the School shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the School to the effect that, if such Merger or Transfer had occurred at the beginning of the most recent Fiscal Year for which there are Audited Financial Statements, the School would not be in default under any financial or other covenants and agreements on its part set forth in the Covenant Agreement, the School shall continue to remain the subtenant under the Sublease Agreement, and the Sublease Agreement shall remain in full force and effect,

(4) the School shall deliver to the Issuer and the Trustee an Opinion of Counsel to the effect that all approvals required by the New York State Board of Regents or otherwise to such Merger or Transfer have been obtained,

(5) the School 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 Tax-Exempt Bonds to become includable in gross income for federal income tax purposes, and

(6) the School 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 School is not the surviving, resulting or transferee Entity (the "Successor School"),

(1) the predecessor School (the "Predecessor School") shall not have been in default under this Agreement or under any other Project Document,

(2) the Successor School 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,

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ARTICLE III

COVENANTS AND AGREEMENTS OF THE SCHOOL

Section 3.1. Incorporated Loan Agreement Provisions as an Obligation of the School Under this Agreement. During the term of this Agreement, Sections 3.3 (Maintenance), 3.4 (Alterations and Improvements), 3.5 (Removal of Property of the Facility), 3.6 (Implementation of Additional Improvements and Removals), 6.1 (Damage, Destruction and Condemnation), 6.2 (Loss Proceeds), 6.3 (Election to Rebuild or Terminate), 6.4 (Effect of Election to Build), 8.1 (Insurance), 8.6 (Environmental Matters), 8.7 (Employment Matters), 8.8 (Non-Discrimination), 8.9(b) through (e) (Lease of Facility), 8.10 (Retention of Title to Facility; Grant of Easements; Release of Portions of Facility), 8.11 (Discharge of Liens), 8.13 (No Further Encumbrances Permitted), 8.17 (Taxes, Assessments and Charges), 8.18 (Compliance with Legal Requirements), 8.19 (Operation as Approved Facility), 8.25 (Compliance with the Indenture), 8.27 (Continuing Disclosure), 8.30 (Living Wage), and 11.6 (Prohibition on the Purchase of Bonds) of the Loan Agreement shall be an Incorporated Loan Agreement Provision and an obligation of the School under this Agreement. Further, all provisions of the Loan Agreement which provide either (y) for the Borrower to cause the School to take, or not to take, a particular action, or (z) that the School is stated to directly take, or not take, such action, shall further constitute a direct obligation of the School under this Agreement.

Section 3.2. Restrictions on Dissolution and Merger of the School.

(a) The School covenants and agrees that at all times during the term of this Agreement, it will

(i) maintain its existence as a not-for-profit corporation constituting a Tax-Exempt Organization, and an education corporation constituting a validly existing public 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 effect a Transfer after the Closing Date, except as provided in Section 3.2(b),

(v) continue to remain the subtenant under the Sublease Agreement, and keep the Sublease Agreement in full force and effect,

(vi) not effect a Merger or Merge, except as provided in Section 3.3(b), and

(vii) not change or permit the change of any Principal of the School, or a change in the relative Control of the School of any of the existing Principals, except in each case as provided in Section 3.2(c).

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(3) the Successor School shall have assumed in writing all of the obligations of the Predecessor School contained in this Agreement and in all other Project Documents to which the Predecessor School shall have been a party,

(4) the Successor School shall have delivered to the Issuer and the Trustee an Opinion of Counsel to the effect that all approvals required by the New York State Board of Regents or otherwise to such Merger or Transfer have been obtained,

(5) the Successor School shall continue to remain the subtenant under the Sublease Agreement, and the Sublease Agreement shall remain in full force and effect,

(6) the Successor School shall have delivered written evidence from each Rating Agency by which any Series of Outstanding Bonds are then rated, if any, to the effect that the Merger or Transfer will not result in a withdrawal, a suspension or a reduction of the long and short-term ratings, if applicable, then assigned to any Series of Outstanding Bonds by such Rating Agency;

(7) the Successor School shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion,

(8) each Principal of the Successor School shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion,

(9) the Successor School 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 School shall be a party constitute the legal, valid and binding obligations of the Successor School and each is enforceable in accordance with their respective terms to the same extent as it was enforceable against the Predecessor School, and (z) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents,

(10) the Successor School shall have delivered to the Issuer and the Trustee a certificate of an Authorized Representative of the School to the effect that, if such Merger or Transfer had occurred at the beginning of the most recent Fiscal Year for which there are Audited Financial Statements, the School would not be in default under any financial or other covenants and agreements on its part set forth in the Covenant Agreement or the Sublease Agreement;

(11) the Successor School 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 School has a net worth (as determined in accordance with GAAP) after the Merger or

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Transfer at least equal to that of the Predecessor School immediately prior to such Merger or Transfer, and

(12) the Successor School 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 Tax-Exempt Bonds to become includable in gross income for federal income tax purposes.

(c) If there is a change in Principals of the School, or a change in the Control of the School, the School shall deliver to the Issuer prompt written notice thereof (including all details that would result in a change to **Exhibit B — “Principals of the School”**) to the Issuer together with a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion.

Section 3.3. Special Covenants of the School.

(a) The School covenants that, for so long as any Bonds shall be Outstanding, it will be chartered by the New York State Board of Regents (or such other authorizer permitted to authorize charter schools in the State) as a public charter school. The School shall provide the Issuer and the Trustee immediate notice if the Charter of the School necessary for the School to operate at the Facility for the Approved Project Operations is not renewed, or is otherwise terminated, revoked, amended, cancelled or expires.

(b) The School covenants that it shall not discriminate in admissions, hiring, the granting of scholarships or loans, or the administration of educational policies generally, except as permissible under the Charter Schools Act (for example, in connection with student enrollment preferences).

(c) The School covenants to comply in all material respects with the provisions of the Charter School Act so long as any Bonds remain Outstanding. The School 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 the operation at the Facility as a public charter school for the Approved Project Operations in accordance with the Charter School Act.

(d) The School shall deliver prompt written notice to the Issuer and the Trustee of any inquiry, investigation, and claim or proceeding, whether pending or threatened, which may affect its authority to operate at the Facility as a public charter school for the Approved Project Operations.

Section 3.4. Sublease Agreement. (a) The School represents and warrants that it has delivered to the Issuer and the Trustee on the Closing Date a true, correct and complete copy of the Sublease Agreement.

(b) The School covenants and agrees that:

(i) for so long as Bonds shall remain Outstanding and throughout the term of this Agreement, the Sublease Agreement shall remain in full force and effect, and

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days prior to the execution thereof, (y) an Opinion of Counsel to each of the Borrower and the School to the effect that, upon the execution and delivery thereof by the Borrower and the School, the Proposed Sublease Amendment shall constitute the legal, valid and binding enforceable obligations of the Borrower and the School and (z) an opinion of National Recognized Bond Counsel to the effect that the Proposed Sublease Amendment will not cause the interest on the Tax-Exempt Bonds to become includable in gross income of the Holders thereof for federal income tax purposes. Notwithstanding the foregoing, nothing herein shall restrict or prevent the School and Borrower from amending the Sublease Agreement for the purposes of increasing the Base Rent (as defined in the Sublease Agreement) due thereunder in an amount equal to the cost of such Facility related operational and administrative expenses Borrower assumes; and

(viii) the School shall not pledge, assign, encumber, sell or otherwise transfer its interest under the Sublease Agreement; and all of the “Base Rent” under the Sublease Agreement shall be payable by the School directly to the Borrower (or to the Trustee upon the exercise of its rights under the Assignment of Sublease Agreement).

(c) The School shall not claim any conflict or inconsistency with the Sublease Agreement as a defense to any obligation under this Agreement or any other Project Document to which it shall be a party.

the School shall not take any action, nor fail to take any action, which would cause the Sublease Agreement to terminate or expire;

(ii) the School will make, comply and observe all payments, obligations, covenants and agreements on its respective part under the Sublease Agreement;

(iii) the School will promptly pay or cause to be paid all rents, additional rents and other charges (as and when the same become due for the payment of such sums), and diligently perform and observe all terms, covenants and conditions, in each case, required to be paid and performed by the School as subtenant under the Sublease Agreement, within the periods provided in the Sublease Agreement, and will do all things necessary to preserve and keep unimpaired the rights of the School under the Sublease Agreement;

(iv) the School will not waive any of its rights under the Sublease Agreement, nor refrain from exercising any right or remedy accorded to it under the Sublease Agreement on account of any default by the Borrower as sublandlord thereunder, or release the Borrower as sublandlord thereunder from any liability or condone or excuse any improper actions of the Borrower or failures to act as sublandlord thereunder, without first obtaining the prior written consent of the Issuer and the Trustee;

(v) the School shall not surrender the sub-leasehold estate created by the Sublease Agreement, whether in whole or in part, nor terminate or cancel the Sublease Agreement, and any such surrender of the sub-leasehold estate created by the Sublease Agreement or termination or cancellation of the Sublease Agreement, without the prior written consent of the Trustee, shall be void and of no force and effect;

(vi) the School shall promptly deliver written notice to the Issuer and the Trustee of the occurrence or continued existence of a default by the Borrower or the School thereunder, together with copies of any default notice that it shall receive or deliver thereunder;

(vii) the School shall not enter into any amendment, modification or supplement to the Sublease Agreement or fail to comply with the requirements of Section 3.4(b)(i) through (vi) above (collectively, a “**Proposed Sublease Amendment**”) unless, the School shall deliver to the Issuer and the Trustee (v) if the amendment, modification or supplement would affect the amount or timing of the payment of rentals by the School under the Sublease Agreement, evidence from each Rating Agency by which any Series of Outstanding Bonds are then rated, if any, to the effect that the Proposed Sublease Amendment will not result in a withdrawal, a suspension or a reduction of the long and short-term ratings, if applicable, then assigned to any Series of Outstanding Bonds by such Rating Agency, (w) a certificate of an Authorized Representative of the School to the effect that the Proposed Sublease Amendment will not have an adverse effect, or otherwise impair, the security for the Bonds, nor adversely affect the operation at the Facility by the School as a public charter school for the Approved Project Operations, (x) a substantially final draft of the Proposed Sublease Amendment at least fourteen (14)

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ARTICLE IV

COVENANTS OF THE SCHOOL

Section 4.1. No Warranty of Condition or Suitability. NEITHER THE TRUSTEE NOR THE ISSUER HAS MADE, AND NEITHER THE TRUSTEE NOR THE ISSUER IS MAKING, ANY 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 BORROWER OR THE SCHOOL OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE INITIAL BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE SCHOOL ACKNOWLEDGES THAT THE ISSUER IS NOT THE MANUFACTURER OF THE FACILITY PERSONALTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE SCHOOL IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE BORROWER AND THE SCHOOL. NEITHER THE TRUSTEE NOR THE ISSUER SHALL BE LIABLE IN ANY MANNER WHATSOEVER TO THE SCHOOL, 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.

Section 4.2. Payments Payable Absolutely Net. Any payment obligation under this Agreement of the School 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 shall yield, net, to the Issuer and to the Trustee, the 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 School, and for which the Indemnified Parties shall be indemnified by the School, and the School hold the Indemnified Parties harmless from, any such costs, expenses and charges.

Section 4.3. Nature of Payment Obligation Unconditional. Any payment obligation under this Agreement of the School shall be absolute, unconditional and a general obligation of the School, 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 the Borrower or the School might otherwise have against the Issuer, the Trustee or the Holder of any Bond, and the obligations of the School shall arise whether or not the Project has been completed as provided in the Loan Agreement. The School will not suspend or discontinue any such payment or suspend the performance or observance of any covenant or agreement required on the part of the School hereunder, for any cause whatsoever, and the School waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or

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surrender this Agreement or any obligation of the School under this Agreement except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the payments hereunder.

Section 4.4. Recapture of Benefits. It is understood and agreed by the parties to this Agreement that the Issuer is entering into the Loan Agreement in order to provide financial assistance to the Borrower for the Project and to accomplish its corporate public purposes. In consideration thereof, the School agrees that Section 5.1 of the Loan Agreement shall be an Incorporated Loan Agreement Provision and an obligation of the School hereunder and shall survive the termination of this Agreement.

Section 4.5. Indemnity.

(a) The School 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 School, 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 attorney and consultant fees, investigation and laboratory fees, court costs, and 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 or refinancing of the costs of the Facility or the Project and the marketing, offering, issuance, sale, resale, remarketing, redemption or defeasance of the Bonds, or any portion thereof, for such purpose,

(ii) any untrue statement or misleading statement or alleged untrue or alleged misleading statement of a material fact contained in any offering or disclosure document or disclosure or continuing disclosure document for any of the Bonds or any of the documents relating to any of the Bonds, or any omission or alleged omission from any offering or disclosure document or disclosure or continuing disclosure document for any of the Bonds of any material fact necessary to be stated therein in order to make the statements made therein, in light of the circumstances under which they were made, not misleading,

(iii) any declaration of taxability of interest on any Tax-Exempt Bonds, or allegations that interest on any Tax-Exempt Bonds is taxable or any regulatory audit or inquiry regarding whether interest on any Tax-Exempt Bonds is taxable,

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(c) An Indemnified Party shall promptly notify the School in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the School pursuant to this Section 4.5; such notice shall be given in sufficient time to allow the School 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 School under this Section 4.5.

(d) Anything to the contrary in this Agreement notwithstanding, the covenants of the School contained in this Section 4.5 shall be in addition to any and all other obligations and liabilities that the School 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 4.6. Compensation and Expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents; Administrative and Project Fees.

(a) Except in connection with the fees and expenses due and payable at closing and paid in accordance with the closing memorandum, the School agrees to pay the fees, costs and expenses of the Issuer together with any 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) of the Loan Agreement (including fees and disbursements of lawyers and other consultants).

(b) The School further agrees to pay (if not paid by the Borrower) 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 School 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 Borrower or the School.

(c) The School agrees, to the extent not paid out of the proceeds of the Bonds as financing expenses, to pay (if not paid by the Borrower) 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 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,

(iv) the planning, design, acquisition, site preparation, Project Work, construction, renovation, equipping, furnishing, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility or any portion thereof, or any defects (whether latent or patent) in the Facility or any portion thereof,

(v) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,

(vi) the execution and delivery by an Indemnified Party, the Borrower, the School or any other Person of, or performance by an Indemnified Party, the Borrower, the School 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,

(vii) any act or omission of the Borrower, the School or any Affiliate, or any of the students, faculty, administrators, visitors, employees, servants, tenants or licensees in connection with the Project or the Facility or any portion thereof, or the operation thereof, or the condition (environmental or otherwise), occupancy, use, possession, conduct or management of work done in or about, or from the planning, design or effectuation of the Project Work or any part thereof,

(viii) any damage or injury to the person or property of any Person in or on the premises of the Facility,

(ix) 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

(x) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the Facility or any portion thereof; 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 School releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable to the School or any of 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 4.5(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 Borrower or the School with respect to any of such matters above referred to.

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(iii) the reasonable fees, charges, and expenses of the Trustee for extraordinary services rendered by it under the Indenture, including reasonable counsel fees, and

(iv) the reasonable fees, costs and expenses of the Bond Registrar.

Section 4.7. Assignment of this Agreement.

(a) The School shall not at any time, assign or transfer this Agreement 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); 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 School (the **"Assignor"**) 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 **"Assignee"**) shall not cause the Facility to cease being the Approved Facility;

(ii) the Assignee shall be liable for the full payment and performance of all of the terms, conditions, covenants, payments and obligations of the Assignor under this Agreement and under any other Project Document to which the Assignor shall be a party;

(iii) the Assignee 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 Assignor 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 Assignee shall be a not-for-profit corporation constituting a Tax-Exempt Organization, or a limited liability company constituting a disregarded Entity to a Tax-Exempt Organization for federal income tax purposes;

(v) such assignment or transfer shall not violate 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 constitute the legally valid, binding and enforceable obligation of the Assignee and shall not legally impair in any respect the payments, obligations, covenants and agreements under any Project Document to which the Assignee shall be a party, nor impair or limit in any respect the obligations of the Borrower or of the School under any other Project Document, and (y) this Agreement and each of the other Project Documents to which the Assignee is a party constitute the legally valid, binding and enforceable obligation of the Assignee;

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(vii) the Assignee shall have delivered to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer;

(viii) the Assignee shall have delivered written evidence from each Rating Agency by which any Series of Outstanding Bonds are then rated, if any, to the effect that the assignment of this Agreement and of any other Project Document to the Assignee will not result in a withdrawal, a suspension or a reduction of the long and short-term ratings, if applicable, then assigned to any Series of Outstanding Bonds by such Rating Agency;

(ix) each such assignment shall contain such other provisions as the Issuer or the Trustee may reasonably require; and

(x) 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 Tax-Exempt Bonds then Outstanding from gross income for federal income tax purposes.

The Assignor 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.

Section 4.8. Documents Automatically Deliverable to the Issuer.

(a) The School shall promptly 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 School 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 School shall state this fact on the notice.

(b) The School shall promptly provide written notice to the Issuer if any Conduct Representation made by the School 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 School shall complete and execute such survey and questionnaire and return the same to the Issuer.

(d) The School shall deliver all insurance-related documents to the Issuer required by Sections 8.1(f) and 8.1(g) of the Loan Agreement.

(e) If the School shall request the consent of the Issuer under Section 8.9 of the Loan Agreement to any sublease in whole or in part of the Facility, or to any assignment or transfer of this Agreement, the School shall submit such request to the Issuer in the form prescribed by the Issuer.

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(15) days prior to the date due, and (y) the School 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 4.10, the School 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 School 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 School 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 Authorized Representative of the School. Upon termination of this Agreement, the School 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 an Authorized Representative of the School. Nothing herein shall be construed as requiring the School to maintain a minimum number of employees on its respective payroll.

(c) If there shall have been a tenant or other occupant, other than the Borrower or the School, with respect to all or part of the Facility, at any time during the immediately preceding calendar year, the School shall file with the Issuer by the next following February 1, a certificate of an Authorized Representative of the School 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 or other occupant, other than the Borrower or the School, 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 School 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 Borrower or the School 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 School 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 School 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 School 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.

Section 4.11. Preservation of Exempt Status. The School agrees that it shall:

Section 4.9. Requested Documents. Upon request of the Issuer, the School 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 School and of its Affiliates and 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, which Annual Audited Financial Statement shall separately set forth the financial condition of the Borrower and the School, (including all other items necessary to determine compliance by the Borrower and the School with its financial covenants set forth in the Project Documents);

(b) a certificate of an Authorized Representative of the School that the insurance the Insureds maintain complies with the provisions of Section 8.1 of the Loan Agreement, 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) of the Loan Agreement;

(c) a certificate of an Authorized Representative of the School as to whether or not, as of the close of the immediately preceding Fiscal Year, and at all times during such Fiscal Year, the School was in compliance with all the provisions that relate to the School 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 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 School with respect thereto;

(d) upon twenty (20) days prior request by the Issuer, a certificate of an Authorized Representative of the School 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;

(e) employment information requested by the Issuer pursuant to Section 8.7(b) of the Loan Agreement; and

(f) information regarding non-discrimination requested by the Issuer pursuant to Section 8.8 of the Loan Agreement.

Section 4.10. Periodic Reporting Information for the Issuer.

(a) The School shall not assert as a defense to any failure of the School to deliver to the Issuer any reports specified in this Section 4.10 that the School shall not have timely received any of the forms from or on behalf of the Issuer unless, (x) the School shall have requested in writing such form from the Issuer not more than thirty (30) days nor less than fifteen

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(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 the exemption of the School constituting a Tax-Exempt Organization under Section 501 of the Code;

(b) not use more than three percent (3%) of the proceeds of the Tax-Exempt 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 Tax-Exempt 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 (within the meaning of Section 513 of the Code) for the School constituting a Tax-Exempt Organization 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 Tax-Exempt Bonds to be "arbitrage bonds" under the Code or cause the interest paid by the Issuer on the Tax-Exempt Bonds to be subject to federal income tax in the hands of the Holders thereof; and

(e) maintain the tax-exempt status of the Tax-Exempt Bonds.

Section 4.12. Securities Law Status. The School 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 Borrower or of the School 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) the School shall not perform any act nor enter into any agreement which shall change such status as set forth in this Section.

Section 4.13. Further Assurances.

The School shall 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 School, 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 applicable to the School.

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Section 4.14. Tax Regulatory Agreement.

(a) The School 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 5.09 of the Indenture that the amount on deposit in the Rebate Fund is less than the Rebate Amount, the School shall deliver (to the extent the Borrower fails to deliver) the amount necessary to make up such deficiency to the Trustee for deposit in the Rebate Fund.

(c) The School agrees to pay (to the extent the Borrower fails to pay) all costs of compliance with the Tax Regulatory Agreement and costs of the Issuer relating to any examination or audit of the Tax-Exempt Bonds by the Internal Revenue Service (including fees and disbursements of lawyers and other consultants).

Section 4.15. General Covenants as to Legal Existence; Maintenance of Properties, Etc. The School hereby covenants (provided, however, that in the event any provision of this Section 4.15 shall conflict in any respect with any provision of this Agreement or of any other Project Document, such provision of this Agreement or of such other Project Document shall control):

(a) Except as otherwise expressly provided herein, to preserve its corporate existence and all its rights and licenses to the extent necessary or desirable in the operation of its business and affairs and be qualified to do business in each jurisdiction where its ownership of Property or the conduct of its business requires such qualifications; provided, however, that nothing herein contained shall be construed to obligate it to retain or preserve any of its rights or licenses, no longer used or, in the judgment of its Governing Body, useful in the conduct of its business.

(b) The School will maintain, or cause to be maintained, its Property in a reasonably safe and sound operating condition, making from time to time all reasonably needed material repairs thereto, and shall maintain reasonable amounts of insurance coverage with respect to its Property, and shall pay all costs of such maintenance, repair and insurance. At all times to cause its Property to be maintained, preserved and kept in good repair, working order and condition, and all needed and proper repairs, renewals and replacements thereof to be made; provided, however, that, nothing contained in this subsection shall be construed to (i) prevent it from ceasing to operate any portion of its Property, if in its judgment (evidenced in the case of such a cessation by a certificate of an Authorized Representative of the School) it is advisable not to operate the same, or if it intends to sell or otherwise dispose of the same and within a reasonable time endeavors to effect such sale or other disposition, or (ii) obligate it to retain, preserve, repair, renew or replace any Property, leases, rights, privileges or licenses no longer used or, in the judgment of its Governing Body, useful in the conduct of its business.

(c) To do all things reasonably necessary to conduct its affairs and carry on its business and operations in such manner as to comply with all applicable and material laws of the United States, the states where the School conducts business or is otherwise subject, and duly

observe and conform to all valid material orders, regulations or requirements of any governmental authority relative to the conduct of its business and the ownership of its Properties; provided, nevertheless, that, nothing herein contained shall require it to comply with, observe and conform to any such law, order, regulation or requirement of any governmental authority so long as the validity thereof or the applicability thereof to it or to its Properties shall be contested in good faith.

(d) To pay promptly when due all lawful taxes, governmental charges and assessments at any time levied or assessed upon or against it or its Property; provided, however, that it shall have the right to contest in good faith by appropriate proceedings any such taxes, charges or assessments or the collection of any such sums, and pending such contest may delay or defer payment thereof; provided, further, that, if by nonpayment of any such sums, the security for the Bonds will be impaired or any material Property of the School will be subject to imminent loss or forfeiture, then such sums shall be paid immediately.

(e) To pay promptly or otherwise satisfy and discharge all of its indebtedness and all demands and claims against it as and when the same become due and payable, other than any whose validity, amount or collectability is being contested in good faith by appropriate proceedings; provided that, if by non-payment of any such sums, the security for the Bonds will be impaired or any material Property of the School will be subject to imminent loss or forfeiture, then such sums shall be paid immediately.

(f) To procure and maintain all licenses, permits, approvals, certifications and accreditations (other than those of a type for which accreditation is not available by an applicable recognized accrediting body), which are material to the maintenance of its facilities, conduct of its operations and performance of its obligations hereunder.

(g) So long as this Agreement shall remain in force and effect and so long as all amounts due, or to become due, on any Bond have not been fully paid to the Holder thereof, not to take any action or suffer any action to be taken by others, including any action which would result in the loss of its status as a Tax-Exempt Organization, or fail to take any action which failure, in the opinion of Nationally Recognized Bond Counsel, would result in the interest on any Tax-Exempt Bonds becoming included in the gross income of the Holder thereof for federal income tax purposes.

(h) At all times to comply with all terms, covenants and provisions of any Liens at such time existing upon its Property or any part thereof or securing any of its Indebtedness.

Section 4.16. Certain Continuing Representations. If at any time during the term of this Agreement, any Conduct Representation made by the School 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 School shall be deemed to be in default under this Agreement unless the Issuer shall, upon written request by the School, 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.

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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) of the Loan Agreement.

Section 4.17. Late Delivery Fees.

(a) In the event:

(i) the Borrower shall fail to pay the Annual Administrative Fee on the date required under Section 8.3 of the Loan Agreement,

(ii) the Borrower shall fail to file and/or deliver any of the documents required of the Borrower under Section 8.14 or Section 8.16 of the Loan Agreement by the date therein stated, or the School shall fail to file and/or deliver any of the documents required of the School under Section 4.8 or 4.10 of this Agreement (collectively, the “**Fixed Date Deliverables**”), or

(iii) the Borrower shall fail to deliver to the Issuer any of the documents as shall have been requested by the Issuer of the Borrower under Section 8.15 of the Loan Agreement, or the School shall fail to deliver to the Issuer any of the documents as shall have been requested by the Issuer of the School, in either case within five (5) Business Days of the date so requested (collectively, the “**Requested Document Deliverables**”),

then the Issuer may charge the School 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 Borrower or the School 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 Borrower and the School of the Notification of Failure to Deliver, then, commencing from and including the eleventh (11th) Business Day following the delivery by the Issuer to the Borrower and the School of the Notification of Failure to Deliver, the Issuer may charge the School on a daily calendar 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 Borrower or the School, 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 Borrower under Section 8.3, 8.14, 8.15 or 8.16 of the Loan Agreement, or of the School under Sections 4.6, 4.8, 4.9 or 4.10 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 Borrower or the School, shall have delivered same to the Issuer and paid to the Issuer all accrued and unpaid Per Diem Fees in connection with the default.

Section 4.18. Advances by the Issuer or the Trustee. In the event the School fails to make any payment or to perform or to observe any obligation required of it under this Agreement or any other Project Document, the Issuer or the Trustee, after first notifying the School in writing of any such failure on its respective part (except that no prior notification of the School 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 School 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 School 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 School 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 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.

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ARTICLE V

REMEDIES AND EVENTS OF DEFAULT

Section 5.1. Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the School to pay any amount that has become due and payable under any of the School Payment Obligations, and the continuance of such failure for more than ten (10) days after written notice of such failure has been given to the School (with a copy to the Borrower), specifying such failure, by any of the Issuer, the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding;

(b) Failure of the School to observe and perform any covenant, condition, or agreement on its part to be performed or observed under any of the School Performance Obligations (except as set forth in Section 5.1(a)), and (i) the continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the School (with a copy to the Borrower), specifying such failure, by any of the Issuer, 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 School (or the Borrower on behalf of the School) 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 School 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;

(d) A proceeding or case shall be commenced, without the application or consent of the School, 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 School 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 School shall be entered in an involuntary case

under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the School as used above shall not be construed to prohibit any action otherwise permitted by Section 3.2;

(e) Any representation or warranty made by the School (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 Letter of Representation and Indemnity Agreement, or (iv) in the Tax Regulatory Agreement, or (v) by or on behalf of the School or any other Person in any Required Disclosure Statement, or (vi) 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; or

(f) An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing.

Section 5.2. Remedies Following an Event of Default. (a) Whenever the School Performance Obligation Event of Default shall occur, the Issuer or the Trustee may take, but if taken, shall only be authorized to take, the remedial step of proceeding at law or in equity against the School to enforce performance or observance of the School Performance Obligation.

(b) Whenever the School Payment Obligation Event of Default shall occur, the Issuer or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the payments then due, or to enforce performance or observance of any obligations, covenants or agreements of the School Payment Obligation.

(c) No action taken pursuant to this Section 5.2 or by operation of law or otherwise shall, except as expressly provided herein, relieve the School from its obligations hereunder, all of which shall survive any such action.

Section 5.3. Remedies Cumulative. Subject to Section 5.2(a), the rights and remedies of the Issuer or the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and 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 School 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 School with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the School be continued or repeated.

Section 5.4. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by the School and thereafter waived by the Issuer or the Trustee, 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 any of the Borrower or the School or any delay

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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.

Section 5.5. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Issuer or the Trustee under the Loan Agreement or this Agreement 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 5.6. Agreement to Pay Fees and Expenses of Attorneys and Other Consultants. In the event the School 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 payments or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the School herein contained, the School agrees that it will on demand therefor pay to the Issuer or the Trustee, as the case may be, the reasonable fees and disbursements of such attorneys or other consultants and such other expenses so incurred.

ARTICLE VI

TERMINATION OF THIS AGREEMENT

Section 6.1. Termination of this Agreement.

(a) 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, the term of this Agreement shall terminate, provided, that, the Borrower and/or the School shall:

(i) pay, or cause to be paid, 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, or cause to be paid, to the Issuer

(A) the fees and expenses of the Issuer, and

(B) all other amounts due and payable under this Agreement and the other Security Documents (except that only the Borrower shall have the obligation to pay the Loan or amounts due in respect of the Bonds), and

(iii) pay and perform all accrued obligations hereunder.

Section 6.2. Survival of Obligations. Upon the termination of this Agreement (i) after payment in full thereof having been made in accordance with Article X of the Indenture, the obligations of the School under Section 3.1 (regarding Incorporated Loan Provision Section 11.6 (Prohibition on the Purchase of Bonds) only), 3.2(a)(v) (unless the School provides an opinion of National Recognized Bond Counsel to the effect that such action will not cause the interest on the Tax-Exempt Bonds to become includable in gross income of the Holders thereof for federal income tax purposes), and 3.4(b)(i) shall survive such termination; and (ii) 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, the obligations of the School under Sections 4.4, 4.5 4.14, 4.18, 5.2, 5.6, 7.3, 7.4, 7.5, 7.12 and 7.13 shall survive such termination.

ARTICLE VII

MISCELLANEOUS

Section 7.1. Force Majeure. In case by reason of *force majeure* the School 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 the School shall give notice and full particulars of such *force majeure* in writing to the Issuer and the Trustee within a reasonable time after occurrence of the event or cause relied on, the obligations of the School (other than (i) the School Payment Obligations, or (ii) the obligations of the School to comply with Section 4.4, 4.5 or 3.1 (with respect to the Incorporated Loan Agreement Provision relating to Section 8.1), so far as it is 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 the School 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 (y) the financial condition of the School or inability to obtain financing, or (z) the inability of the Borrower to fulfill an obligation under the Loan Agreement (except if such obligation is incapable of being fulfilled by the Borrower by reason of *force majeure* affecting the fulfillment by the Borrower of such Loan Agreement obligation), constitute a *force majeure* relative to an obligation of the School under this Agreement. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the School 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 School 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; and the School 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 School.

Section 7.2. Amendments. This Agreement may be amended (y) only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture, and (z) only by a written instrument executed by the parties hereto.

Section 7.3. Service of Process. The School 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 School under this Agreement shall be satisfied and met. If for

any reason the School should cease to be so subject to service of process in the State, the School 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 School at 528 West 162nd Street New York, New York, 10032, as its agent upon whom may be served all process, pleadings, notices or other papers which may be served upon the School as a result 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 School 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 School as a result 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 obligations of the School hereunder.

For such time as any of the obligations, covenants and agreements of the School under this Agreement remain unsatisfied, the agent(s) of the School designated in this Section 7.3 shall accept and acknowledge on the behalf of the School the service of process in any such suit, action or proceeding brought in any such court. The School agrees and consents that each such service of process upon such agents and written notice of such service to the School in the manner set forth in Section 7.4 shall be taken and held to be valid personal service upon the School whether or not the School 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 School 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 School or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the School.

Section 7.4. 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 School, 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:

- (1) if to the Issuer, to

Build NYC Resource Corporation
One Liberty Plaza, 14th Floor
New York, New York 10006
Attention: General Counsel

with a copy to

Build NYC Resource Corporation
One Liberty Plaza, 14th Floor
New York, New York 10006
Attention: Executive Director
- (2) if to the School, to

WHIN Music Community Charter School
528 West 162nd Street
New York, New York 10032
Attention: Executive Director

with a copy to

Cohen Schneider Law P.C.
275 Madison Avenue
New York, New York 10016
Attention: Cliff Schneider, Esq.
- (3) if to the Trustee, to

The Bank of New York Mellon
240 Greenwich Street, Floor 7E
New York, New York 10286
Attention: Corporate Trust Administration

The Issuer, the School, 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.

Section 7.5. Consent to Jurisdiction. The School 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 School, the Borrower's ownership of the Facility, the School's 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 School 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 School 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 School 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 7.6. 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 Trustee and the School relating to the Facility, other than any other Project Document or document relating to the offering or sale of the Bonds.

Section 7.7. 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 Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 7.8. 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 7.9. 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, the Trustee and the School and their respective successors and assigns.

Section 7.10. Third Party Beneficiaries. (a) The Issuer, the Trustee and the School 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 School 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 by the Issuer or by the Trustee as provided in Article VIII of the Indenture on behalf of the Bondholders.

(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 School, 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 School, the Paying Agents and the Holders of the Bonds.

Section 7.11. 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 7.12. Waiver of Trial by Jury. The School 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 obligations of the School hereunder, the Facility, the Project, the relationship between the Issuer and the Trustee and the School, the Borrower's ownership of the Facility, the School's 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 7.13. 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 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.

Section 7.14. 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

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IN WITNESS WHEREOF, the Issuer has caused its corporate name to be subscribed unto this Agreement by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, the Trustee has caused its corporate name to be subscribed by its duly authorized officer, and the School 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: _____
Name: Emily Marcus
Title: Executive Director

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

On the ____ day of June, in the year two thousand twenty-two, before me, the undersigned, personally appeared **Emily Marcus**, 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/Commissioner of Deeds

Use Agreement
Signature Page 1 of 3

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 – Signature Page Follows)

WHIN MUSIC COMMUNITY CHARTER SCHOOL,
as School

By: _____
Name: Gregory David
Title: Board Chair

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

On the ____ day of June, in the year two thousand twenty-two, before me, the undersigned, personally appeared **Gregory David**, 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

Use Agreement
Signature Page 2 of 3

**THE BANK OF NEW YORK
MELLON,**
as Trustee

By: _____
Name: Craig S. Wenzler
Title: Vice President

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the ____ day of June, in the year two thousand twenty-two, 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 behalf of which the individual acted, executed the instrument.

Notary Public

APPENDICES

Use Agreement
Signature Page 3 of 3

EXHIBIT A

EXHIBIT B

AUTHORIZED REPRESENTATIVE OF THE SCHOOL

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Gregory David	Trustee, Board Chair	_____
Ivonne Norman	Trustee, Secretary	_____
Josh Bederman	Trustee, Treasurer	_____
Charlie Ortiz	Executive Director	_____

PRINCIPALS OF THE SCHOOL

<u>Name</u>	<u>Title</u>
Gregory David	Trustee, Board Chair
Ivonne Norman	Trustee, Secretary
Josh Bederman	Trustee, Treasurer
Charlie Ortiz	Executive Director

EXHIBIT C

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 4.7] [Section 3.2] of that certain Use Agreement, dated as of June 1, 2022, between the Issuer and The Bank of New York Mellon, as Trustee, and WHIN Music Community Charter School, a New York not-for-profit education corporation, (the "Use Agreement"), THAT:

[if being delivered pursuant to Section 3.2 of the Use 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 Section 4.7 of the Use 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

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:

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EXHIBITS

Exhibit A – Authorized Representative
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EXECUTION VERSION

LEASE

THIS INDENTURE OF LEASE (the “**Lease**”) dated as of April 16, 2021 (the “**Effective Date**”) by and between 528 W 162 LLC (“**Landlord**”), having an address at 250 West 26th Street, 4th Floor, New York, New York, and Friends of WHIN Music Community Charter School, Inc. (“**Tenant**”), having its primary place of business at 401 West 164th Street, New York, New York 10032.

WITNESSETH:

ARTICLE 1

DEMISED PREMISES - TITLE - TERM OF LEASE

Section 1.01 **Demised Premises.** In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be observed and performed, Landlord does hereby lease and demise to Tenant and Tenant does hereby hire, lease and take from Landlord, for the term subject to and upon the covenants and conditions hereinafter set forth, the building and land located at 528 West 162nd Street, New York, New York 10032 (a.k.a Block 2120, Lot 18) (the “**Premises**” or “**Building**”) and as further described in **Exhibit 1**.

Section 1.02 **Title.** Landlord owns the fee title to the Premises, subject to restrictions and encumbrances of record, if any, zoning regulations affecting such Premises and any state of facts shown on an accurate survey or as a visual inspection of the Premises would disclose.

Section 1.03 **Term of Lease.** To have and to hold unto Tenant, its successors and permitted assigns, for the term of approximately forty (40) years which shall commence on the date which is the first day of the first full month which is sixty (60) days after the Loan Closing Date (as such term is defined below) (such date, the “**Commencement Date**”) and terminate on the last day of the month immediately prior to the fortieth (40th) anniversary of the Commencement Date, or on such earlier date upon which the term of this Lease shall expire, be canceled or terminated pursuant to any of the conditions or covenants of this Lease (the date the term of this Lease expires or is terminated being the “**Expiration Date**”). The aforesaid period from the Commencement Date up until the Expiration Date shall be referred to as the “**Term**”.

Section 1.04 **Delivery of Premises.** On the Commencement Date, Landlord shall deliver the Premises to Tenant in as-is condition, broom-clean, and free and clear of any tenancies or other occupancies.

Section 1.05 **Violations.** Within (10) days upon request from Tenant (which request may be via email), Landlord shall pay all fines or other monetary penalties in connection with outstanding violations on the Premises to the extent payment of the same is necessary for the Tenant to obtain the Permits (as defined below) or create the Leasehold Condominium (as defined below). Alternatively, Tenant shall be allowed to pay the same directly, and, in such case, Landlord shall reimburse Tenant for the same within ten (10) days of request by Tenant (which request may be via email).

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following calendar year, and the second Rental Year shall commence on July 1st thereafter, and so on. Subject to Section 3.04 below, and subject to any termination rights contemplated herein, commencing on the Commencement Date, Tenant shall pay to Landlord eight hundred forty thousand dollars (\$840,000) per annum as “**Basic Rent**”, which shall be payable in equal monthly payments of seventy thousand dollars (\$70,000.00), prorated for the first Rental Year if not a full twelve (12) month period.

Section 3.02 **Periodic Increases to Basic Rent.** On the first day of the Sixth (6th) Rental Year, Eleventh (11th) Rental Year, Sixteenth (16th) Rental Year, Twenty-First (21st) Rental Year, Twenty-Sixth (26th) Rental Year, Thirty-First (31st) Rental Year, and Thirty-Sixth (36th) Rental Year, the Basic Rent (with each such designated Rental Year being referred to as a “**Rent Increase Year**”) shall increase by an amount equal to the greater of (i) ten percent (10%) of the then-payable Basic Rent (as of the last day of the previous Rental Year) and (ii) the percentage increase in Per Pupil Funding from the New York City Department of Education over the prior five (5) year period (the “**Per Pupil Increase**”). “**Per Pupil Funding**” shall be defined as the general, base funding provided to a New York State charter school located in New York City on a per-student basis.¹ Each increase to Basic Rent in each Rent Increase Year will be compounded. If, in the future, Lease Aid is no longer calculated based off of Per Pupil Funding (as described in the below footnote), then the then-current method for calculating Lease Aid, or such other method as the parties shall reasonably determine, shall be used to determine the Per Pupil Increase.

Section 3.03 **One Time Increase to Basic Rent.** If the compounded percentage increases to the Basic Rent from the Commencement Date to the first day of the Twenty-First (21st) Rental Year Basic Rent have not averaged at least two and one-half percent (2.5%) per Rental Year on a cumulative basis, then the Basic Rent shall be increased by an amount equal to the differential between the total Basic Rent actually paid by Tenant for the preceding twenty (20) years (the “**20 Year Paid Rent**”) and the amount that would have been paid in Basic Rent if the Basic Rent had increased by two and one-half percent (2.5%) per Rental Year with each increase calculated on a compounded basis on each Rent Increase Year (the “**Percentage Comparison Rent**”). If the Percentage Comparison Rent exceeds the 20 Year Paid Rent then the differential (the “**Rent Differential**”) shall be paid by Tenant to Landlord as and be deemed to be a part of Basic Rent. The Rent Differential shall be paid by Tenant in equal installments over the one hundred twenty (120) month period commencing on the first month of the Twenty-First (21st) Rental Year. If the calculation of the Rent Differential is delayed beyond the first month of the Twenty-First (21st) Rental Year then all monthly installments from the first month of the Twenty-First (21st) Rental Year up until the first day of the month in which Landlord sends Tenant notice of the Rent Differential shall be paid by Tenant. Subsequent to the first payment due for the Rent

¹ Rental assistance provided by the New York City Department of Education (also known as and referred to herein as “**Lease Aid**”) is currently calculated based off of Per Pupil Funding. Specifically, Charter schools are currently eligible to receive Lease Aid in the amount of 30% of Per Pupil Funding times the number of students enrolled at the School or the actual rental cost, whichever is less. Assuming a school is fully enrolled so that the school is not eligible for any additional Lease Aid attributable to more students in the building, Lease Aid will only increase to the extent that Per Pupil Funding increases. So, if for example, this year, Per Pupil Funding is \$16,150 per student, then Lease Aid would therefore be \$4,845. If next year Per Pupil Funding increases to \$16,634.50 (a 3% increase), Rental Assistance would increase to \$4,990.35 (a corresponding 3% increase). If Per Pupil Funding does not increase, then Lease Aid will not increase.

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Section 1.06 **Memorandum of Lease.** Simultaneously with the execution of this Lease, the parties will execute and cause to be recorded in the public records a Memorandum of Lease in the form attached hereto as **Exhibit 3**. The costs of recording the same shall be by Tenant.

ARTICLE 2

USE OF PREMISES

Section 2.01 **Permitted Subtenant.** Landlord acknowledges and agrees that contemporaneously upon entering into this Lease, Tenant will sublet the entirety of the Premises to the WHIN Music Community Charter School (the “**School**”). Pursuant to the sublease between Tenant and the School, the School shall be bound by the terms and conditions of this Lease. Aside from Landlord’s consent to the School’s use and occupancy of the Premises as set forth herein, no further consent from Landlord for the School to use or occupy the Premises shall be required.

Section 2.02 **Use.** Tenant shall use the Premises solely as and for a school for children and for related operational and administrative purposes (including use of offices in connection with the uses set forth in this Section) and activities, including, but not limited to, cafeteria service, transportation of students, before- and after-school activities, sports activities related to the school, teacher meetings and conferences, parent association activities and fund-raising events, community education and other not-for-profit community events, community outreach programs, community events, theater performances, and music-related activities including concerts and musical instruction. For the avoidance of doubt, Tenant shall also be permitted to use the Premises as a before- and after-school care for children to the extent permitted by applicable zoning and municipal laws. Tenant shall at all times permit the Premises to be used only for purposes that are legal and are in conformance with the certificate of occupancy for the Premises (“**Certificate of Occupancy**”), which Certificate of Occupancy shall be obtained by Tenant at its sole cost and expense. Landlord will, at Tenant’s cost and expense, reasonably cooperate with Tenant’s efforts to obtain the Certificate of Occupancy. Tenant shall not use or occupy or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in a manner which will in any way violate any certificate of occupancy (if there is an existing certificate of occupancy) affecting the Premises, the zoning laws or make void or voidable any insurance then in force with respect thereto, or which will make it impossible to obtain fire or other insurance, or which will cause, or be likely to cause, structural damage to the Building or any part thereof, or which will constitute a public or private nuisance. Tenant shall not use or occupy or permit the Premises to be used or occupied in any manner which will violate any present or future laws or regulations of any governmental entity. The use by Tenant of the Premises for any other legally permitted uses shall require the written consent of Landlord, which consent will not be unreasonably withheld or delayed.

ARTICLE 3

RENT AND OTHER CHARGES

Section 3.01 **Basic Rent.** Each twelve (12) month period from July 1st through the following June 30th shall be referred to below as a “**Rental Year**”. Notwithstanding the foregoing, the first (1st) Rental Year shall run from the Commencement Date through June 30th of the

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Differential, each monthly installment of the Rent Differential shall be paid on the first day of the month and paid with the Basic Rent payment.

Section 3.04 **Reduction of Basic Rent During the First 24 Months of the Term.** So long as there is not an Event of Default (as defined below), the monthly payments of the Basic Rent shall be partially abated as follows for the twenty-four (24) month period commencing on the Commencement Date (the “**Rent Reduction Period**”). During the Rent Reduction Period, Tenant shall pay to Landlord thirty five thousand dollars (\$35,000.00) (the “**Reduced Rent**”) on the first day of each month. If during the Rent Reduction Period, an Event of Default has occurred and is continuing beyond any applicable notice and cure period, the Rent Reduction Period shall be deemed to have terminated on the last day of the applicable cure period. In such event, the Rent Reduction Period shall end and Tenant shall be liable for the difference between the Basic Rent and Reduced Rent. This shall be in addition to any remedies to which Landlord is entitled as a result of Tenant’s breach of the terms of this Lease.

Section 3.05 **Additional Rent.** All payments Tenant is required to make pursuant to this Lease, other than the Basic Rent (including but not limited to refurbishing of security or payment of additional security), shall constitute additional rent (sometimes referred to herein as “**Additional Rent**”, and together with the Basic Rent, the “**Rent**”) and, if Tenant defaults in any such payment so as to create an Event of Default (as hereinafter defined), Landlord shall have (in addition to any rights and remedies granted hereby) all rights and remedies provided by law for nonpayment of rent.

Section 3.06 **Payment of Rent.** (a) Monthly payments of Basic Rent shall be due and payable, in advance, on or before the first (1st) day of each month. All payments of Rent shall be made by electronic fund transfer via ACH or check. Except as set forth in this Lease, each payment of Rent shall be made without any offset. Payments for Rent due under this Lease shall be paid to Landlord at its address hereinabove first specified, or, at such other address as Landlord may otherwise direct in writing. Failure to pay Rent by the seventh (7th) day of the month and following written notice of such failure shall be deemed to be a breach of a substantial obligation of this Lease. In addition to any other remedies Landlord may have under this Lease, if Basic Rent is not paid on or before the seventh (7th) day of the month, or any Additional Rent is not paid within seven (7) days after it is due, Tenant shall pay a late fee equal to five percent (5%) of the payment which is not timely made. Interest shall accrue on any such unpaid amount at the rate of sixteen percent (16%) per annum, or the highest rate permitted by law, whichever rate is lower.

(b) If Tenant shall submit any check to Landlord for payment of any obligation hereunder and said check is returned unpaid (a “bounced” check), Tenant shall pay one hundred fifty dollars (\$150.00) to Landlord for the bookkeeping charge incurred. The one hundred fifty dollar (\$150.00) bookkeeping charge is in addition to any other remedies Landlord may have pursuant to the terms of this Lease or at law.

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ARTICLE 4

TAXES AND TRIPLE NET LEASE

Section 4.01 Real Estate Taxes and Other Taxes. Commencing on the Commencement Date, Tenant shall pay one hundred percent (100%) of the real estate taxes and assessments and Impositions against the Premises and all other taxes imposed on the Premises (including, but not limited to, to any taxes imposed on the payment of rent) during the Term, or during Tenant's occupancy, whichever period shall be longer. Payment for real estate taxes and other applicable taxes shall be due thirty (30) days after Landlord sends Tenant a bill for the real estate taxes or other applicable taxes. If any tax year begins prior to the Commencement Date or terminates after the Expiration Date, Tenant shall be responsible only for taxes on a prorated basis for that portion of the tax year occurring within the Term. In any period in which Landlord does not elect to challenge the real estate taxes assessed, then Tenant may take the necessary action to challenge such real estate taxes assessed and Landlord will sign any documents in connection with such challenge as may be reasonably requested by Tenant.

Section 4.02 Triple Net Lease. This is a "triple net lease" and Tenant, during the Term (and during any period in which Tenant holds over after expiration of the Term), Tenant shall be responsible for any and all costs and expenses in maintaining, repairing and if necessary replacing the Premises and maintaining, repairing and if necessary replacing portions of the Premises (including the sidewalks contiguous to the Premises). The foregoing obligation shall include making all structural and non-structural repairs and replacements to the Premises. It is agreed that Landlord shall have no obligation to maintain or repair any portion of the Premises or the sidewalks contiguous to the Premises. **In no event shall Landlord have any obligation to pay any costs in connection with the operation, maintenance or repair of the Premises. All such costs to operate, insure, maintain and repair the Premises shall be paid by Tenant.**

ARTICLE 5

UTILITIES AND OTHER SERVICES

Section 5.01 Utility Expenses. During the Term (and during any period in which Tenant holds over after expiration of the Term), Tenant agrees to pay, or cause to be paid, all charges for all utilities and other services Tenant wants at the Premises. Tenant shall also, at its sole cost and expense, procure any and all necessary permits, licenses and other authorizations required for the lawful and proper installation and maintenance upon the Premises of Tenant's own wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such service upon the Premises. Landlord agrees to reasonably cooperate in Tenant's efforts to obtain the foregoing. Landlord shall not be liable for any failure of the utilities or other services during the Term.

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have failed or refused to pay the full amount of the L/C, such failure or refusal shall constitute a substantive default by Tenant under this Lease, without in any way reducing or diminishing the liability of the Issuing Bank for failure or refusal to make such payment.

(d) If the Issuing Bank shall fail or refuse, for any reason at any time, but through no fault of Landlord, (i) to pay the amount of any sight draft presented to it or (ii) to pay the full amount of the L/C, if the L/C has not been extended or replaced as hereinabove referred to, then in either of such events, Tenant shall forthwith deposit with Landlord a sum equal to the full amount of the L/C which shall be used, held and/or applied by Landlord as security in accordance with the other provision(s) of this Lease relating to security; it being intended that Landlord, at all times, shall have as security for this Lease, the full amount of security hereinabove referred to, which shall consist of money or a valid and subsisting L/C reasonably acceptable to Landlord and/or a combination of both. Notwithstanding the foregoing, Tenant must provide a letter of credit for the amount drawn down within three (3) days after Landlord's demand therefor.

(e) Landlord may use, apply or retain the whole or any part of the security to the extent required to cure any default (which continues beyond any applicable notice and/or grace period) of Tenant's and reimburse Landlord for any damages or expenses (including, without limitation, reasonable counsel fees) incurred by reason of such default, including, but not limited to, any damages, deficiency or expenses in reletting of the Premises, whether accrued before or after summary proceedings or other re-entry by Landlord. If an Event of Default is not continuing hereunder (beyond any applicable notice and/or grace period), the security shall be returned to it within sixty (60) days after the end of the Term and delivery of possession of the Premises to Landlord. If Landlord shall sell or assign the Premises, then upon the conveyance, Landlord agrees to transfer this security to such transferee and Landlord shall upon receipt of written acknowledgment from the transferee (a copy of which shall be sent to Tenant) thereupon be released from all liability with respect to such security. Tenant shall not assign or encumber the security and neither Landlord nor its successors or assigns shall be bound by any such assignment or encumbrance. To the extent Landlord is holding any portion of the security deposit in the form of cash, Landlord shall have the option to deposit such security deposit in an interest-bearing savings account and any interest shall accrue and be added to the security less one percent (1%) per annum of the security which Landlord shall be entitled to retain as its administrative fee.

Section 6.02 Potential Reduction of Amount of the Security. (a) If on the first day of the twenty-fifth (25th) month (the "25th Month") after the School has been in operation at the Premises and provided Tenant is not in default of the terms of this Lease beyond any applicable notice and/or grace period (and all Rent has been paid as of the 25th Month) then Tenant's Security shall be reduced to an amount equal to one hundred and fifty thousand dollars (\$150,000). In the event that Tenant elects to deliver to Landlord a replacement letter of credit, Landlord agrees to return the original L/C (if applicable) to Tenant at such time as Tenant shall provide Landlord with such replacement letter of credit as set forth in this Section 6.02.

(b) If on the first day of the thirty-seventh (37th) month (the "37th Month") after the School has been in operation at the Premises and provided Tenant is not in default of the terms of this Lease beyond any applicable notice and/or grace period (and all Rent has been paid as of the 37th Month) then Tenant's Security shall be further reduced to an amount equal to one seventy-five thousand dollars (\$75,000). In the event that Tenant elects to deliver to Landlord a

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ARTICLE 6

SECURITY

Section 6.01 Security Deposit. (a) Simultaneous with delivery of the Commencement Date Letter (as defined below), Tenant shall deliver or cause the School to deliver cash or a letter of credit ("L/C") to Landlord in the amount of two hundred twenty-five thousand dollars (\$225,000.00) as security under this Lease. Any L/C tendered by Tenant as security under this Lease shall remain in effect at all times during the Term and for sixty (60) days after the expiration of this Lease and shall be a clean, irrevocable, transferable and unconditional Letter of Credit issued by and drawn upon a bank with offices in New York City or that permits presentation of the L/C by facsimile or electronic mail (the "Issuing Bank") reasonably acceptable to Landlord, in a form and substance reasonably acceptable to Landlord. The L/C shall provide, among other things, that:

(i) the full amount and/or any part of the L/C may be drawn at any time or from time to time, upon demand by Landlord, by presentation to the Issuing Bank of a sight draft for the amount to be drawn or that permits presentation of the L/C by facsimile or electronic mail;

(ii) the L/C shall be for a term of at least one (1) year and shall be automatically renewed from year to year unless the Issuing Bank gives Landlord written notice that the L/C will not be renewed, at least sixty (60) days prior to the expiration date thereof;

(iii) if, following a notice of non-renewal from the Issuing Bank, Tenant fails to renew or replace the L/C at least thirty (30) days prior to the expiration thereof, and deliver to Landlord a new L/C or an endorsement to the L/C, and any other evidence reasonably required by Landlord that the L/C has been renewed for a period of at least one (1) year, then Landlord may present the L/C for payment and retain the proceeds thereof as security in lieu of the L/C in accordance with the terms hereof; and

(iv) the L/C shall be freely transferrable by Landlord without charge in the event of a transfer by Landlord of its interest in the Lease without any fees or charges therefor.

(b) Any money drawn by sight draft under the L/C or otherwise received by Landlord by reason of the L/C shall be used, held and/or applied by Landlord as security in accordance with the other provision(s) of this Lease relating to the security and in accordance with §7-103 of the New York General Obligations Law. Without limiting any other rights of Landlord pursuant to this Lease or by law, in the event of a default by Tenant, which continues following notice and expiration of the applicable cure period, Landlord may, at Landlord's option, draw the full amount of the L/C, apply the amount drawn to amounts due pursuant to this Lease and retain any balance remaining as cash security to be held in accordance with this Article 6 and Tenant shall be required to replenish the amount applied by Landlord pursuant to this Article.

(c) If the Issuing Bank shall fail or refuse, for any reason at any time, but through no fault of Landlord, to pay the amount of any sight draft presented to it or if any L/C has not been extended or replaced at least thirty (30) days prior to the end of its term and the Issuing Bank shall

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replacement letter of credit, Landlord agrees to return the original L/C (if applicable) to Tenant at such time as Tenant shall provide Landlord with such replacement letter of credit as set forth in this Section 6.02.

(c) If on the first day of the eighty-fourth (84th) month (the "84th Month") after the School has been in operation at the Premises and provided Tenant is not in default of the terms of this Lease beyond any applicable notice and/or grace period (and all Rent has been paid as of the 84th Month) then Tenant's Security shall be further reduced to an amount equal to fifty thousand dollars (\$50,000). In the event that Tenant elects to deliver to Landlord a replacement letter of credit, Landlord agrees to return the original L/C (if applicable) to Tenant at such time as Tenant shall provide Landlord with such replacement letter of credit as set forth in this Section 6.02.

ARTICLE 7

REPAIRS

Section 7.01 Repairs. During the Term (and during any period in which Tenant holds over after expiration of the Term), Tenant shall promptly make or cause to be made all structural and non-structural repairs and alterations (including any replacements) reasonably necessary to maintain the Premises. Tenant's obligation hereunder shall also include, but not be limited to, maintenance and repair of the sidewalks abutting the Premises.

Section 7.02 Violations. During the Term (and during any period in which Tenant holds over after expiration of the Term), Tenant shall remove any violations issued by any federal, state or local governmental or quasi-governmental agencies or units, if such violations are issued during the Term within a commercially reasonable period after the issuance of any violations. All violations shall be removed prior to termination or expiration of the Term.

Section 7.03 Condition Upon Expiration of the Term. On the Termination Date, the Premises shall be delivered with the building to be constructed by Tenant on the Premises broom-clean, ordinary wear and tear excepted. Notwithstanding the foregoing, on the surrender of the Premises the mechanical systems shall be in working order, the roof and basement, if any, shall be free of leaks and there shall not be any violations of record on the Premises.

ARTICLE 8

AFFIRMATIVE OBLIGATIONS AND COVENANTS OF TENANT

Section 8.01 Affirmative Obligations. Tenant covenants and agrees, at its own cost and expense, at all times during the Term, except as stated in this Article 8 hereof to:

(a) Comply with Laws. Promptly comply with all laws, ordinances, rules and regulations of governmental authorities (including, but not limited to, zoning ordinances and building codes) affecting the Premises.

(b) Garbage and Extermination. Handle and dispose of all rubbish, garbage and waste from the Premises in accordance with, all laws and ordinances, and reasonable regulations established by Landlord and provided to Tenant in writing. Tenant shall sort and dispose its

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garbage in accordance with all applicable laws and regulations. All waste shall be removed from the Premises on a regular basis and disposed of with a licensed carter. Tenant shall have the Premises exterminated by a licensed exterminator on a regular basis (in accordance with customary practices for properties of the same type as the Building).

ARTICLE 9

INTENTIONALLY RESERVED.

ARTICLE 10

RIGHT OF ACCESS

Section 10.01 Right of Access. Upon request by Landlord, Tenant shall permit Landlord, or its assignees, to show the Premises at times and dates reasonably convenient to Tenant to any mortgagee or insurance representative, or to any person that Landlord deems appropriate. Such showings shall be done upon reasonable notice to Tenant, and so far as practicable, in such manner as to avoid unreasonably interfering with or adversely affecting Tenant's use of the Premises and in full compliance with the School's security procedures. It is hereby agreed that the aforesaid right of access does not grant Landlord dominion and control over the Premises, therefore such right of access shall not relieve Tenant of indemnifying, defending and holding Landlord harmless from any and all liability for any injury which may be sustained by any person on the Premises and/or the sidewalks contiguous to the Premises; provided, however, that Landlord shall indemnify Tenant for any damages or losses caused to Tenant as a result of Landlord's action on the Premises with respect to such access right contemplated by this Section. Landlord shall be entitled to display, on the Premises in such manner as not to unreasonably interfere with Tenant's business, the usual "For Sale" or "To Let" signs or such other signage indicating Landlord's proposed development plans for the Premises, and Tenant agrees that such signs may remain unmolested upon the Premises.

ARTICLE 11

ADDITIONAL OBLIGATIONS AND COVENANTS OF TENANT

Section 11.01 Additional Covenants. Tenant covenants and agrees that at all times during the Term it shall not, at any time, without first obtaining Landlord's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned):

(a) Alterations. Except as set forth in **Article 26** below with respect to Tenant's Initial Construction, make any alterations, improvements, and/or additions to the Premises or any part thereof without the prior written consent of Landlord, which consent will not be unreasonably withheld or delayed; provided, however, that if Landlord does not notify Tenant of its decision within fifteen (15) business days of receiving such a request from Tenant, then such request will be deemed to have been approved; and further provided that, if the cost of Tenant's work will cost less than five hundred thousand dollars (\$500,000) in the aggregate (exclusive of "soft" costs), only involves work to the interior of the Premises and will does not involve a material structural alteration to the Premises, then Landlord's consent for such work shall not be required.

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ARTICLE 12

INSURANCE, CASUALTY, CONDEMNATION

Section 12.01 Tenant's Insurance. Tenant and the School, at their sole cost, for the mutual benefit of Tenant, the School and Landlord, shall obtain and maintain (or cause to be obtained and maintained) during the Term the following policies of insurance:

(a) Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies including fire, lightning, flood, earthquake, windstorm/hail, vandalism, and malicious mischief, boiler and machinery and at Landlord's option, coverage for damage or destruction caused by the acts of terrorism and such other insurable hazards as, under good insurance practices, from time to time are insured against for other property and buildings similar to the premises. Such insurance policy shall also include coverage for Ordinance and Law, including demolition and increased cost of construction (which insurance from demolition and increased cost of construction may contain a sub-limit satisfactory to Landlord). Each such insurance policy shall (i) be in an amount equal to one hundred percent (100%) of the then replacement cost of the Improvements without deduction for physical depreciation, (ii) have deductibles no greater than \$50,000, (iii) be paid annually in advance, and (iv) contain agreed amount and replacement cost endorsements. Landlord shall be named as a Loss Payee.

(b) Flood Insurance if any part of the Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards, in an amount to be determined and approved by Landlord.

(c) Commercial General Liability and Umbrella Liability insurance and at Landlord's option, to include terrorism coverage, to be written on an occurrence basis with no deductible or self-insured retention, and with such insurance providing a limit in combination of no less than \$10,000,000 per occurrence. The policies described in this subsection shall also include coverage for independent contractors, contractual liability under which this agreement shall be an insured contract, and products/completed operations liability coverage.

(d) Statutory Worker's Compensation and Employer's Liability Insurance covering any state wherein tenant has employees.

(e) During any period of structural repair or restoration, Builder's Risk Insurance in an amount equal to not less than the full insurable value of the Property, against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as Landlord may reasonably request, in form and substance reasonably acceptable to Landlord.

(f) Prior to the commencement of any construction operations pursuant to the terms of this Lease, Tenant shall cause its general contractor to provide evidence of (1) Commercial General Liability coverage, including coverage for contractual liability, independent contractors and products-completed operations, and such policy shall not contain any "action over" exclusion involving and/or related to bodily injury to employees of such contractor and/or employees of any subcontractor, with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate,

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(b) Change Exterior Architecture. Except as set forth in **Article 26** below with respect to Tenant's Initial Construction, change (whether by alteration, replacement, rebuilding or otherwise) the exterior architectural treatment of the Premises without the prior written consent of Landlord, which consent will not be unreasonably withheld or delayed; provided, however, that if Landlord does not notify Tenant of its decision within fifteen business (15) days of receiving such a request, the request will be deemed to have been approved. Nothing set forth herein shall require Landlord's consent to change the color of the exterior of any portion of the Premises.

(c) Misuse Plumbing Facilities. Use the plumbing facilities for any purpose other than that for which they were constructed so as to adversely affect the Premises, or dispose of any garbage or other foreign substance therein, whether through the utilization of so-called "disposal" or similar units, or otherwise.

(d) Damage the Premises. Except as set forth in **Article 26** below with respect to Tenant's Initial Construction, perform any act or carry on any practice which may damage, mar or deface the Premises.

(e) Exceed Floor Loads. Place a load on any floor in the Premises, which is in excess of the floor load per square foot as established by standard engineering principles; or install, operate or maintain therein any heavy item or equipment except in such manner as to achieve a proper distribution of the weight.

(f) Exceed Electrical Load. Install, operate or maintain in the Premises, any electrical equipment which does not bear the Underwriters' Laboratory approval, or would overload the electrical system therein, or any part thereof, beyond its reasonable capacity for proper and safe operation.

(g) Permit Odors, etc. Suffer, allow or permit any offensive or obnoxious vibration, noise, odor or other undesirable effect to emanate from the Premises, or otherwise unreasonably interfere therefore with the safety, comfort or convenience of the area surrounding the Premises with the express understanding and qualification that the Use of the Premises is a school for children; upon notice by Landlord to Tenant that any of the aforesaid is occurring, Tenant shall forthwith (but in all events within five (5) days) endeavor to remove or control the same.

(h) Interfere with Insurance, Compliance, Improper Use. Use or occupy the Premises or permit anything to be done thereon in any manner which shall prevent Landlord from obtaining at standard rates any insurance required or desired, or which would invalidate or increase the cost of Landlord or Tenant of any existing insurance, or which might cause structural injury to the building on the Premises, or which would constitute a public or private nuisance or which would violate any present or future laws, regulations, ordinances or requirements (ordinary or extraordinary, foreseen or unforeseen) of any federal, state or municipal governments, or of any department, subdivisions, bureaus or offices thereof, or of any other governmental public or quasi-public authorities now existing or hereafter created having jurisdiction of the Premises.

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to be maintained during the period of construction operations, (2) Commercial Automobile Liability, including coverage for owned, non-owned and hired vehicles, with minimum limits of \$1,000,000 per occurrence, and (3) Umbrella and/or Excess Liability insurance with minimum limits of \$1,000,000 per occurrence and in the aggregate (with such aggregate limit being applied on a per project basis). The policy shall provide coverage which is primary and non-contributory to any coverage maintained by Tenant and shall name Tenant and Landlord as additional insureds for both ongoing operations and completed operations via ISO Endorsements CG2010, CG2037 and CG2038 to resolve any privity (or equivalent) issues that may arise. In addition, Tenant's general contractor and any sub-contractor engaged by such general contractor shall maintain Statutory Worker's Compensation coverage and Employer's Liability coverage.

(g) All policies of insurance (the "**Policies**") required pursuant to this Section shall (i) be issued for a term of at least one year, and (ii) be issued by companies approved by Landlord and authorized to do business in the State of New York, with a rating of A-: IX or better in the current A.M. Best's Insurance Reports; and (iii) name Landlord and its successors and/or assigns (as their interest may appear) as the loss payee (in the case of property insurance) and as additional insured (in the case of liability insurance). Landlord shall receive at least thirty (30) days' prior written notice of any modification, reduction or cancellation of any of the Policies and provide that Landlord is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums. All Policies shall provide that, with respect to the interest of Landlord, such insurance policy shall not be invalidated by and shall insure Landlord regardless of (A) any act, failure to act or negligence of or violation of warranties, declaration or conditions contained in such policy by any named insured, and (B) the occupancy or use of the premises for purposes more hazardous than permitted by the terms thereof. Tenant shall pay the premiums for the Policies (the "**Insurance Premiums**") as the same become due and payable and furnish Landlord evidence of the renewal of each of the Policies together with receipts for or other evidence of payment of the Insurance Premiums reasonably satisfactory to Landlord. Tenant shall deliver to Landlord a certified copy of each Policy within thirty (30) days after its effective date.

Section 12.02 Intentionally Deleted.

Section 12.03 Intentionally Deleted.

Section 12.04 Intentionally Deleted.

Section 12.05 Utility Failure. As a consideration for the making of this Lease, Landlord shall not be liable for any failure of the water supply, electricity, gas, telephone, communication lines, or any other utility unless such failure is caused by the negligence or fault of Landlord or Landlord's Affiliates. Landlord shall not be liable for injury or damage which may be sustained by Tenant or any LH Condo Unit owner, or to any person or property caused by or resulting from steam, electricity, gas, water, rain, ice, or snow which may leak or flow from or into any part of said Building or from the breakage, leakage, obstruction or other defect of the pipes, wiring, appliances, plumbing or lighting fixtures of the same, the condition of said Premises or any part thereof, or from the street or subsurface, or from any other source or cause whatsoever, unless such damage or injury shall be caused by, or be due to the negligence or fault of Landlord or Landlord's Affiliates.

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Section 12.06 Safety Compliance. Tenant agrees, at its own cost and expense, to comply in all material respects with all of the rules and regulations of the Fire Insurance Rating Organization having jurisdiction and any similar body. If Tenant or any LH Condo Unit owner installs any electrical equipment that overloads the lines of the Building, Tenant shall, at its own cost and expense, promptly make whatever changes are necessary to remedy such condition and to comply with all reasonable requirements of Landlord and the Board of Fire Insurance Underwriters and any similar body and any governmental authority having jurisdiction thereof.

Section 12.07 Fire or Other Casualty. (a) If the Premises are damaged or destroyed by fire or other cause (ordinary or extraordinary), Tenant shall give Landlord prompt notice of such event and, except as provided in this Lease, shall repair such damage and restore the Premises to the condition existing prior to such damage or destruction and to a standard and quality no less than the construction of the original Improvements (the "**Restoration**"). Such repair and restoration shall be effected with reasonable diligence, subject to reasonable delays for adjustment of the insurance loss. Subject to the terms of this Lease, such obligation shall survive any termination of this Lease. Rent (including Basic Rent and Impositions) shall not be abated by reason of any such damage or destruction and Tenant's obligations under this Lease shall not be affected by reason of such damage or destruction; and in furtherance of the foregoing, the Rent will not be abated as a result of the casualty. Except as provided below, this Lease shall not terminate solely by reason of such damage or destruction.

(b) Unless Tenant terminates this Lease in accordance with the terms set forth below, the proceeds of any Property Damage Policy shall be disbursed as follows, subject to the rights of the Leasehold Lenders:

(i) If the reasonably estimated cost of the Restoration is less than five hundred thousand dollars (\$500,000.00), all proceeds of the Property Damage Policy shall be paid to Tenant, to be used for the prompt repair and restoration of the Premises.

(ii) If the reasonably estimated cost of the Restoration equals or exceeds five hundred thousand dollars (\$500,000.00), the proceeds of the Property Damage Policy shall be paid to a commercial bank or trust company selected by Landlord that is subject to supervision and regulation by state or federal Governmental Authority and that has capital, surplus, and undivided profits in an amount at least equal to the product of ten billion dollars (\$10,000,000,000) (the "**Depository**"), to be disbursed to Tenant in reimbursement of Tenant's repair and restoration costs in accordance with the following provisions:

(1) No disbursements shall be made unless and until the following conditions have been met:

(A) Tenant delivers to Landlord and Depository a final and complete set of plans and specifications for the Restoration and a certification of the estimated cost of the Restoration by an architect or cost estimator approved by Landlord, such approval not to be unreasonably withheld or delayed.

(B) If the net insurance proceeds available for the Restoration are less than the reasonably estimated cost of Restoration, Tenant shall deliver to the Depository sufficient funds to make up the deficiency.

(C) Tenant delivers to Landlord and the Depository copies of all permits, approvals, and authorizations required by the Building Department and all other Governmental Authorities (the "**Permits**") for the Restoration.

(2) Once the foregoing conditions have been met Depository shall disburse the insurance proceeds to Tenant, subject to a ten percent (10%) retainage, from time to time as the Restoration progresses in accordance with Depository's customary construction loan advance procedures, provided:

(A) There is no Event of Default under this Lease.

(B) With respect to each disbursement, Tenant delivers to Depository and Landlord (i) a certification of Tenant's architect that the sums requested have been earned and are due, the Restoration is being completed substantially in accordance with the plans and specifications given to Landlord, and the amounts requested are then due and payable, and (ii) releases and waivers of mechanic's lien, in form and substance reasonably satisfactory to Depository, executed by each of (A) the Major Contractors and (B) as applicable, the general contractor, construction manager, and/or design-builder, in each case for periods prior to and covered by the disbursement then requested.

(C) If at any time Landlord reasonably determines that the funds then held by the Depository are insufficient to fund the balance of the Restoration, progress payments shall cease until Tenant delivers to the Depository sufficient funds to make up the deficiency.

(D) No mechanic's lien or similar lien or other encumbrance, other than a permitted Leasehold Mortgage, have been filed against the Premises, and no stop notices have been issued by any Governmental Authority to Landlord or Tenant, that have not been discharged by bonding or otherwise.

(E) The final disbursement of the insurance proceeds and Tenant's funds shall not be made until (y) Restoration is Substantially Completed, and (z) Tenant has complied with Depository's other customary construction loan advance procedures.

(3) Tenant shall pay all of the Depository's reasonable fees and all out-of-pocket costs incurred by Landlord in connection with such Restoration, including any out-of-pocket fees incurred by Depository and Landlord for architectural and engineering review and/or revisions of Tenant's plans and specifications and inspection of the work site and the Restoration. All such fees and costs shall be paid to Landlord and Depository within twenty (20) days after

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Tenant is billed for same. No such review or inspection shall be deemed a warranty or representation that such plans and specifications or the Restoration complies with applicable Legal Requirements or with the provisions of this Lease.

Section 12.08 Tenant's Limited Right to Terminate if there is a Casualty. Notwithstanding the foregoing, if the Premises are damaged or destroyed by fire or other cause during the last five (5) years of the Term and such damage or destruction was not caused by the misconduct of Tenant and the cost to restore the Premises, as reasonably estimated, would equal or exceed thirty percent (30%) of the Full Replacement Cost of the Improvements, Tenant may, at its option, terminate this Lease by notice given to Landlord no later than thirty (30) days after such fire or other casualty event, provided all of the following conditions are met:

(a) Tenant is not in default of this Lease, which default is not cured within the applicable cure period (if any); and

(b) Tenant has paid all Rent then due; and

(c) Tenant has maintained in full force and effect any insurance required by this Lease and the insurance maintained by Tenant fully covers the damage; and

(d) Tenant pays Landlord an amount equal to such policy's deductible; and

(e) Tenant assigns to Landlord all of its right, title and interest in the proceeds of any insurance covering the loss and reasonably cooperates with Landlord's efforts to obtain such insurance proceeds (which obligation to assign and cooperate shall survive any termination of this Lease); and

(f) No Leasehold Lender or Person claiming through Tenant has a claim upon any insurance proceeds covering the loss, and

(g) Tenant has completed the Casualty Termination Work (hereinafter defined) in a good and workman like manner and in compliance with all Laws; and

(h) There are no subtenants whose subleases or occupancy agreements have not been validly terminated by reason of such damage or destruction; and

(i) All insurance proceeds covering the loss are paid to Landlord, subject to the right of any Fee Lender.

If such notice is given, this Lease shall cease and come to an end as of the later of the date forty five (45) days after the date Landlord receives such notice and the date all of the foregoing conditions are met. Subject to the requirements of this Lease, Tenant shall not be required to repair such damage or destruction if the foregoing conditions are met. Tenant shall continue to pay all Basic Rent and Additional Rent, including Impositions, until all insurance proceeds covering the loss are paid to Landlord (subject to the right of any Fee Lender). If, for any reason, all insurance proceeds are not paid to Landlord (or the Fee Lender) or if the insurance company refuses to pay the insurance proceeds to Landlord, Tenant's termination notice shall be void and this Lease shall be deemed in full force and effect.

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Section 12.09 Tenant Obligation to Demolish Improvements. If Tenant exercises its option to terminate this Lease pursuant to Section 12.08, Tenant, at Landlord's option and at Tenant's sole expense, shall demolish the Improvements (except as otherwise directed in writing by Landlord, which direction shall be given to Tenant within thirty (30) days after Landlord receives Tenant's notice of termination pursuant to Section 12.08), remove all debris, grade the Land, and adequately secure the site during such remediation work (collectively, the "**Casualty Termination Work**").

Section 12.10 Condemnation. (a) The following basic terms, as used in this Lease and in all amendments to this Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

(i) The term "**Taking**" shall mean a taking during the Term of all or any part of the Premises, or any interest therein or right accruing thereto including any right of access, by or on behalf of any Governmental Authority or by any entity granted the authority to take property through the exercise of a power of eminent domain granted by statute, any agreement that conveys to the condemning authority all or any part of the Premises as the result of, or in lieu of, or in anticipation of the exercise of a right of condemnation or eminent domain, or a change of grade affecting the Premises. The date of the Taking shall be deemed to be the date that title vests in the condemning authority or its designee.

(ii) The term "**Award**" shall mean the condemnation award and/or proceeds of the Taking, including any interest earned on the Award.

(iii) The term "**Value of the Fee Estate**" means the Market Value of Landlord's fee estate in the Premises; and no Taking was pending, threatened or under consideration. The Value of the Fee Estate shall be determined immediately prior to title vesting in the condemning authority or its designee; and

(iv) The term "**Value of the Premises**" means the Market Value of the Premises; and

(v) The term "**Value of the Improvements**" means the Market Value of the Premises less the Value of the Fee Estate. The Value of the Improvements shall be determined immediately prior to title vesting in the condemning authority or its designee.

(b) Landlord and Tenant shall each notify the other if it becomes aware of a threatened or possible Taking (including any letter of interest from the condemning authority or its designee), or the commencement of any proceedings or negotiations which might result in a Taking. Landlord and Tenant shall have the right to appear in such proceedings, as their interests may appear, and be represented by their respective counsel.

(c) If there is (i) a Taking of the entire Premises or of more than twenty (20%) of the rentable area of the Improvements, (a "**Substantial Taking**"), the Term of the Lease shall cease and terminate on the date of the Taking as fully and completely as if such date were the originally stated Expiration Date of this Lease. The Award for a Substantial Taking (other than a Temporary

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Taking (as defined below) that involves a Substantial Taking, which is dealt with below) shall be allocated as follows:

- (i) Landlord shall be entitled to claim and recover from the condemning authority the Value of the Fee Estate; and
- (ii) Tenant shall be entitled to claim and recover from the condemning authority an amount equal to the Value of the Improvements, multiplied by a fraction, the numerator of which is the number of months (and any fractional part thereof) occurring between the date of the Taking and the Expiration Date and the denominator of which is the number of months (and any fractional part thereof) occurring between the Commencement Date and the Expiration Date; and
- (iii) the balance of the Award, if any, shall be paid to Landlord.
- (d) If all or any portion of the Premises is taken temporarily (a "**Temporary Taking**"), the following shall apply. If (i) the Temporary Taking (whether or not a Substantial Taking) ends prior to the then Expiration Date or (ii) a portion of the Premises is Taken for a period that will end after the then Expiration Date but such Taking is not a Substantial Taking, then:
 - (i) This Lease shall remain in full force and effect, including as to the portion Taken and there shall be no change in Tenant's obligations under this Lease; and
 - (ii) There shall be no reduction in Rent; and
 - (iii) If clause (i) applies, the entire Award shall be paid to Tenant; and
 - (iv) If clause (ii) applies, the portion of the Award allocable to the period prior to the Expiration Date shall be paid to Tenant and the portion of the Award allocable to the period after the Expiration Date shall be paid to Landlord.

If, however, the Temporary Taking involves a Substantial Taking and the term of the Temporary Taking extends beyond the then Expiration Date, Tenant may, at its option, but subject to the rights of the Leasehold Lender, terminate this Lease as of the date of the Taking, by notice given prior to the date of the Taking, in which event this Lease shall be terminated as of the date of the Taking as fully and completely as if such date were the stated Expiration Date of this Lease and Landlord shall be entitled to the entire Award. If Tenant does not so elect to terminate this Lease, this Lease shall remain in full force and effect, there shall be no reduction in Rent and clause (d) above shall govern the distribution of the Award.

(e) If the Taking is not a Substantial Taking or a Temporary Taking (a "**Partial Taking**"), this Lease shall remain in full force and effect; provided, however, that on the date of such Taking this Lease shall terminate as to the portion of the Premises taken, which portion shall no longer be deemed part of the Premises. From and after the date of such Partial Taking, the Basic Rent shall be reduced in an amount equal to fifty percent (50%) of the portion of the Award actually paid to Landlord. Whether or not the Award is sufficient to restore the Improvements, Tenant shall promptly restore the Improvements, to the extent reasonably practicable given the nature and scope of the Taking and the requirements of applicable Law, to their condition

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attorneys' fees) incurred by Landlord (except to the extent caused by Landlord's gross negligence or willful misconduct) by reason of:

- (a) Any action commenced by Tenant (or by Landlord to cure an Event of Default as hereinafter defined) on or about the Premises, or the sidewalks contiguous to the Premises;
- (b) Any use, non-use or maintenance of the Premises, or the sidewalks contiguous to the Premises;
- (c) Any negligence of Tenant, or intentional acts by Tenant, its agents, invitees, contractors, officers or directors;
- (d) Any injury or damage to any person or property occurring on or about the Premises (including the commencement of an action as a result of such damage or injury) or sidewalks contiguous to the Premises; or
- (e) Any failure by Tenant to pay any amounts due under this Lease, or to perform any of its other obligations under this Lease.

ARTICLE 14

LANDLORD'S REMEDIES IN EVENT OF TENANT'S DEFAULT OR BANKRUPTCY

Section 14.01 Events of Default. Tenant shall be in default of this Lease if any one or more of the following events (referred to herein as "**Event(s) of Default**") occurs:

- (a) Tenant shall default in the payment of any amounts required to be paid by Tenant under this Lease, and such default continues for seven (7) days after written notice by Landlord; or
- (b) Tenant shall default in the observance or performance of any other covenant or provision of this Lease other than non-payment of Additional Rent and such default continues for thirty (30) days after notice of such default from Landlord or if the default is incapable of being cured within such thirty (30) day period, then Tenant has begun its cure efforts with diligence within such thirty (30) day period and will pursue such cure efforts with diligence to completion (with such extended period to cure not exceeding 90 days after notice of such default); or
- (c) A voluntary petition is filed by Tenant under any laws for the purpose of adjudication of Tenant as a bankrupt or for reorganization of Tenant under the Bankruptcy Act of the United States or any future laws of the United States having the same general purpose; or
- (d) A receiver is appointed for Tenant by reason of insolvency or alleged insolvency of Tenant; or
- (e) An involuntary bankruptcy petition shall be filed against Tenant for bankruptcy relief and the petition shall not be dismissed within sixty (60) days after the petition is filed.

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immediately prior to such Partial Taking in accordance with the provisions of this Lease and to a standard and quality no less than the construction of the original Improvements (the "**Condemnation Restoration**"). The Award for the Partial Taking shall be allocated as follows:

- (i) If the Partial Taking includes any of the Improvements, the Award shall first be applied to effect the Condemnation Restoration. The balance of the Award (if any) shall be allocated between Tenant and Landlord as follows:
 - (1) Landlord shall be entitled to an amount equal to the diminution in the Value of the Fee Estate,
 - (2) Tenant shall be entitled to an amount equal to the diminution in the Value of the Improvements, and
 - (3) the balance of the Award, if any, shall be paid to Landlord.
- (ii) If there is a Leasehold Lender, the portion of the Award to be applied to Condemnation Restoration shall be paid to the Leasehold Lender and applied to such restoration in accordance with the procedures established in the Leasehold Mortgage, and Tenant's portion of the Award shall be paid in accordance with the provisions of the Leasehold Mortgage. If no Leasehold Mortgage encumbers the Premises at the time of the Partial Taking, then (y) if the cost of the Condemnation Restoration, as reasonably estimated, is less than five hundred thousand dollars (\$500,000), the portion of the Award needed to effect the Condemnation Restoration shall be paid to Tenant, who shall effect the Condemnation Restoration; and (z) if the cost of effecting the Condemnation Restoration is equal to or greater than five hundred thousand dollars (\$500,000), the portion of the Award needed for restoration of the Improvements shall be paid to a Depository, who shall distribute such portion of the Award to Tenant as the Restoration progresses in the same manner as provided in Section 12.07 with respect to insurance proceeds and subject to the same conditions.
- (iii) If the Partial Taking does not include any portion of the Improvements, the entire Award shall be paid to Landlord.
- (f) If this Lease terminates pursuant to this Article, Landlord, within ten (10) Business Days after this Lease terminates, shall return to Tenant all Rent previously paid that is attributable to the period after such termination. The termination of this Lease shall not affect those obligations and liabilities of Tenant under this Lease that accrued before the termination of this Lease or that relate to periods before such termination, which obligations shall survive termination. Nothing in this Article is included for the benefit of the condemning authority, the intent being only to set out the rights of the parties as they relate to one another.

ARTICLE 13

TENANT'S INDEMNIFICATION OF LANDLORD AGAINST LIABILITY

Section 13.01 Tenant Indemnity. Tenant shall indemnify, defend and hold Landlord and its managing agent harmless from all liability and expenses (including reasonable architects' and

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Section 14.02 Termination of Lease. Landlord, notwithstanding any other right or remedy it may have under the Lease, at law or in equity, may, in the event of Tenant's Event of Default, terminate the Lease, by written notice to Tenant setting forth the basis therefor and effective not less than fifteen (15) days thereafter, whereupon, upon such effective date, the Lease shall terminate (with the same effect as if such date were the date fixed herein for the natural expiration of the Term). If the Lease is terminated, Tenant shall surrender the Premises vacant and broom clean, and in the condition required by the terms of this Lease to Landlord and Tenant shall have no further rights hereunder, but Tenant, shall remain liable for its breach of the Lease as hereinafter provided.

Section 14.03 Landlord's Damages.

(a) Tenant shall be liable for all reasonable fees incurred by Landlord (including, but not limited to, reasonable out-of-pocket legal fees) in bringing any action or summary proceeding against Tenant and for any reasonable out-of-pocket legal fees incurred by Landlord in defending any action or proceeding commenced by Tenant.

(b) Tenant covenants and agrees, notwithstanding any termination of this Lease as aforesaid or any entry or re-entry by Landlord, whether by summary proceedings, termination, or otherwise, to pay and be liable for all losses incurred by Landlord as a result of Tenant's material breach of this Lease. Moreover, any unpaid Rent Differential shall become immediately due on the date of the Event of Default. To induce Landlord to enter into this Lease, Tenant confirms and agrees that this transaction is a commercial and not a consumer transaction. Landlord may commence actions or proceedings to recover such damages or installments thereof at any lawful time. No provisions hereof shall be construed to preclude Landlord's recovery from Tenant of any other damages to which Landlord is lawfully entitled. Unless required by law, Landlord shall not be obligated to mitigate its damages.

Section 14.04 Nonexclusivity. No right or remedy herein conferred upon Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and subject to the grace and notice provisions set forth in this Lease, in addition to every other right or remedy given herein or now or hereafter existing at law, in equity or by statute.

Section 14.05 Landlord's Right to Perform Tenant's Covenants. If Tenant shall fail to maintain the Premises or shall fail to make any other payment or perform any other act which Tenant is obligated to make or perform under this Lease, and Tenant has not proceeded to diligently cure such failure to pay or perform after written notice by Landlord to Tenant stating such nonperformance, then Landlord, after twenty (20) days written notice to Tenant, may perform for the account of Tenant any covenant in the performance of which Tenant is in default. Tenant shall pay to Landlord as additional rent, upon demand, any amount paid by Landlord in the performance of such covenant in any amount which Landlord shall have paid by reason of failure of Tenant to comply with any covenant or provision of this Lease, including reasonable amounts of fees incurred in connection with the prosecution or defense of any proceedings instituted by reason of default of Tenant, together with interest at the maximum lawful rate of interest then allowed by the State of New York, but not more than fourteen (14%) percent per annum from the date any outstanding amount is due until paid by Tenant.

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Section 14.06 No Waiver. The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease of any of the rules or regulations set forth or hereafter adopted by Landlord, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Landlord of Rent with knowledge of the breach of any covenant, or term, of this Lease shall not be deemed a waiver of such breach and no provision of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than account of the earliest stipulated Rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided. No act or thing done by Landlord or Landlord's agents during the term hereby demised shall be deemed an acceptance of a surrender of said Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord.

Section 14.07 Right of Re-Entry. In the event that the termination of this Lease is the result of any election exercised by Landlord pursuant to the terms of this Article, Landlord shall be entitled to the rights, remedies and damages set forth in this Article and elsewhere in this Lease, subject to the laws of the State of New York. To the extent permitted by law, Tenant waives any right of re-entry to the Premises.

ARTICLE 15

ASSIGNMENT AND SUBLETTING

Section 15.01 Except as otherwise provided in this Article 15 and subject to Tenant's right to sublet to the School as per Section 2.01 above, Tenant may not sublet any portion of the Premises or assign this Lease without the express written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed. Except for a sale for financing purposes, a sale, transfer or assignment of fifty (50%) percent or more of the beneficial ownership of Tenant (other than among existing owners of Tenant as of the date hereof), whether in a single transaction, or within a three (3) year time period, shall be deemed an assignment requiring Landlord's written consent, unless such assignment shall be permitted pursuant to Section 15.02 hereof. In no event shall Tenant have more than two (2) non-Affiliated subtenants at any one time. Any proposed subletting or assignment submitted by Tenant for Landlord's approval must comply with the following terms and conditions:

(a) Tenant must give Landlord not less than thirty (30) days' prior written notice of the proposed sublet or assignment.

(b) Tenant must not be in default under this Lease past any applicable notice and/or grace period as of the date of the request for the sublet or assignment and as of the date the assignment or sublet is to commence.

(c) Tenant must send a copy of the proposed sublease or assignment, or term sheet or letter of intent with respect thereto, setting forth all of the material business and economic terms

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to relieve Tenant (or its subsequent assignee(s)) from obtaining the express consent in writing of Landlord to any further assignment or subletting or any licensing of any portion of the Premises.

Notwithstanding anything to contrary contained herein, Tenant shall have the right, upon not less than ten (10) days' written notice to Landlord but without obtaining Landlord's consent, to assign this Lease or sublet the Premises to an Affiliate or Related Entity, or to any entity arising by virtue of merger, consolidation with Tenant or Tenant's parent entity, or to any purchaser of all or substantially all of Tenant's beneficial ownership interests or assets, or to any entity into or with which Tenant is merged or consolidated, or under the ownership or control of Tenant's parent entity or holding entity (a "Related Entity"). "Affiliate" means, as to any designated person or entity, any other person or entity which controls, is controlled by, or is under common control with Tenant or the School. "Control" shall mean direct or indirect ownership of more than fifty percent (50%) of the outstanding voting stock of a corporation or other majority equity or control interest if not a corporation or the possession, directly or indirectly, of power to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities, by statute or according to the provisions of a contract. Tenant shall provide such documentation as Landlord may reasonably request in connection with the foregoing. In the event of a proposed assignment to a Related Entity, the Related Entity must have a net worth equal to or greater than the net worth of Tenant as calculated as of the month of the anticipated assignment. If the net worth of the Related Entity is less than that of Tenant, then Tenant shall not be allowed to assign this Lease without the express written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant may, on not less than thirty (30) days written notice to Landlord (and without Landlord's consent) assign this Lease to an entity that has a net worth (exclusive of goodwill, intellectual property and all non-tangible assets), equal to the greater of (i) fifteen million dollars (\$15,000,000) with such amount increasing by fifteen percent (15%) every five (5) years with the first increase being as of the first day of the Sixth Rental Year and (ii) the net worth of Tenant as calculated as of the month of the anticipated assignment (a "Non-Consent Assignment"). In the event of a Non-Consent Assignment, the notice to Landlord shall include a financial statement for Tenant and for the proposed assignee with each statement certified by a certified public accountant. Any such Non-Consent Assignment shall be only for the uses permitted under Article 2 of this Lease. In the event of an assignment which has been consented to by Landlord, the current Tenant shall be released from any liability accruing from and after the date the assignment is effective and the assignee has assumed all of the obligations under this Lease and a true and exact copy of such Lease assumption has been received by Landlord.

Section 15.03 Assignment or Subletting Profit. Except for an assignment or subleasing to a Related Entity or Affiliate as defined above or to the School, or as a result of a Foreclosure, in the case of any assignment of the Lease or subleasing of the Premises, such consent shall be upon the express and further condition, covenant and agreement, that Landlord shall be entitled to fifty (50%) percent of the excess, if any, of (x) all revenue received by Tenant in connection with any assignment or subleasing in excess of the rent due under this Lease, less (y) Tenant's reasonable cost to prepare the Premises for use by the subtenant or assignee (or allowances provided in lieu thereof) and its brokerage fees and reasonable legal fees incurred in such sublet or assignment, as well as the costs of any alterations and improvements performed by Tenant in connection this Lease (amortized over the initial term of this Lease), and reasonable costs relating to improving, renovating, maintaining and restoring the Premises as a pre-condition for the

of the proposed sublease or assignment, to Landlord with the notice of intention to sublet or assign, together with financial statements from the proposed assignee or sublessee (certified as being true and complete by a member, officer or shareholder of the proposed sublessee or assignee) and such other documents as may be reasonably requested by Landlord.

(d) The proposed sublease or assignment must contain the explicit provision that Tenant agrees to remain fully liable for all terms and conditions of the Lease (as a principal and not as a surety) until the Lease expires or until the sublessee or assignee vacates the Premises pursuant to the sublease or assignment, whichever event occurs later, unless Landlord agrees in writing to release Tenant from the obligations under the Lease.

(e) Within thirty (30) days after receipt of Landlord's written demand therefor, Tenant must tender a check to Landlord in the amount of Landlord's actually incurred fees, legal and otherwise, which fees shall not exceed five thousand dollars (\$5,000.00) in connection with reviewing the sublet request or assignment request. Said fee is non-refundable.

Section 15.02 Landlord's Consent. (a) Subject to Landlord's right to recapture set forth below, Landlord shall, within thirty (30) days after receipt of the above information, notify Tenant whether it consents to the sublet or assignment. Landlord shall be deemed to have consented to the proposed sublet or assignment in the event that it fails to respond within thirty (30) days of Tenant's request.

(b) Landlord shall not be deemed to be unreasonably withholding its consent to any proposed assignment or subleasing if in Landlord's reasonable opinion: (a) the proposed assignee or subtenant intends to use the Premises (or parts thereof) for purposes other than as set forth in Article 2; (b) the proposed assignee or subtenant uses or may use Hazardous Material (as defined in this Lease) in contravention of Section 25.01 hereof; or (c) the proposed assignee or subtenant does not possess reasonably adequate financial capabilities to perform the tenant or subtenant obligations (whichever is applicable) as or when due or required; or (d) the character of the business to be conducted or the proposed use of the Premises by the proposed subtenant or assignee shall be likely to unreasonably increase the burden on building systems or equipment over the burden prior to such proposed subletting or assignment; or (e) violate or be likely to violate any provisions or restrictions contained herein relating to the use or occupancy of the Premises or not be for the use set forth in this Lease; or (f) there shall be existing an Event of Default (defined in Section 14.01).

(c) If this Lease is assigned, or if the Premises or any part thereof be sublet or occupied by anyone other than Tenant, Landlord may, after default by Tenant beyond any applicable notice and/or grace period and upon prior notice to Tenant, collect Basic Rent, and Additional Rent and all the charges from the assignee, sublessee or occupant and apply the net amount collected to such sums reserved herein; provided, however, no such assignment, subletting, occupancy or collection shall, in and of itself, be deemed a waiver of the provisions of this Article 15 hereof, or the acceptance of the assignee, sublessee or occupant as a tenant, or a release of Tenant from the further performance by Tenant of the covenants on the part of Tenant herein contained, Tenant herein named to remain primarily liable under this Lease. The consent by Landlord to an assignment or subletting under any of the provisions of this Article 15 shall in no way be construed

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sublease or assignment, as incurred by Tenant or any person claiming through or under Tenant in connection with such transaction. Any payments due to Landlord as aforesaid shall be made as and when received by Tenant.

Section 15.04 Limited Remedy. If Landlord denies the assignment or sublet request, Tenant's sole remedy shall be to get a declaratory judgment permitting the assignment or sublet. It is agreed by and between the parties that in the event permission to assign or sublet is denied, Tenant shall not be entitled to monetary damages or to an abatement of Basic Rent or Additional Rent even if Tenant obtains a declaratory judgment compelling Landlord to consent to the assignment or sublet request.

Section 15.05 Right of Recapture. Except in the case of an assignment or sublet to a Related Entity or Affiliate of the School for a Non-Consent Assignment or as a result of a Foreclosure, Landlord may, in the case of a proposed assignment of this Lease or proposed sublet of all of the Premises for substantially all of the remaining Term, at its option, by notice given within thirty (30) days after receipt of Tenant's notice, given pursuant to Section 15.01(a) above, and Landlord's receipt of the documents and information required by Section 15.01(c) above, terminate this Lease by sending Tenant a notice of recapture (the "Recapture Notice"), which date of termination shall be effective as of the date which Tenant's sublet or assignment was to be effective but in no event earlier than sixty (60) days after Landlord exercises its termination right under this Section. Such recapture by Landlord shall automatically terminate this Lease and Tenant shall no longer have any obligation or liability under this Lease to the extent accruing after the date Tenant vacates. If Tenant fails to vacate on the date set forth in Landlord's Recapture Notice, Tenant shall be deemed to be holding over after expiration of the Term. Notwithstanding the foregoing, it is understood and agreed that Landlord will have no termination/recapture right with respect to a proposed sublease or assignment to a Related Entity or Affiliate.

ARTICLE 16

SUBORDINATION OF LEASE TO MORTGAGES ON THE PREMISES

Section 16.01 Subordination. The Lease shall be superior and prior to the lien of any current or future mortgage on the Premises (a "Fee Mortgage") and any renewal, replacement, extension or consolidation thereof. For the avoidance of doubt, any Fee Mortgage shall be subordinate to this Lease. At Landlord's request, Tenant shall have any Leasehold Lender (as defined below) enter into an "intercreditor agreement" with any Fee Mortgagee. Any intercreditor agreement shall allow the Fee Mortgagee to foreclose its mortgage interest so long as it does not terminate this Lease unless and until Tenant or its Leasehold Lender or Leasehold Lender's assignee is in default of the terms of this Lease. The holder of the Fee Mortgage is referred to as the, "Fee Mortgagee" or "Fee Lender".

Section 16.02 Attornment Agreement. The intercreditor agreement shall provide that the Fee Mortgagee shall agree to attorn to the Lease (at the Fee Mortgagee's request) in the event the Leasehold Lender, by foreclosure or otherwise, terminates Tenant's interest in the Premises and agreeing to make commercially reasonable efforts to notify the Leasehold Lender of any default by Tenant hereunder and afford the Leasehold Lender the opportunity to remedy such default (in the manner and in accordance with the time frames set forth in this Lease) should the

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Leasehold Lender wish to do so. Landlord shall promptly, at Tenant's request, execute and deliver proper instruments evidencing the same.

ARTICLE 17

EXONERATION OF INDIVIDUALS

Section 17.01 Exoneration of Landlord. If Landlord or any successor in interest shall be an individual, joint venture, limited liability company, tenancy in common, firm or partnership, general or limited, there shall be no personal liability on such individual or on any member of such joint venture, limited liability company, tenancy in common, firm or partnership or on such joint venture, tenancy in common, firm or partnership in respect to any of the covenants or conditions of this Lease. Tenant shall look solely to the equity of Landlord in the Building for satisfaction of the remedies of Tenant in the event of a breach by Landlord of any of the covenants or conditions of this Lease and no other property or assets of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies in the event of a breach or violation by Landlord of any of the terms of this Lease or any other liability which Landlord might have to Tenant.

Section 17.02 Exoneration of Tenant. If Tenant or any successor in interest shall be an individual, joint venture, limited liability company, tenancy in common, firm or partnership, general or limited, there shall be no personal liability on any individual members of such joint venture, limited liability company, tenancy in common, firm or partnership or on such joint venture, tenancy in common, firm or partnership in respect to any of the covenants or conditions of this Lease.

ARTICLE 18

NOTICES

Section 18.01 Notices. All notices, demands and requests which may or are required to be given by either party to the other shall be in writing. All notices, demands and requests by Landlord to Tenant shall be sent by United States Certified Mail (return receipt requested is optional), postage prepaid, or by national overnight courier service, addressed to Tenant at Tenant's address set forth above with a copy to: Kris Ferranti, Esq., Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022, or at such other place as Tenant may from time to time designate in a written notice to Landlord. All notices, demands and requests by Tenant to Landlord shall be sent by United States Certified Mail, postage prepaid, return receipt requested, or by national overnight courier service addressed to Landlord at the address shown on the first page of this Lease or at such other place as Landlord may from time to time designate in a written notice to Tenant. Notices, demands and requests which shall be served upon Landlord or Tenant in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder two (2) days after such notice, demand or request shall be mailed or on the date of delivery if sent by overnight courier. Notices on behalf of Landlord may be signed by Gary A. Kreinik in his capacity as Landlord's attorney or by any person identifying himself as a member of Landlord or as an agent for Landlord, with the same force and effect as if signed by Landlord. The time

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this Lease is in full force and effect, the date of Tenant's most recent payment of rent, and that there are no defenses, claims or offsets outstanding, or stating those claimed by Landlord and such other information as Tenant may reasonably request. In no event will Landlord or Tenant be obligated to deliver more than two (2) estoppel certificates in any consecutive twelve (12) month period.

ARTICLE 22

NO ABATEMENT OF RENT

Section 22.01 No Abatement of Rent. Except for the partial abatement of the Basic Rent as set forth in Article 3 and in the event of a condemnation (as set forth in Article 12), there shall be no abatement, diminution or deduction of Rent or other compensation due to Landlord by Tenant or any person claiming under it, under any circumstances including, but not limited to, the complete or partial destruction of the Building or any inconveniences, discomfort, interruption of business or otherwise caused by a taking or destruction of the Premises except as otherwise specifically provided herein.

ARTICLE 23

SURRENDER

Section 23.01 Surrender Condition and Hold Over. On the last day or sooner termination of the Lease, Tenant shall quit and surrender the Premises, vacant, broom-clean, in good condition and repair, ordinary wear and tear excepted. If Tenant fails to remove any of its furnishings, fixtures or Personal Property or fails to leave the Premises broom clean, then any items remaining on the Premises shall be considered abandoned by Tenant and Landlord shall be entitled to keep or remove such items at Landlord's sole cost and expense. Tenant must leave the Premises in broom clean condition. All movable furniture or unattached movable trade fixtures shall be removed by Tenant. If Tenant remains in possession of the Premises after the expiration of the Term created hereunder, and without the execution of a new lease, Tenant shall be deemed to be holding over and shall pay as holdover use and occupation amount equal to one hundred fifty percent (150%) of the Basic Rent payable as of the last day of the Term plus the Additional Rent (then payable) as calculated on a month by month basis for the first thirty (30) days of such holdover and thereafter one hundred seventy-five percent (175%) of the Basic Rent payable as of the last day of the Term, plus the Additional Rent (then payable) as calculated on a month by month basis. Nothing set forth herein shall be deemed to constitute permission for Tenant to hold over after expiration of the Term and Tenant shall be deemed to be a tenant at sufferance.

Section 23.02 Abandoned Property. To the extent permitted by law, any property left at the Premises by Tenant at the expiration of the Term or, when Tenant vacates the Premises, shall be deemed abandoned. Landlord may sell or dispose of said property in any manner it deems appropriate. Any costs of disposal incurred by Landlord shall be paid by Tenant. This obligation shall survive termination of the Lease.

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requirements for notices required by this Lease shall be the longer of the time set forth in this Lease, or the time required by law.

ARTICLE 19

ACCEPTANCE

Section 19.01 Acceptance. Neither Landlord nor its agents have made any representations with respect to the Building, the land upon which it is erected except as expressly set forth herein and no rights, easements, or licenses are acquired by Tenant by this Lease. All agreements of the parties are merged into this Lease. Subject to Section 1.04, the signing of this Lease by Tenant shall be conclusive evidence that Tenant shall have accepted the same "as is" at the Commencement Date. In no event shall Landlord be liable for any defect, latent or otherwise, in such property or for any limitation on its use.

ARTICLE 20

QUIET ENJOYMENT - CONVEYANCE BY LANDLORD

Section 20.01 Quiet Enjoyment. Tenant, upon timely performance of all covenants and conditions of this Lease, on its part to be performed, shall quietly have and enjoy the Premises during the Term, without hindrance or molestation by Landlord or any other person claiming through Landlord.

Section 20.02 Conveyance by Landlord. If Landlord shall convey the Premises, all liabilities and obligations on the part of Landlord under this Lease accruing subsequent to such transfer shall terminate upon such conveyance and thereafter all such liabilities and obligations shall be the liabilities and obligations of such transferee and shall be binding upon such transferee of the Premises.

ARTICLE 21

ESTOPPEL CERTIFICATE

Section 21.01 Estoppel Certificate. Within fifteen (15) days after the request therefrom by Landlord, or if on a sale, assignment of hypothecation by Landlord of its interest in the Premises, or any part thereof, an estoppel certificate shall be required from Tenant and Tenant shall deliver, in recordable form, a certificate to any proposed mortgagee or purchaser, or to Landlord, certifying if such be the case that this Lease is in full force and effect, the date of Tenant's most recent payment of rent, and that there are no defenses or offsets outstanding, or stating those claimed by Tenant and such other information as Landlord may reasonably request. Tenant's failure to deliver said statement shall be conclusive upon Tenant that (1) this Lease is in full force and effect without modification except as may be represented by Landlord, (2) there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaims or deductions (as applicable), and (3) that no more than one (1) month's rent has been paid in advance. Within fifteen (15) days after the request therefrom by Tenant, an estoppel certificate shall be required from Landlord and Landlord shall deliver, a certificate certifying if such be the case that

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ARTICLE 24

MISCELLANEOUS

Section 24.01 Submission for Signature. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option to Lease, and it is not effective as a Lease or otherwise until execution and delivery by both Landlord and Tenant.

Section 24.02 New York Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York and shall be deemed to have been created by both parties.

Section 24.03 Broker. Landlord and Tenant warrant and represent that they have dealt with no realtors, brokers or agents in connection with the negotiation of this Lease and the renting of the Premises other than **Keller Williams and Kassir Sabbagh Realty** (collectively, the "Brokers"). Should any claims be made for brokerage commissions through or on account of dealings of Tenant or Landlord or their agents or representatives each party shall indemnify, defend and hold the other harmless against any liability in connection therewith. Landlord shall be liable for any commission due to the Brokers.

Section 24.04 Jury Trial. Anything herein contained to the contrary notwithstanding, Tenant agrees and does hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant and/or Tenant's use or occupancy of the Premises. This waiver of trial by jury is subject to the laws of the State of New York. If such waiver is, or shall become, illegal or void, then and in that event this paragraph shall have no force and effect and shall be deemed deleted from this Lease.

Section 24.05 Counterclaims, Etc. Anything herein contained to the contrary notwithstanding, in any action or summary proceeding brought for the collection of any of the Additional Rent provided for herein or for the non-payment thereof to Landlord, or for any proceeding or action wherein Tenant has violated the terms of this Lease, Tenant hereby waives and agrees not to introduce any non-compulsory counterclaims which Tenant now has or hereafter may have. Tenant, however, shall have the right to litigate any such claims in a separate, independent action.

Section 24.06 Leasing Contingencies. (a) Permitting Contingency. Tenant shall have nine (9) months from the Effective Date (such date, as it may be extended pursuant to this sentence, the "Permitting Outside Date") to obtain any required Permits for the Initial Construction (such Permits, the "Initial Construction Permits"), subject to a six (6) month extension upon Tenant's request if the Initial Construction Permits cannot be obtained by the Permitting Outside Date. If Tenant does not obtain the Initial Construction Permits on or prior to the Permitting Outside Date, either party shall have fifteen (15) days following the Permitting Outside Date (with all extensions included) to terminate this Lease by delivering written notice to the other party. If Tenant does not terminate this Lease within the fifteen (15) day period, then Tenant shall be deemed to have waived its right to terminate the Lease by reason of the failure to obtain the Initial Construction Permits on or prior to the Permitting Outside Date. Tenant will make commercially reasonable

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efforts to obtain its Initial Construction Permits in an expeditious manner. Tenant will keep Landlord informed of Tenant's progress in obtaining its Initial Construction Permits.

(b) **Financing Contingency.** Tenant shall have nine (9) months from the Effective Date (such date, as it may be extended pursuant to this sentence, the "**Financing Commitment Outside Date**") to obtain a non-binding letter of intent for a leasehold financing ("**Financing Commitment**") for construction of the Facility, subject to a six (6) month extension upon Tenant's request if the Financing Commitment cannot be obtained by the Financing Commitment Outside Date. Tenant shall then close on its Financing Commitment and receive an initial funding thereunder (the "**Loan Closing**", and such a financing, the "**Leasehold Financing**", and the date of such Loan Closing, the "**Loan Closing Date**") within two (2) months after the date on which the Financing Commitment is obtained (such date, as it may be extended pursuant to this sentence, the "**Loan Closing Outside Date**"), subject to a two (2) month extension upon Tenant's request if the Loan Closing cannot be consummated by the Loan Closing Outside Date. Within five (5) business days of obtaining the Financing Commitment, Tenant shall deliver to Landlord a notice of the same setting forth that Tenant has obtained the Financing Commitment and the anticipated Loan Closing Date (such date being for informational purposes only). Within five (5) business days of the Loan Closing Date, Tenant shall deliver to Landlord a notice of the same setting forth (i) that the Loan Closing has been consummated and (ii) the Commencement Date (the "**Commencement Date Letter**"). The Commencement Date Letter shall include the L/C. If the Commencement Date Letter does not include the L/C, the Commencement Date Letter shall, at Landlord's option, be deemed void and without force and effect. If Tenant does not obtain the Financing Commitment on or prior to the Financing Commitment Outside Date or Tenant does not consummate the Loan Closing on or prior to the Loan Closing Outside Date, then either party shall have the right to terminate this Lease upon fifteen (15) days' notice following the applicable date to the other party. If neither party terminates this Lease pursuant to the preceding sentence, then Tenant shall be deemed to have waived its right to terminate the Lease by reason of the failure to obtain the Financing Commitment on or prior to the Financing Commitment Outside Date or by reason of Tenant's failure to consummate the Loan Closing by the Loan Closing Outside Date, as applicable, it being understood that, for the avoidance of doubt, the Commencement Date shall not occur unless and until the Loan Closing has been consummated.

(c) Obtaining the Initial Construction Permits, the Financing Commitment and the Loan Closing shall be referred to collectively herein as the "**Leasing Contingencies**". Tenant shall use commercially reasonable efforts to obtain the Initial Construction Permits, obtain the Financing Commitment and consummate the Loan Closing, and Landlord will reasonably cooperate with Tenant in connection with such efforts and Landlord will sign any documents as reasonably requested by Tenant or other applicable counterparties in connection with such efforts. Tenant will, upon Landlord's reasonable request, provide updates as to Tenant's progress in obtaining the Initial Construction Permits, obtaining the Financing Commitment and consummating the Loan Closing. Upon receipt thereof, Tenant will promptly provide Landlord with a copy of the (i) Initial Construction Permits and (ii) Financing Commitment.

Section 24.07 **Savings Clause.** It is the desire and intent of the parties that the provisions of this Lease shall be enforced to the fullest extent permitted by law. Accordingly, the invalidity or unenforceability of any provision of this Lease shall not affect the validity or enforceability of any other provision of this Lease, which shall remain in full force and effect, nor shall the invalidity

or unenforceability of any portion of any provision of this Lease affect the validity or enforceability of the balance of such provisions.

Section 24.08 **Force Majeure.** Neither party shall be liable for a delay or failure in the commencement, performance or completion of any of their obligations hereunder where such delay or failure is attributable to strikes or other labor conditions, inability or difficulty in obtaining materials or services, wars, delays due to the weather or attributable to the other party, delays of governmental bodies in processing a party's request for permits or approvals, or other causes beyond the reasonable control of the applicable party (exclusive of a party's financial inability); and the failure of a party to so commence, perform or complete any such obligation for the foregoing reasons shall not be construed as an eviction of Tenant, or a breach of the Lease by Tenant or Landlord, nor work as an abatement of rent, nor render the applicable party liable in damages, nor release the other party from prompt fulfillment of any of its covenants under this Lease. None of the events described in this Section shall be applicable to the failure by Tenant to make payment of any amounts due under this Lease.

Section 24.09 **Consequential Damages.** In no event shall Landlord, Tenant or the School be liable for special, incidental or consequential damages in connection with this Lease.

Section 24.10 **Time of Essence.** Time is of the essence with regard to the obligations set forth in this Lease.

Section 24.11 **Legal Fees.** In any action or proceeding to enforce the terms of this Lease or in any action or proceeding to obtain possession of the Premises or in any action or proceeding arising out of this Lease, the prevailing party shall be reimbursed by the non-prevailing party for the reasonable out-of-pocket legal fees which the prevailing party incurred in the action or proceeding.

Section 24.12 **PDF.** Handwritten signatures to this Lease transmitted by telecopy or electronic transmission (for example, through the use of a Portable Document Format or "PDF" file) shall be valid and effective to bind the parties so signing. It is expressly agreed that each party to this Lease shall be bound by its own telecopied or electronically transmitted handwritten signature and shall accept the telecopy or electronically transmitted handwritten signature of the other party to this Lease. The parties hereto agree that the use of telecopied or electronic signatures for the execution of this Lease shall be legal and binding and shall have the same full force and effect as if originally signed.

ARTICLE 25

HAZARDOUS MATERIAL

Section 25.01 **Unlawful Discharge.** During the Term (and during any period in which Tenant holds over after expiration of the Term), Tenant agrees not to cause or permit any release or discharge onto the Premises of any Hazardous Material. Tenant further agrees not to store or use (other than the storage or use of any product typically used as part of the use of the Premises permitted by this Lease and only to the extent that the same are stored, handled, shipped and

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disposed of in compliance with all laws, ordinances, regulations and other governmental directives and strictures, and no consent shall be necessary for such lawful storage or use, Tenant hereby agreeing to indemnify and save Landlord harmless from all loss, cost, expense or liability due or attributable to the storage or use set forth in this parenthetical), Hazardous Material in or on the Premises, or commit or suffer to be committed in or on the Premises any act which would require the filing of a notice pursuant to any Environmental Law. Tenant agrees at Tenant's sole cost and expense to remove from the Premises and the land under the Premises, Hazardous Material which may be released thereon during the term of this Lease by Tenant's act or neglect, or the act or neglect of Tenant's successors, assigns, agents, contractors, employees, servants, guests, licensees or invitees. Tenant covenants and agrees that it shall advise Landlord in writing of Tenant's application for, receipt of, or rejection regarding, and withdrawal or lapse of, any license or permit required with respect to Hazardous Materials relating to Tenant's activities at the Premises. In the event that Tenant or Landlord receives from any federal, state or local governmental agency any notice of violation or alleged violation of any Environmental Laws, Tenant agrees to forward to Landlord a copy of any such notice, within ten (10) days of receipt thereof, and Tenant agrees to take all steps necessary to bring Tenant's use of the Premises into compliance with such Environmental Laws and any other applicable law.

As used herein, "**Hazardous Material**" means any pollutant, contaminant, or chemical, or industrial, toxic, hazardous or noxious substance or waste which is regulated by any local governmental authority having jurisdiction over the Premises, the State of New York, or the United States government, including but not limited to (i) any oil or petroleum compounds, flammable substances, explosives, radioactive materials, or any other materials or pollutants which pose a hazard to the Premises or to persons in or on the Premises and cause the Premises to be in violation of any laws, regulations or ordinances of federal, state or applicable local governments, (ii) to the extent so regulated, asbestos or any asbestos-containing material of any kind or character, (iii) polychlorinated biphenyls, as regulated by the Toxic Substance Control Act, 15 U.S.C. Section 2601 *et seq.*, (iv) any materials or substances designated as hazardous substances pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*, (v) environmental poison, as defined in the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 135 *et seq.*, (vi) "chemical substance", "new chemical substance", or "hazardous chemical substance or mixture" pursuant to Sections 3, 6 and 7 of the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*, (vii) "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*, and (viii) "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*

As used herein "**Environmental Laws**" means all federal, state and local laws, ordinances, regulations, rules or requirements, now or hereafter enacted, concerning Hazardous Material.

Tenant agrees to be solely responsible for, and to indemnify Landlord and save Landlord harmless from and against any and all liability arising from the breach of any of Tenant's covenants and agreements under this Article, including, without limitation, attorneys' fees and costs incurred by Landlord in connection therewith, whenever such liability shall arise and for as long as Landlord remains so liable.

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ARTICLE 26

TENANT'S INITIAL CONSTRUCTION

Section 26.01 **Tenant's Initial Construction.** The following terms, as used in this Lease and in all amendments to this Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

(a) **Building Department:** The New York City Department of Buildings.

(b) **Construction Security:** Tenant shall provide a Payment and Performance Bond in substantially the form as **Exhibit 4-A** attached hereto, and shall have Landlord named as a "beneficiary" under such Construction Security by entering into a Rider in substantially the form as **Exhibit 4-B** attached hereto, or shall provide other construction security reasonably acceptable to Landlord.

(c) **Initial Construction:** The initial construction of the Improvements described below, including all related demolition and excavation activities.

(d) **Major Contractors:** Those contractors and/or subcontractors performing the following work at the Premises in connection with the Initial Construction: concrete, masonry, carpentry/drywall, HVAC, electrical, roofing, and plumbing.

Section 26.02 **Tenant's Construction.** (a) Tenant shall construct, in accordance with the requirements of this Lease, a modern, air conditioned and heated structure. Attached hereto as **Exhibit 5** are Tenant's preliminary conceptual drawings. These drawings are preliminary and conceptual in nature and subject to change. Tenant will provide initial construction plans upon receipt of the same. Such building shall be an independent, free standing structure located entirely within the boundaries of the Land. Such building(s) and the Improvements constructed or installed in connection therewith and all appurtenances thereto are sometimes referred to as the "**Facility**."

(b) Tenant shall not commence the Initial Construction until Tenant has met all of the following conditions:

(i) Tenant has consummated the Loan Closing; and

(ii) Tenant has furnished to Landlord evidence reasonably satisfactory to Landlord that Tenant has sufficient funds available to it, which funds may include loan proceeds, to build and complete the Facility (this evidence of funds is being provided to Landlord for informational purposes only and shall not be the basis for Landlord to terminate the Lease if Landlord believes Tenant's funds are insufficient to complete the Facility); and

(iii) Tenant has contacted all appropriate utilities and verified the location, depth and nature of all utilities affecting the Premises and any areas bordering upon the Premises; and

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(iv) Landlord has approved the final plans and specifications for the Initial Construction, in accordance with Section 26.02(d); and

(v) Tenant has delivered to Landlord (i) copies of the Initial Construction Permits, and (ii) copies of the plans and specifications for the Facility stamped approved by the Building Department; and

(vi) Tenant has delivered to Landlord the Construction Security; and

(vii) Tenant has delivered to Landlord a fully executed and delivered construction contract with a general contractor, or a fully executed and delivered design-build contract, together with executed and delivered contracts for each of the Major Contractors, or a fully executed and delivered construction management contract together with executed and delivered contracts for each of the Major Contractors (collectively, the “**Construction Contracts**”), for the construction of the Facility, meeting the requirements of this Article 26; and

(viii) Tenant has delivered to Landlord fully executed and delivered agreements between Tenant and the architect and engineers engaged to design the Facility (“**Design Contracts**”) meeting the requirements of this Article subject to the rights of the Leasehold Lender and any Fee Lender, a collateral assignment to Landlord of all of Tenant’s right title and interest to the Construction Documents and Design Documents, which assignment shall be in form reasonably satisfactory to Landlord (provided that Landlord shall not exercise its rights as assignee until this Lease has been terminated and each Leasehold Lender has failed to exercise its rights to a New Lease). Nothing set forth herein shall obligate to assume any of the obligations under the Construction Documents or Design Documents; and

(ix) Tenant has obtained, and has caused its general contractors, construction managers, architects, and subcontractors to obtain, the insurance required under this Lease and has delivered to Landlord certificates (in form reasonably acceptable to Landlord) evidencing such insurance, except that, with respect to liability insurance, the “**Wrap Up**” liability insurance shall have a limit of liability as reasonably determined by Landlord; and

(x) Tenant’s general contractor and any Major Contractors shall have furnished to Landlord an indemnification agreement reasonably acceptable to Landlord.

(c) Each of the Design Contracts or the collateral assignments described in Section 26.02(b)(viii) above shall include the following provision, in form and substance reasonably satisfactory to Landlord:

(i) Subject to the rights of the Leasehold Lenders and Fee Lenders, Landlord, its successors and assigns, shall be permitted to use the plans and specifications prepared pursuant to such Design Contracts, in connection with the construction, maintenance, operation, alteration of, and addition to the Facility.

(d) Landlord’s approval of the plans and specifications for the Initial Construction shall not be unreasonably withheld, conditioned or delayed. If Landlord fails to grant or deny any such

request for Landlord’s approval within thirty (30) calendar days after Landlord has received Tenant’s request for such approval, three (3) complete sets of plans and specifications, and all additional information reasonably requested by Landlord, such approval shall be deemed granted. Such approved plans and specifications may not be materially modified without Landlord’s approval, such approval not to be unreasonably withheld, conditioned or delayed. If Landlord fails to grant or deny any such request for Landlord’s approval to any material modification(s) to the approved plans and specifications within seven (7) calendar days after Landlord has received Tenant’s request for such approval, three (3) complete sets of the plans and specifications reflecting such material modification(s), and all additional information reasonably requested by Landlord, such approval shall be deemed granted. No approval by Landlord, and no inspection by Landlord or its representatives of the Initial Construction, shall be deemed an assurance or representation by Landlord that any aspect of the Initial Construction, or the plans and specifications therefor, comply with applicable Legal Requirements or with the requirements of this Lease.

Section 26.03 Construction Timetable. Tenant shall comply with the construction timetable and construction milestones as set forth in the loan documents entered into in connection with the Leasehold Financing (the “**Timetable**”). **Notwithstanding anything to the contrary in this Section, the failure of Tenant to comply with the Timetable shall not be deemed to constitute a default under the terms of this Lease.**

Section 26.04 Limitations. No Affiliate of Tenant shall be engaged to act as (i) general contractor for the Facility, or (ii) the construction manager of the Facility, or (iii) design-builder, and/or (iv) a Major Contractor.

Section 26.05 Intentionally Reserved.

Section 26.06 Quality of Construction. The materials, fixtures, machinery and equipment to be installed in the Facility shall be of good or first rate quality and new. If required by Landlord, Tenant shall furnish reasonably satisfactory evidence to Landlord as to the kind and quality of materials, fixtures, machinery and equipment. All construction work associated with the Facility shall comply in all material respects with the requirements of the final plans and specifications approved by Landlord. All work in connection with the construction of the Facility shall be prosecuted with reasonable dispatch, subject to Unavoidable Delays and subject to the Timetable (to the extent applicable).

Section 26.07 Certificate of Occupancy. Tenant shall obtain a temporary certificate of occupancy for the Premises prior to opening. Tenant shall keep such temporary certificate of occupancy in full force and effect until the date that a permanent certificate of occupancy is issued for the Premises, and Tenant shall obtain and deliver to Landlord a permanent certificate of occupancy for the Facility within six (6) months after issuance of the initial temporary certificate of occupancy, subject to reasonable extension of such time period for Unavoidable Delays. Tenant shall also be obligated to obtain all required governmental signoffs in connection with the construction of the Premises.

Section 26.08 Construction Documentation from Tenant. Tenant shall deliver the following documents to Landlord, promptly after the Facility is Substantially Completed: (i)

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copies of the “as built” plans for the Facility, including CAD drawings if requested by Landlord; (ii) a survey of the Premises showing the Facility and certified to Landlord by a licensed surveyor; (iii) all permits, certificates, and sign-offs required to be issued by applicable Legal Requirements in connection with the construction of the Facility; and (iv) when issued, any temporary or permanent certificate of occupancy issued with respect to the Facility.

ARTICLE 27

CONSTRUCTION AND ALTERATIONS REQUIREMENTS AND STANDARDS

Section 27.01 Construction and Alterations Requirements and Standards. The provisions of this Article shall apply to the Initial Construction and all other proposed alterations and work by Tenant, except to the extent Article 26 may impose a higher standard. Tenant may, at its sole option and at its sole cost and expense, make any additions, replacements, changes, alterations, installations, repairs or improvements to the Premises (the “**Alterations**”) that Tenant, in its sole discretion, deems necessary or appropriate; except that Tenant shall not, without Landlord’s consent, which may be granted or denied in Landlord’s absolute discretion: (a) demolish all or substantially all of the Improvements, (b) alter the Improvements so as to reduce the aggregate rentable square footage of the Improvements, (c) reduce the height of the Improvements, (d) alter the Improvements so as to adversely affect the structural integrity of the Improvements, or (e) alter the nature of the Facility from the nature of the Facility required to be constructed under this Lease. Notwithstanding the foregoing, Landlord’s consent shall not be unreasonably withheld or delayed to any of the Alterations described in clauses (a) - (d) above if such Alterations result from a material casualty not caused by Tenant or from a condemnation. Notwithstanding the foregoing, if the cost of Tenant’s work will cost less than five hundred thousand dollars (\$500,000) in the aggregate (exclusive of “soft” costs), only involves work to the interior of the Premises and will does not involve a structural alteration to the Premises, then Landlord’s consent for such work shall not be required (“**Non-Consent Work**”).

Section 27.02 Quality of Alterations. All Alterations shall be made in a good and workmanlike manner, in compliance with all applicable Laws, and in compliance with the requirements of any Leasehold Financing or Fee Mortgage, and shall conform in all material respects with the plans and specifications approved by the Building Department and, if applicable, Landlord. Tenant shall complete all Alterations with reasonable diligence and shall, promptly after completion of such Alterations, obtain all certificates, sign-offs, licenses, permits, and approvals required by Law to be obtained with respect to the Alterations and with respect to all equipment, machinery and fixtures installed in connection with the Alterations. All materials, fixtures, machinery and equipment to be installed in the Improvements shall be of good quality and new. Tenant shall design and plan the staging of all work at the Premises, and perform all construction at the Premises, with the highest degree of care so as to ensure the safety of persons and property at and around the Premises. Tenant shall take appropriate action to ensure that all improvements owned by adjacent property owners shall not be damaged or disturbed.

Section 27.03 Commencement of Work. Except for Non-Consent Work (as defined above) Tenant shall not commence any Alterations until Tenant has met all of the following conditions:

(a) Tenant has obtained all Permits required for the Alterations; and

(b) With respect to Alterations made after the Initial Construction, (i) Tenant has caused its general contractors, construction managers, architects, engineers, and subcontractors to obtain the insurance described herein, subject to Landlord’s right to reasonably increase the limits of such insurance and to require such other and additional coverages as may be reasonably determined by Landlord, and (ii) Tenant has delivered to Landlord certificates (in form reasonably acceptable to Landlord) evidencing such required insurance; and

(c) Tenant has obtained the insurance required below, and has delivered to Landlord certificates (in form reasonably acceptable to Landlord) evidencing such insurance; and

(d) Intentionally Deleted.

(e) If Landlord’s consent is required for such Alterations, Landlord has consented to the final plans and specifications for the proposed Alterations in accordance with the terms of this Lease; and

(f) If the aggregate cost of the Alterations exceeds \$2,000,000, Tenant has delivered to Landlord the Construction Security described below.

Section 27.04 Intentionally Deleted.

Section 27.05 Security. If the aggregate cost of the proposed Alterations, as reasonably estimated, exceeds one million dollars (\$1,000,000) for any period prior to the fifteenth (15th) Rental Year or two million dollars (\$2,000,000) for any period commencing on the first day of the fifteenth (15th) Rental Year, Tenant shall deliver to Landlord Construction Security reasonably acceptable to Landlord prior to the commencement of the Alterations.

Section 27.06 Landlord Cooperation. To the extent reasonably necessary, and without violating applicable Law, Landlord shall, at no out-of-pocket expense to Landlord, cooperate with Tenant in Tenant’s efforts to obtain the required Permits for the construction of the Alterations and the operation of the Improvements in accordance with the provisions of this Lease, including by joining in applications for Permits, subdivision plat approvals, certificates of dedication, public works or other agreements, utility easements, permits for sewer, water and other utility services, and the dedication to the applicable governmental authorities of such title to or easements for utility, roadway and slope or storm drainage areas or facilities as are reasonably necessary or desirable.

Section 27.07 Miscellaneous. (a) At all times during the Term, the Facility, all other Improvements, all Alterations, and all Personal Property acquired (or leased) by Tenant or Tenant’s Affiliates shall be the property of Tenant, but shall remain on the Premises except as hereinafter provided. Upon the expiration or sooner termination of the Term, the Facility, all other Improvements, all Alterations, and all Personal Property acquired (or leased) by Tenant or Tenant’s Affiliates shall become the sole property of Landlord at no cost to Landlord, free and clear of all liens, leases and encumbrances and in good condition, subject only to reasonable wear and tear, except that Tenant shall remove from the Premises at the Expiration Date any of Tenant’s Personal Property that is moveable, but any damage caused by such removal shall be repaired by

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Tenant in a good and workmanlike manner. To the extent Tenant leaves any moveable property in the Premises it shall be deemed abandoned and any cost Landlord incurs to remove such Personal Property shall promptly be reimbursed by Tenant.

(b) Notwithstanding the foregoing, Tenant may replace any fixtures, machinery, equipment and Personal Property from time to time, provided such replacements are new and of quality and utility at least equal to the fixtures, machinery, equipment and Personal Property being replaced. Any such replacements, with the exception of moveable Personal Property, shall remain on the Premises and become the property of Landlord at the expiration or sooner termination of this Lease as provided above.

(c) Tenant shall deliver to Landlord, upon request, copies of the "as built" plans for all buildings, including the Facility, constructed on the Premises and all material Alterations (including replacements of or material Alterations to building systems, structural alterations to the structural elements of the buildings, and additions to the buildings), including CAD drawings, and any temporary or permanent certificate of occupancy issued with respect to such buildings.

(d) Landlord, its architects, engineers and representatives shall have the right to inspect the Land and the Improvements (to the extent then constructed) from time to time during the construction of the Facility and any Alterations.

(e) Tenant shall keep the Premises and this Lease free from any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect or engineer and free from any similar lien or encumbrance with respect to work, material or services alleged to have been performed for Tenant. If any such lien or encumbrance is filed or recorded, Tenant shall discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after Tenant receives notice of such lien or encumbrance. If Tenant fails to discharge such lien or encumbrance within such thirty (30) day period, Landlord may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest, and/or penalties imposed in connection therewith or take such other action as Landlord deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by Tenant. The amount so paid and costs incurred by Landlord shall be deemed Additional Rent under this Lease payable within thirty (30) days after Tenant is billed therefor. Nothing in this Lease shall be deemed in any way to: (a) constitute Landlord's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair of the Premises; or (b) evidence Landlord's agreement to subject the Premises to any such lien.

ARTICLE 28

LEASEHOLD MORTGAGES

Section 28.01 Leasehold Mortgages. Notwithstanding anything in this Lease to the contrary, Tenant shall have the absolute and unconditional right, without Landlord's consent, to, from time to time, grant to any Institutional Lender or mezzanine lender providing financing or refinancing to Tenant with respect to the Premises a mortgage lien encumbering Tenant's interest in the Premises and its interest in, to and under this Lease, together with an assignment of leases

and rents and a security interest in any Personal Property owned by Tenant, in order to secure the repayment of such financing, including interest thereon, and the performance of all of the terms, covenants and agreements on Tenant's part to be performed or observed under all agreements executed in connection with such financing or refinancing (collectively, a "**Leasehold Mortgage**"; and each holder of a Leasehold Mortgage, a "**Leasehold Lender**"). No such Leasehold Mortgage, lien or security interest shall attach to Landlord's interest in this Lease or the Premises or to any personal property owned by Landlord nor shall any such assignment affect Landlord's interest in this Lease, or in any leases and rents or other proceeds from the Premises. Tenant may have one or more Leasehold Mortgages at any time.

Section 28.02 Leasehold Lender Protections. (a) Landlord's consent and approval shall not be required in connection with any Leasehold Mortgage. Notwithstanding the foregoing, Tenant shall give Landlord prompt notice of each Leasehold Mortgage, together with contact information for notices to the Leasehold Lender (such notice and/or any notice given by Lender to Landlord of its contact information, collectively, the "**Lender Notice**"). Tenant promptly shall furnish Landlord with a complete copy of each Leasehold Mortgage (including all documents and instruments comprising the Leasehold Mortgage) and all amendments, extensions, modifications and consolidations thereof, certified as such by Tenant.

(b) After receipt of a Lender Notice, Landlord shall give such Leasehold Lender, in the manner provided by the notice provisions of this Lease, a copy of each notice of default given by Landlord to Tenant, at the same time that Landlord gives such notice of default to Tenant or promptly thereafter. No such notice of default given by Landlord to Tenant shall be effective unless and until a copy of such notice shall have been so given to each such Leasehold Lender at the last address furnished to Landlord. Notice to a Leasehold Lender shall be deemed given on the date received by the Leasehold Lender. Landlord shall not exercise any right, power or remedy with respect to any default hereunder, and no notice to Tenant of any such default shall be effective and no grace or cure periods under this Lease shall be deemed to commence unless and until Landlord shall have so given to the Leasehold Lender written notice or a copy of its notice to Tenant of such default. The Leasehold Lender shall have the right, but not the obligation (except as provided in the next section), to cure such default or to cause such default to be cured, within the time periods set out below.

(c) Landlord shall not exercise its right to terminate this Lease following a default by Tenant if:

(i) As to a monetary default, the Leasehold Lender cures such default on or before the date that is the later of (i) thirty (30) days after the date such default is required to be cured by Tenant under the terms of this Lease and (ii) thirty (30) days after the date Leasehold Lender is given notice of Tenant's default; and

(ii) As to a non-monetary default, (i) Landlord receives written notice from the Leasehold Lender (the "**Lender Cure Notice**"), within thirty (30) days after Leasehold Lender is given Landlord's notice of Tenant's default, that Leasehold Lender agrees to remedy the default, and (ii) Lender cures such default on or before the date that is the later of (A) sixty (60) days after the date such default is required to be cured by Tenant under the terms of this Lease, and (B) sixty (60) days after the date Leasehold Lender is given

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notice of Tenant's default, provided, however, that if any non-monetary default is not capable of being remedied by the Leasehold Lender within such time period, Leasehold Lender shall have such greater period of time as is reasonably necessary to cure such default (but in no event shall such period exceed 120 days after the date Leasehold Lender is given notice of Tenant's default) if Leasehold Lender shall commence to remedy the default within such period and shall diligently continue to prosecute such cure to completion; plus (iii) if possession of the Premises is required in order to cure such default, so long as Leasehold Lender institutes judicial or non-judicial foreclosure proceedings within such sixty (60) day period and diligently prosecutes such proceedings in order to obtain possession directly or through a receiver, and, upon obtaining such possession, commences promptly to cure the default and diligently prosecutes the same to completion, provided that, during the period in which such action is being taken and any foreclosure proceedings are pending, all of the other obligations of Tenant under this Lease, to the extent they are reasonably susceptible to being performed by Leasehold Lender, shall be performed. If such non-monetary default is of such a nature that it cannot be cured by Leasehold Lender (for example, the bankruptcy of Tenant), and if Leasehold Lender succeeds Tenant to the position of tenant hereunder, Landlord shall not terminate this Lease, commence eviction proceedings or accelerate rent during the foregoing curative periods extended to Leasehold Lender. Notwithstanding anything to the contrary set forth above or in this Lease, Leasehold Lender's period to cure any non-monetary defaults such period shall not exceed 120 days after the date Leasehold Lender is given notice of Tenant's default.

(d) Landlord agrees that any cessation or interruption in the permitted use of the Premises for educational purposes or an integral part thereof that occurs during the pendency of Leasehold Lender exercising its rights under the Leasehold Mortgage shall not constitute a default under the Lease, and Landlord also agrees that the cessation or interruption of such use following any Foreclosure (defined below) may continue for a reasonable period of time in order to provide adequate opportunity for a replacement tenant to resume the permitted use of the Premises.

(e) At any time after the delivery of the Lender Cure Notice, Leasehold Lender may notify Landlord, in writing, that it has relinquished possession of the Premises, or that it will not institute foreclosure proceedings, or, if such proceedings have been commenced, that it has discontinued or will discontinue such proceedings, and that it relinquishes all right to a New Lease (the "**Abandonment Notice**"). In such event, Leasehold Lender shall have no further obligation to cure Tenant's default(s). Landlord may, at any time after receipt of such Abandonment Notice or upon Leasehold Lender's failure to comply with the requirements of Section 15.03 above, terminate this Lease in accordance with the terms thereof, without any obligation to give Leasehold Lender a New Lease.

(f) If the Leasehold Lender or any affiliate, nominee acting on behalf of the Leasehold Lender, succeeds to Tenant's interest whether under this Lease or a New Lease (each a "**Subsequent Transferee**"), and then sublets or licenses the Premises, the rent collected by the Subsequent Transferee shall be first be applied to Rent due under this Lease, then to pay in full the outstanding principal and all accrued and accruing interest (but not default interest) of any Leasehold Mortgage. Upon repayment in full of the Leasehold Mortgage the provisions of Section 15.03 shall apply. The provisions of this Section shall only apply to a Subsequent Transferee.

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Any other Purchaser shall be bound by the provisions of Article 15 in connection with any subletting or assignment profit. If Leasehold Lender sublets for less than the amount of the Rent payable under this Lease then Leasehold Lender shall pay the difference (between the sublease rent and the Rent) each month to Landlord. Nothing set forth in this Section shall be deemed a waiver by Landlord to receive the full amount of the Rent or permission to Leasehold Lender to pay less than the full amount of the Rent.

(g) Subject to the preceding sections, no Leasehold Lender shall become liable under the provisions of this Lease, or any lease executed pursuant to this Article unless and until such time as it becomes, and then only for as long as it remains, Tenant under the leasehold estate created by this Lease. No Leasehold Lender or designated Affiliate of a Leasehold Lender shall have any personal liability under this Lease except to the extent of its interest in this Lease, even if it becomes Tenant or assumes the obligations of Tenant under this Lease.

(h) Subject to the terms set forth above, Leasehold Lender has no obligation to cure any default of Tenant under the Lease.

(i) Pursuant to any transfer of Tenant's leasehold interest in this Lease arising out of a judicial or non-judicial sale proceeding pursuant to the Leasehold Mortgage, any transfer pursuant to a deed or assignment in lieu of foreclosure, any sale or transfer in any bankruptcy or insolvency proceedings, or any similar transfer pursuant to any exercise of remedies under any Leasehold Mortgage (collectively, a "**Foreclosure**"), to acquire the leasehold interest and Tenant's rights under this Lease and assume the obligations of Tenant under this Lease as required under this Section, or assign, transfer, sell or convey its rights under the Lease, in which case such successor in interest, including a Purchaser (as defined below), shall acquire the leasehold interest and assume the obligations of Tenant under this Lease and in such event, Landlord shall not exercise its right of termination with respect to such default; provided that Leasehold Lender or its successor in interest, including a Purchaser shall during the time it pursues its remedies necessary to enable it to effect a Foreclosure cures all payment and performance defaults capable of being cured and performs all obligations of Tenant under the Lease that can be performed

(j) Landlord's consent and approval shall not be required in connection with the transfer of Tenant's interest in this Lease and Premises arising out of any Foreclosure, subject to compliance with the terms of this Section. In the event of the assignment or transfer of Tenant's leasehold estate pursuant to any Foreclosure, no such Foreclosure shall constitute a default by Tenant under this Lease provided Leasehold Lender timely cures all payment and performance defaults and performs all obligations of Tenant under the Lease, and any Purchaser of the leasehold interest shall be entitled to all the benefits and bound to all of the obligations of this Lease. Landlord agrees to execute such documents as may be reasonably necessary to evidence such Purchaser's rights as Tenant under this Lease. Upon any rejection of this Lease by any trustee of Tenant in any bankruptcy, reorganization, arrangement or similar proceeding which would, if it were not for this Section, cause this Lease to terminate, without any action or consent by Landlord, Tenant or any Leasehold Lender (a "**Bankruptcy Termination**"), the transfer of Tenant's interest hereunder to such Leasehold Lender or its nominee shall automatically occur (a "**Deemed Transfer**"). The Leasehold Lender may terminate this Lease following a Deemed Transfer upon giving notice thereof to Landlord no later than thirty (30) days after the Bankruptcy Termination. Upon any such termination, upon payment of all Rent due up through the Bankruptcy Termination,

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the Leasehold Lender shall have no further obligations hereunder (including any obligations which may have accrued prior to such termination) except in the event that said Leasehold Lender shall request a new lease (a "New Lease").

(k) Landlord, upon written request of Leasehold Lender (or if more than one Leasehold Lender makes such request, the Leasehold Lender whose Leasehold Mortgage has the most senior lien), made any time within thirty (30) days following a Deemed Transfer, shall promptly execute and deliver to such Leasehold Lender a New Lease, naming such Leasehold Lender or its designee as the tenant under this Lease, for the remainder of the Term upon all of the terms, covenants, and conditions of this Lease (including options to extend the term of this Lease, if any) except for such provisions that must be modified to reflect such termination, rejection or disaffirmance and the passage of time, if such Leasehold Lender shall pay to Landlord, concurrently with the delivery of such New Lease, all unpaid Rent due under this Lease up to and including the date of the commencement of the term of such New Lease. Leasehold Lender or its designee shall execute and deliver to Landlord such New Lease within thirty (30) days after delivery of such New Lease by Landlord to Leasehold Lender. Upon execution and delivery of such New Lease, Leasehold Lender shall cure or cause to be cured all defaults existing under this Lease which are capable of being cured by such Leasehold Lender or its designee promptly and with diligence after the delivery of such New Lease.

(l) The New Lease and the leasehold estate thereby created shall, subject to the terms and conditions of this Lease, have the same priority as this Lease with respect to any mortgage, including any Fee Mortgage of the Premises or any leasehold interest therein or any other lien, charge or encumbrance thereon, whether or not the same shall then be in existence. Landlord shall execute, and shall cause any Fee Lender to execute, any instruments reasonably necessary to maintain such priority. Concurrent with the execution and delivery of such New Lease, Landlord shall pay (or shall cause any depository or Fee Lender to pay) to the tenant named in the New Lease, any moneys (including insurance and condemnation proceeds) then held by Landlord (and/or such depository or Fee Lender) that would have been payable to Tenant as of the date of execution of the New Lease but for the termination of this Lease. With respect to any moneys held by Landlord under the terms of this Lease that would not be payable to Tenant if the Lease had not been terminated, Landlord shall continue to hold, and to disburse such moneys, in accordance with the terms of this Lease.

(m) If more than one Leasehold Lender has requested a New Lease, and the Leasehold Lender whose Leasehold Mortgage had the most senior lien does not execute a New Lease or does not fully comply with the provisions of this Article regarding the delivery of such New Lease, Landlord shall continue to offer, seriatim in order of the priority of their respective Leasehold Mortgages, such New Lease to the remaining requesting Leasehold Lenders, who shall have fifteen (15) days from the date of receipt of such offer, **with time being of the essence**, to execute such New Lease and to fully comply with the provisions regarding the delivery of such New Lease, until the earlier of (a) the execution and delivery of a New Lease and (b) the expiration of the offer period for the requesting Leasehold Lender whose lien is most junior. If no Leasehold Lender has the right to be offered a New Lease, Landlord shall be free of all obligations to the Leasehold Lenders and shall be free to lease all or any part of the Premises at Landlord's sole discretion.

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to Landlord, and (ii) Leasehold Lender or other Purchaser shall cure all monetary defaults under this Lease (within the time frames set forth in this Lease), including, but not limited to, those with regard to the payment of past due rent, and all other non-monetary defaults under this Lease, which are capable of being cured or which are otherwise being diligently prosecuted to a cure by such Leasehold Lender or Purchaser, in each case, within the curative periods described above. In determining the excess or profit for purposes of Section 15.03, the outstanding principal balance of the Leasehold Mortgage together with all accrued and unpaid interest (but excluding default interest) through the date of such sale or assignment shall be included in costs and deducted from any amount received by Subsequent Transferee.

(t) If there is a Taking, Leasehold Lender shall have the right to participate in any condemnation proceedings and settlement discussions and shall have the right to supervise and control the receipt and disbursement of all Awards payable to Tenant in the place of and instead of Tenant. All Awards payable to Tenant shall be applied in accordance with the terms of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien.

(u) Intentionally deleted.

(v) Intentionally deleted.

(w) Intentionally deleted.

(x) If any dispute under this Lease is required to be resolved by arbitration, every Leasehold Lender that has delivered the Lender Notice to Landlord shall have the right to participate in such proceeding and shall be given notice of its commencement at least twenty (20) days prior thereto.

(y) Landlord agrees that the name of Leasehold Lender may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied as required by the terms of this Lease towards the rebuilding of the Premises.

(z) Intentionally deleted.

(aa) There shall be no merger of this Lease or the leasehold estate created by this Lease with a fee interest in the Premises by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, this Lease or the leasehold estate created by this Lease and the fee estate in the Premises, unless and until such Person and every Leasehold Lender and Fee Lender shall join in a written instrument expressly providing for such merger and such instrument is recorded.

(bb) If the Lease is terminated by reason of a breach or default that is not capable of being cured by Leasehold Lender, or by Tenant's voluntary surrender or Landlord's cancellation, of or to this Lease at any time while any Leasehold Mortgage is in effect, without first obtaining notifying each Leasehold Lender, Landlord shall provide written notice of such termination to Leasehold Lender, and such Leasehold Lender shall have a period of fifteen (15) days after receipt of such notice in which to request in writing that Landlord grant to such Leasehold Lender, or its

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(n) Landlord shall, within thirty (30) days after it receives the request of any Leasehold Lender or prospective Leasehold Lender, provide an estoppel certificate as to such matters pertaining to this Lease as are reasonably requested by such Leasehold Lender or prospective Leasehold Lender. Landlord shall not be obligated to provide more than two (2) estoppel certificates in any consecutive twelve (12) month period.

(o) Leasehold Lender shall have the right to participate in the adjustment of losses with any insurance company with respect to any damage or destruction of the Premises (but only to the extent Tenant is entitled to participate in such adjustment) or any improvements thereon. Subject to any rights of termination set forth in this Lease, all insurance proceeds shall be applied to restore the Premises, subject to Leasehold Lender's right to supervise disbursement of all insurance proceeds in accordance with the terms of the Leasehold Mortgage, or, if there is more than one Leasehold Mortgage, with the terms of the Leasehold Mortgage that has the senior lien.

(p) Upon a default by Tenant with respect to any loan held by Leasehold Lender, Leasehold Lender or any successor in interest shall have the right to enter the Premises for the purposes of taking physical possession thereof, and take such legal actions against Tenant and any other parties in occupancy of the Premises as may be available to remove Tenant and/or such other parties and/or to confirm Leasehold Lender's rights to foreclose upon, and take possession and control of, the Premises and any other collateral under the Leasehold Mortgage.

(q) Upon any Foreclosure or Deemed Transfer and resulting transfer of the leasehold estate created by this Lease, Landlord will recognize Leasehold Lender, any affiliate, nominee, or successor of Leasehold Lender, or any other person, firm or corporation acquiring the leasehold estate as Tenant under this Lease pursuant to any Foreclosure, and any successor or assignee thereof (collectively, a "Purchaser"), on the same terms and provisions and with all of the rights and privileges of Tenant, provided (i) such Purchaser agrees to assume and be bound by all of the terms, covenants and conditions of this Lease pursuant to an assumption agreement reasonably acceptable to Landlord, and (ii) Leasehold Lender or other Purchaser shall cure all monetary defaults under this Lease, including those with regard to the payment of past due rent, and all non-monetary defaults which are capable of being cured or which are otherwise being diligently prosecuted to a cure by such Purchaser, in each case, within the curative periods described above. No consent or approval by Landlord shall be required in connection with the commencement or completion of any Foreclosure or any assignment or transfer of Tenant's rights or obligations under this Lease in connection with any such Foreclosure or Deemed Transfer.

(r) In the event that any Purchaser shall acquire the rights of Tenant pursuant to the provisions of this Section, such Purchaser will attorn to Landlord, and Landlord will recognize Purchaser as tenant under this Lease. The Purchaser shall thereupon be deemed to have assumed all of the obligations of Tenant to Landlord under this Lease.

(s) A Subsequent Transferee shall be entitled to further assign the leasehold estate in connection with the sale and assignment of such interest, without the further consent or approval of Landlord and without being subject to the right of recapture set forth in Section 15.05 of this Lease, provided at least fifteen (15) days prior written notice of such assignment is given to Landlord; and provided further (i) such assignee agrees to assume and be bound by all of the terms, covenants and conditions of this Lease pursuant to an assumption agreement reasonably acceptable

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designee or nominee, as tenant, a New Lease (on the then existing terms of this Lease as it may have been modified) for the Premises.

(cc) Each Leasehold Lender is an express third-party beneficiary of the provisions of this Section and shall be entitled to enforce the same directly against Landlord, provided that all actions shall be consolidated in and presented by the senior Leasehold Lender. In any such action or proceeding in which any Leasehold Lender seeks to enforce its rights, as precondition to the commencement of such an action, Leasehold Lender will need to deliver a written agreement signed by Leasehold Lender, in which Leasehold Lender agrees to reimburse Landlord for all of its reasonable legal fees if the Leasehold Lender is not the prevailing party. Failure to deliver such an agreement shall preclude Leasehold Lender from enforcing any provision of this Section against Landlord.

(dd) In the event that Landlord shall become subject to any bankruptcy or insolvency proceeding, any rights, elections, or actions available to Tenant therein shall be subject to the rights of Leasehold Lender under the Leasehold Mortgage to consent to, or to exercise on behalf of Tenant, such rights, elections, or actions. Without limiting the foregoing, no consent or acquiescence by Tenant to any rejection of this Lease by Landlord or any successor or trustee in such proceeding shall be binding or effective without the prior, written consent thereto by each Leasehold Lender, and the rights, liens, and claims of Leasehold Lender shall extend to, encumber, and include all rights to damages for any such rejection and all rights to continued possession of the Premises.

(ee) Landlord and Tenant shall each, from time to time, execute, acknowledge and deliver such further instruments, and perform such additional acts, as the other and/or a Leasehold Lender may reasonably request in order to effectuate the intent and purposes of this Article.

(ff) Each Leasehold Lender, by giving a Leasehold Mortgage to the Tenant agrees to be bound by the terms set forth in this Lease. As a condition of Landlord's obligations to Leasehold Lender under the terms of this Lease, each Leasehold Lender shall give Landlord a right of first refusal to purchase the Leasehold Mortgage. If Leasehold Lender intends to sell or assign the Leasehold Mortgage to a third party transferee, Leasehold Lender shall give Landlord not less than twenty-one (21) days' written notice to match the offer. The notice shall be sent by Federal Express or other overnight courier for overnight delivery. If Landlord does not respond in the twenty-one (21) day period (measured from the date the notice is received by Landlord) then Landlord shall be deemed to have waived its right to purchase the Leasehold Mortgage then being offered.

ARTICLE 29

LEASEHOLD CONDOMINIUM

Section 29.01 Leasehold Condominium. (a) The parties agree that Tenant intends to submit its leasehold interest in the Premises to a leasehold condominium regime in order to take advantage of certain real estate tax abatements available to certain types of tax exempt entities that own property. In order to do so, on Tenant will seek to record in the Office of the City Register of the City of New York (the "City Register's Office") a declaration of leasehold condominium

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and corresponding condominium tax map drawings (collectively, the “**LH Condominium Documents**”), thereby creating the leasehold interest leasehold condominium regime (the “**Leasehold Condominium**”). The Leasehold Condominium will consist of at least two (2) leasehold condominium units, both of which will be “owned” (for purposes of the Leasehold Condominium) by Tenant (as the declarant of the Leasehold Condominium). Each unit in the Leasehold Condominium is referred to herein as a “**LH Condo Unit**.” The Leasehold Condominium declaration shall be subordinate to the terms of this Lease and to any and all mortgages currently encumbering the Building or which will encumber the Building in the future. Tenant shall be liable for each LH Condo Unit to the same extent that it is liable for the Premises pursuant to this Lease, and references in this Lease requiring action by Tenant and references to limitations on Tenant shall also apply to the LH Condo Units and to Tenant in its capacity as owner of the LH Condo Units. For the avoidance of doubt, the tax lot assigned to the Premises will be replaced with new tax lots for the LH Condo Units upon the recording of the LH Condominium Documents, and each LH Condo Unit will have an allocable percentage of interest in the Leasehold Condominium’s common elements allocated to it (the “**Common Interest**”). The aggregate Common Interest of all LH Condo Units must equal 100%.

(b) Landlord hereby consents to Tenant submitting this Lease as part of an application (the “**NAL Application**”) to the New York State Department of Law (the “**AG’s Office**”) for a “no-action letter” or other similar approval letter, the issuance of which will be necessary to create the Leasehold Condominium. Landlord agrees to cooperate with Tenant with respect to the creation of the Leasehold Condominium, and Landlord agrees to promptly sign any documents as may be reasonably requested by Tenant in connection with its formation of a Leasehold Condominium, including, without limitation, an affidavit in support of the NAL Application, which shall be submitted to the AG’s Office by Tenant as part of such NAL Application. Tenant agrees to provide Landlord with a copy of the NAL Application. After the AG’s Office issues the No Action Letter and the Department of Finance has approved the LH Condominium Documents, the LH Condominium Documents will then be recorded in the City Register’s Office. Upon such recordation, the Leasehold Condominium will be created. After the Leasehold Condominium is created, Tenant shall cause the Leasehold Condominium’s Board of Managers, on behalf of all of the LH Condo Unit Owners, to consent to and agree to perform all of the obligations of Tenant under this Lease. Nothing set forth in this Article 29 shall be deemed to release Tenant from its obligations under this Lease.

ARTICLE 30

DEFINITIONS

The following basic terms, as used in this Lease and in all amendments to the Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

Affiliate: Any Person that directly or indirectly controls, is controlled by, or is under common control with the designated Person or any officer, director, managing or general partner, or member of such designated Person.

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elevators, escalators, machinery, pipes, conduit, wiring, septic systems, wells, heating, ventilation and air conditioning systems).

Including: “Including” means “including but not limited to.” “Includes” means “includes without limitation.”

Institutional Lender: A savings and loan association, savings bank, commercial bank or trust company, insurance company, educational institution, welfare, pension or retirement fund or system, any other entity subject to supervision and regulation by the insurance or banking departments of the State of New York or by a department or agency of the United States exercising similar functions (or any successor department or departments hereafter exercising the same functions as said departments), any governmental agency or entity insured by a governmental agency, a finance company, a private mortgage company, a conduit or pooled mortgage investment fund, a real estate investment trust, an investment bank, a community development financial institution, an institution engaged in the financing of schools, a finance company specializing in extending credit financing to not-for-profit institutions, or any other lender generally considered an “institutional” real estate lender and which makes loans secured by real estate as an ordinary part of its business, provided that in order for any of such entities to be included as an “Institutional Lender,” it shall be subject to service of process within New York State and shall either (i) have assets of at least fifty million dollars (\$50,000,000) or (ii) be a real estate mortgage investment conduit (“**REMIC**”) or similar vehicle so long as the mortgage held by the REMIC or similar vehicle is serviced by an entity that meets the requirements of clause (i) above or by a rated servicer, or (iii) any entity controlled by any of the entities described in clause (i) or (ii) above. An entity meeting the foregoing requirements shall be deemed an Institutional Lender whether acting individually or in a fiduciary capacity. Notwithstanding the foregoing, no Affiliate of Tenant shall be deemed an Institutional Lender.

Insurance Requirements: Any code, order, directive, recommendation, or requirement of any fire insurance rating body applicable to the Premises.

Land: Shall have the same meaning as the Premises.

Landlord Parties: Landlord, Landlord’s managing agent, and all of their Affiliates, officers, directors, shareholders, members, managers, partners, and employees.

Law(s): Any present or future law, statute, ordinance, regulation, code, judgment, injunction, arbitral award, order, rule, directive, proclamation, decree, common law or other requirement, ordinary or extraordinary, foreseen or unforeseen, of the Federal or any state or local government, or any political subdivision, arbitrator, department, commission, board, bureau, agency or instrumentality thereof, or of any court or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, or of any other public or quasi-public authority or group, having jurisdiction over the Premises; and any reciprocal easement, covenant, restriction, or other agreement, restriction or easement of record affecting the Premises as of the date of this Lease or subsequent thereto.

Lenders: All Leasehold Lenders and all Fee Lenders.

Legal Requirements: All requirements of Law.

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Business Days: Monday through Friday, excluding holidays observed by the State of New York, the federal government of the United States, and/or the labor unions servicing the Building,

CPI Fraction: A fraction (which shall never be less than one), the numerator of which is the Price Index (hereinafter defined) most recently published prior to the applicable date and the denominator of which is the Price Index most recently published prior to the Commencement Date. The term “**Price Index**” means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor (or any successor thereto), for All Urban Consumers, US, City Average, All Items (1982-1984). If such Consumer Price Index is terminated, a successor or substitute index, appropriately adjusted, shall be reasonably selected by Landlord. If such Consumer Price Index is converted to a different standard reference base or is otherwise revised, the Price Index shall be determined with the use of such conversion factor, formula or conversion table as may be published by the Bureau of Labor Statistics or, if such Bureau shall not publish same, then with the use of such conversion factor, formula or table as may be reasonably selected by Landlord.

Full Replacement Cost: Shall mean the actual cost of replacing the Improvements and Personal Property.

Fee Lender: See Section 16.01.

Fee Mortgage: See Section 16.01.

Governmental Authority or Governmental Authorities: Any federal, state, county, municipal or other governmental or regulatory authority, agency, board, department, bureau, body, commission, or instrumentality, or quasi-governmental authority, and any court, arbitrator, or other administrative, judicial or quasi-judicial tribunal, or any other public or quasi-public authority, having jurisdiction over the Premises or the matter at issue.

Impositions: Collectively, (a) all real estate taxes, all special assessments and all other property assessments, including all assessments for public improvements or betterments, whether or not commenced or completed within the term of this Lease and all Business Improvement District charges and assessments, (b) all ad valorem, sales and use taxes, (c) all rent and occupancy taxes and all similar taxes, (d) all personal property and other taxes on the Personal Property, (e) all water, sewer, and other utility charges imposed by any Governmental Authority, (f) all fines, fees, charges, penalties, and interest imposed by any Governmental Authority or utility, and (g) all other governmental charges and taxes, in each case of any kind or nature whatsoever, general or special, foreseen or unforeseen, ordinary or extraordinary, which are at any time during or with respect to the Term assessed, levied, charged, confirmed or imposed with respect to the Premises, the Personal Property or the use, leasing, ownership or operation thereof, or become payable out of or become a lien upon the Premises, the sidewalks or streets adjoining the Premises, or the Personal Property or the rents or income therefrom.

Improvements: All buildings and other improvements now located, or hereafter erected, on the Land, together with all fixtures now or in the future installed or erected in or upon the Land or such improvements and owned or leased by Landlord or Tenant (including boiler(s), equipment,

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Liabilities: All losses, claims, suits, demands, costs, liabilities, and expenses, including reasonable attorneys’ fees, penalties, interest, fines, judgment amounts, fees, and damages, of whatever kind or nature.

Market Value: The most probable price which a property (whether fee estate, leasehold estate, or the Premises, as the case may be) should bring in a competitive and open market under all conditions requisite for a fair sale, the buyer and seller (or assignee and assignor in the case of the sale of a leasehold estate) each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus, under the following conditions:

(a) Buyer and seller (or assignor and assignee, as the case may be) are typically motivated; and

(b) Both parties are well informed or well advised, and acting in what they consider their best interests; and

(c) A reasonable time is allowed for exposure in the open market; and

(d) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Permitted Use(s): All uses of the Premises that are permitted by applicable Law.

Person: Any individual, corporation, partnership, firm or other legal entity.

Personal Property: Tenant’s and the School’s furnishings, inventory, trade fixtures, movable equipment and other articles of personal property.

Premises: Shall have the definition as set forth in Section 1.01. References in this Lease to the “Premises” shall be construed as if followed by the phrase “or any part thereof” unless the context otherwise requires.

Requirements: All applicable Legal Requirements and Insurance Requirements.

Substantial Completion: Alterations (including the Initial Construction) shall be deemed “**Substantially Complete**” or “**Substantially Completed**,” and “**Substantial Completion**” shall be deemed to have occurred, when (i) Tenant’s architect delivers to Landlord a certification that the Alterations have been completed with the exception of minor punch list items and insubstantial details of construction, mechanical adjustment or decoration, in accordance with the plans and specifications approved by the Governmental Authorities and, if applicable, Landlord, and (ii) Tenant shall have obtained and furnished to Landlord all approvals, permits, sign-offs, and other documents required by Law to be issued in connection with such Alterations, including any letter of completion, permanent or temporary certificate of occupancy, and/or amendment of certificate of occupancy, and (iii) Tenant delivers to Landlord a final release and waiver of mechanics lien covering all of the Alterations, in form and substance reasonably satisfactory to Landlord, executed

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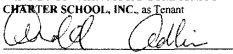
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by each of the Major Contractors and (B) as applicable, the general contractor, construction manager, and/or design-builder.

Sublease: Any lease, sublease, license or other agreement for the use or occupancy of space in the Improvements (other than this Lease). **"Subtenant"** means any tenant, licensee or other occupant of space in the Improvements (other than Tenant).

Unavoidable Delays: Delays due to strikes, lockouts, acts of God, inability to obtain labor or materials, government restrictions, enemy action, terrorist attack, civil commotion, fire or other casualty, shortages of materials, or other causes of a like nature beyond the reasonable control of Landlord or Tenant, as the case may be.

IN WITNESS WHEREOF, Landlord and Tenant have caused these presents to be signed by their duly authorized agent on the day and year first above written.

528 W 162 LLC, as Landlord

FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC., as Tenant


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EXHIBIT 1
DESCRIPTION OF PROPERTY

[to come]

EXHIBIT 3
FORM OF MEMORANDUM OF LEASE

Record and Return to:
Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022
Attention: Kris Ferranti

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum"), is made as of January 23, 2020, between **528 W 162 LLC**, a New York limited liability company ("Landlord"), having an office at 250 West 26th Street, 4th Floor, New York, New York, and **FRIENDS OF WHIN MUSIC COMMUNITY CHARTER SCHOOL, INC.**, a New York not-for-profit corporation ("Tenant"), having an address at 401 West 164th Street, New York, New York 10032.

RECITALS

WHEREAS, Landlord and Tenant have executed that certain Lease, dated as of April 15, 2021 (as the same may be amended from time to time, the "Lease"), under which Landlord leases to Tenant the building and land located at 528 West 162nd Street, New York, New York 10032 (the "Building") as more particularly described in Exhibit A hereto, and identified on the current Tax Map of the City of New York, County of New York, State of New York as Block 2120, Lot 18 (the "Land").

WHEREAS, the Lease has an effective date of April 15, 2021 and the term thereof is for a period of forty (40) years beginning on the Commencement Date (as defined in the Lease), unless sooner terminated pursuant to the terms of the Lease.

WHEREAS, Landlord and Tenant desire to enter into this Memorandum to be recorded in order that third parties will have notice of the existence of the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, and intending to be legally bound hereby, Landlord and Tenant agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated by reference into this Section as if set forth in this Section in full.

2. Incorporation of the Lease. This Memorandum is prepared, signed and acknowledged solely for recording purposes under New York law. The purpose of this Memorandum is to give notice of the existence of the tenancy created by the Lease; and shall not be construed to vary or otherwise affect the rights or obligations of the parties under the Lease as it may be amended. Landlord and Tenant each has rights, duties, and obligations (and conditions to its rights) under the Lease but not stated in this Memorandum. If the Lease and this Memorandum conflict, the Lease governs. Nothing in this Memorandum constitutes any representation or warranty by either party. To the extent, if any, that the Lease limits the liability

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

LANDLORD:

162 W 162 LLC

By: _____
Name:
Title:

STATE OF _____)
COUNTY OF _____) ss.:

On the ___ day of _____ in the year 20__ before me, the undersigned, personally appeared _____ 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[additional signature(s) follow]

of either Landlord or Tenant, such limitation shall apply with the same force and effect to any liability of Landlord or Tenant under this Memorandum.

3. Successors and Assigns. The Lease and this Memorandum shall bind and benefit the parties and their successors and assigns. This shall not limit any restrictions on assignment or other transfer permitted under the terms of the Lease.

4. Release. The parties agree to promptly execute and record a release of this Memorandum of Lease at any time after the Lease expires or is terminated.

[signatures follow]

TENANT:

FRIENDS OF WHIN MUSIC
COMMUNITY CHARTER SCHOOL, INC.

By: _____
Name:
Title:

STATE OF _____)
COUNTY OF _____) ss.:

On the ___ day of _____ in the year 20__ before me, the undersigned, personally appeared _____ 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

[TO BE ATTACHED]

EXHIBIT 4-A

FORM OF PAYMENT AND PERFORMANCE BOND

Exhibit A

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Exh. 4-A

PERFORMANCE BOND

SAMPLE BOND FORM

Bond No.:

CONTRACTOR:
(Name, legal status and address)
SAMPLE BOND FORM

SURETY:
(Name, legal status and principal place of business)
SAMPLE BOND FORM

OWNER:
(Name, legal status and address)
SAMPLE BOND FORM

CONSTRUCTION CONTRACT

Date:
Amount:
Description:
(Name and location)

BOND

Date:
(Not earlier than Construction Contract Date)

Amount:
Modifications to this Bond: ☐ None ☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company:
SAMPLE BOND FORM (Corporate Seal)

Signature:
Name and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:
Gerald J. Wilkoff, Inc.
95 Main Street
PO Box 142
Mineola, NY 11501
516-747-0208

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party.)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the

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Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- 1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- 2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- 1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- 2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- 3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails

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to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform material complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL **SURETY**
Company: _____ (Corporate Seal) Company: _____ (Corporate Seal)

Signature: _____ Signature: _____
Name and Title: _____ Name and Title: _____
Address: _____ Address: _____

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furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- 1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- 2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

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PAYMENT BOND

SAMPLE BOND FORM

Bond No.:

CONTRACTOR:
(Name, legal status and address)
SAMPLE BOND FORM

SURETY:
(Name, legal status and principal place of business)
SAMPLE BOND FORM

OWNER:
(Name, legal status and address)
SAMPLE BOND FORM

CONSTRUCTION CONTRACT

Date:
Amount:
Description:
(Name and location)

BOND

Date:
(Not earlier than Construction Contract Date)
Amount:
Modifications to this Bond: ☐ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)
SAMPLE BOND FORM

Signature: _____
Name and Title: _____

SURETY

Company: _____ (Corporate Seal)
SAMPLE BOND FORM

Signature: _____
Name and Title: N/A

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Gerald J. Wilkoff, Inc.
95 Main Street
PO Box 142
Mineola, NY 11501
516-747-0200

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party.)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment

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§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- 1 the name of the Claimant;
- 2 the name of the person for whom the labor was done, or materials or equipment furnished;
- 3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- 4 a brief description of the labor, materials or equipment furnished;
- 5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- 6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- 7 the total amount of previous payments received by the Claimant; and
- 8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform material complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

The Company executing this bond vouches that this document conforms to American Institute of Architects Document A312, 2010 edition 3

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL	SURETY
Company: _____ (Corporate Seal)	Company: _____ (Corporate Seal)
Signature: _____	Signature: _____
Name and Title: _____	Name and Title: _____
Address: _____	Address: _____

EXHIBIT 4-B
FORM OF MULTIPLE OBLIGEE RIDER

The Company executing this bond vouches that this document conforms to American Institute of Architects Document A312, 2010 edition 4

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Exh. 4-B

RLI
RLI Insurance Company
P.O. Box 3967 Peoria IL 61612-3967
Phone: 309-692-1000 Fax: 309-692-8637

Multiple Obligee Rider
(To be attached to bond at time of issuance)

EXHIBIT 5
CONCEPTUAL DRAWINGS

TO BE ATTACHED TO AND FORM PART OF

_____ Bond No. _____
dated concurrently with the execution of this Rider, issued by RLI Insurance Company, P.O. Box 3967, Peoria, IL 61612-3967
as Surety, on behalf of _____ as
Principal, and in favor of _____ and
_____ as
Obligees.

IT IS HEREBY UNDERSTOOD AND AGREED that the above described bond(s) are hereby amended to include the following paragraph:

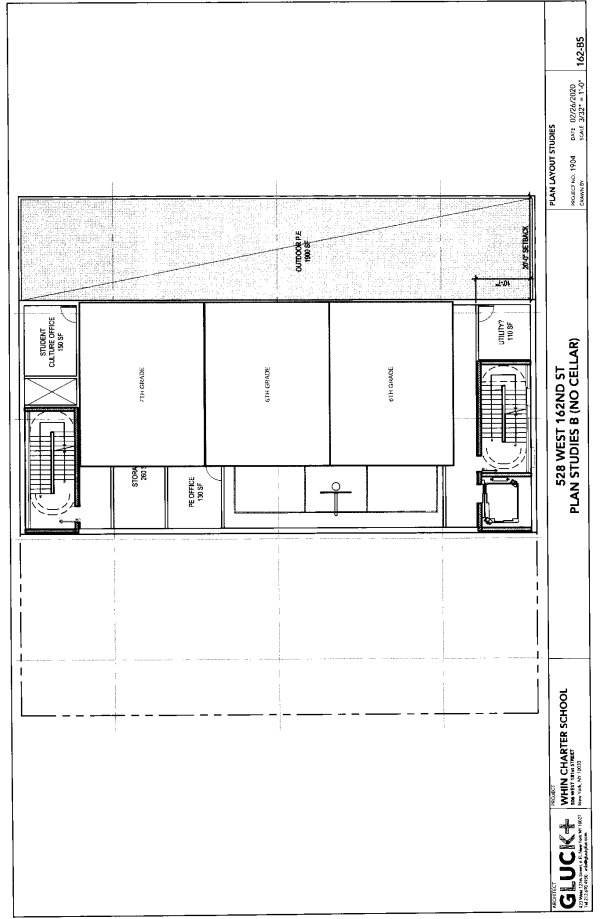
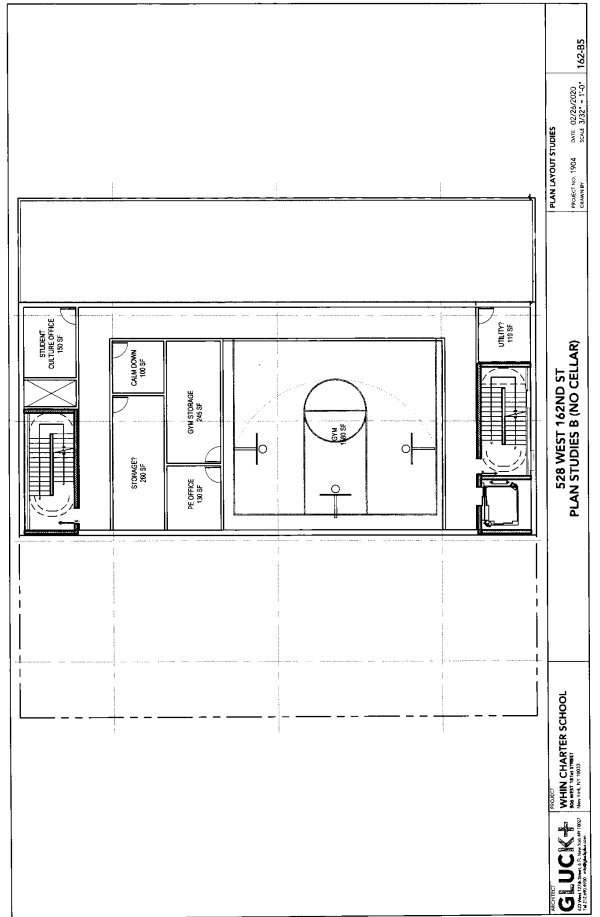
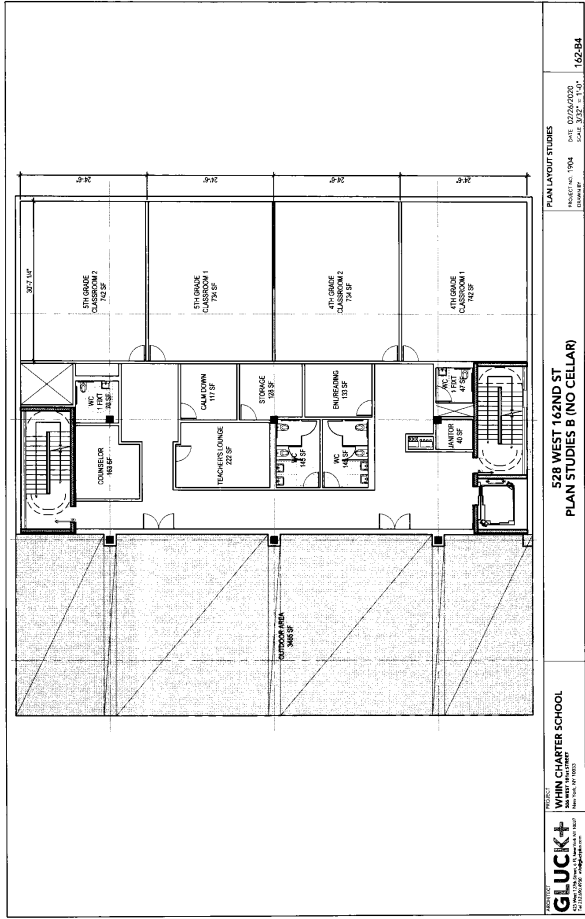
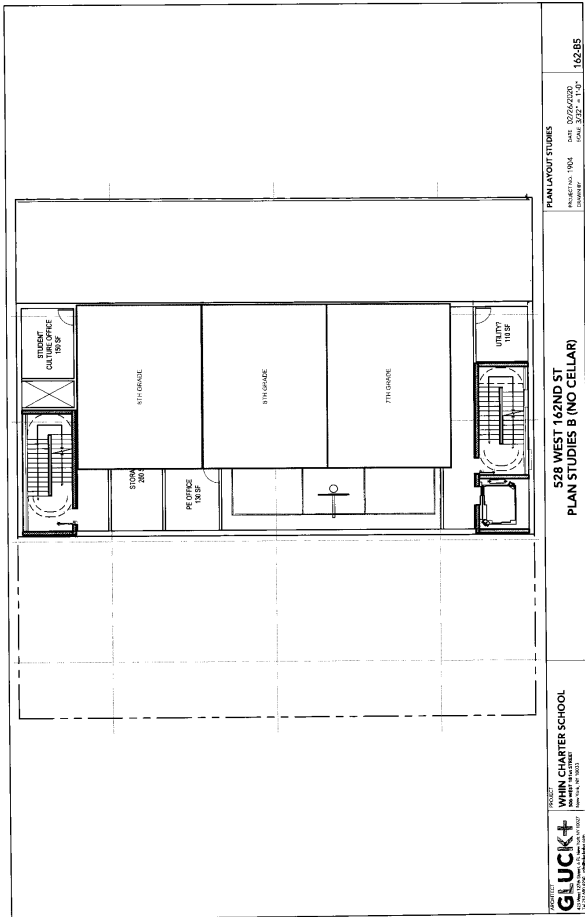
Notwithstanding anything contained herein to the contrary, there shall be no liability on the part of the Principal or Surety under this bond to the Obligees, or any of them, unless the Obligees, or any of them, shall make payments to the Principal, or the Surety in case it arranges for completion of the Contract upon default of the Principal, strictly in accordance with the terms of said Contract as to payments, and shall perform all other obligations required to be performed under said Contract at the time and in the manner therein set forth; and

In no event shall the Surety be liable in the aggregate to Obligees for more than the penalty of the Performance Bond, nor shall it be liable except for a single payment for each single breach or default. At the Surety's election; any payment due to Obligee may be made by its check issued jointly.

IT IS FURTHER UNDERSTOOD AND AGREED that nothing herein contained shall be held to change, alter or vary the terms of the above described bond(s) except as hereinafter set forth.

SIGNED, SEALED AND DATED this _____ day of _____ A.D. _____

(Principal)
By: _____
RLI Insurance Company
By: _____
Attorney-in-Fact



FIRST AMENDMENT OF LEASE

FIRST AMENDMENT OF LEASE (this "Amendment") dated as of April 14, 2022 by and between 528 W 162 LLC, having an address at 250 West 26th Street, 4th Floor, New York, New York ("Landlord") and FRIENDS OF WEIN MUSIC COMMUNITY CHARTER SCHOOL, INC., having an address at 401 West 164th Street, New York, New York ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Lease dated as of April 16, 2021 (the "Lease") for those certain premises known as 528 West 162nd Street, New York, New York 10032, as more particularly described in the Lease; and

WHEREAS, the parties hereto desire to modify and amend the Lease in certain respects hereinafter contained, the parties hereto agree as follows:

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

1. **Definitions.** All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Lease.

2. **Term of Lease.** Section 1.03 of the Lease is hereby deleted in its entirety and replaced with the following:

"**Term of Lease.** To have and to hold unto Tenant, its successors and permitted assigns, for the term of approximately forty-eight (48) years which shall commence on the date which is the first day of the first full month which is sixty (60) days after the Loan Closing Date (as such term is defined below) (such date, the "**Commencement Date**") and terminate on the last day of the month immediately prior to the forty-eighth (48th) anniversary of the Commencement Date, or on such earlier date upon which the term of this Lease shall expire, be canceled or terminated pursuant to any of the conditions or covenants of this Lease (the date the term of this Lease expires or is terminated being the "**Expiration Date**"). The aforesaid period from the Commencement Date up until the Expiration Date shall be referred to as the "**Term**"."

3. **Periodic Increases to Basic Rent.** Section 3.02 of the Lease is hereby deleted in its entirety and replaced with the following:

"**Periodic Increases to Basic Rent.**

(a) **Increases in Basic Rent from the Commencement Date through the 40th Rental Year.** On the first day of the Sixth (6th) Rental Year, Eleventh (11th) Rental Year, Sixteenth (16th) Rental Year, Twenty-First (21st) Rental Year, Twenty-Sixth (26th) Rental Year, Thirty-First (31st) Rental Year and the Thirty-Sixth (36th) Rental Year, the Basic Rent (with each such designated Rental Year being referred to as a "**Rent Increase Year**") shall increase by an amount equal to the greater of (i) ten percent (10%) of the then-payable Basic Rent (as of the last

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Market Rental set forth in the Tenant's Letter. The Independent Appraiser may only select the Fair Market Rental set forth or the Fair Market Rental set forth in the Landlord's letter and may not vary the amount selected. and the resulting average shall be deemed the Fair Market Rental Value for the).

(iv) Promptly after the Basic Rent for the 41st Rental Year has been determined, Landlord and Tenant shall execute and deliver an agreement setting forth the Basic Rent for such 41st Rental Year as finally determined, provided the failure of the parties to do so shall not affect their respective rights and obligations hereunder.

(v) Commencing with the 42nd Rental Year and each year thereafter through the end of the Term, the Basic Rent shall increase by the higher of (a) three percent (3%) of the previous Rental Year's Basic Rent and the (b) the percentage increase in Per Pupil Funding from the New York City Department of Education over the prior year period for each year during the extended period.

4. **Tenant's Insurance.**

(a) The second to last sentence in Section 12.01(a) of the Lease is hereby deleted in its entirety and replaced with the following:

"Each such insurance policy shall (i) be in an amount equal to one hundred percent (100%) of the then replacement cost of the Improvements without deduction for physical depreciation, (ii) have deductibles no greater than \$50,000, (iii) be paid annually in advance, and (iv) contain agreed amount and replacement cost endorsements." Landlord shall be named as an additional insured.

(b) The first sentence in Section 12.01(g) of the Lease is hereby deleted in its entirety and replaced with the following:

"All policies of insurance (the "**Policies**") required pursuant to this Section shall (i) be issued for a term of at least one year, and (ii) be issued by companies authorized to do business in the State of New York, with a rating of A-: VII or better in the current A.M. Best's Insurance Reports; and (iii) name Landlord and its successors and/or assigns (as their interest may appear) as the loss payee (in the case of property insurance) and as additional insured (in the case of liability insurance)."

5. **Subordination of Lease to Mortgages on the Premises.** Article 16 of the Lease shall be amended by adding Section 16.03 as follows:

"Section 16.03 **Subordination, Non-disturbance and Attornment Agreement.** Notwithstanding the foregoing, Landlord shall obtain in favor of Tenant from the holder of any current or future mortgages encumbering the Premises a Subordination, Non-disturbance and Attornment Agreement ("SNDA") on each such mortgage's standard form. Provided Landlord uses commercially reasonable efforts to obtain such an SNDA from any future mortgagee (Landlord acknowledges and agrees that Tenant requires an SNDA from Landlord's current

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day of the previous Rental Year) and (ii) the percentage increase in Per Pupil Funding from the New York City Department of Education over the prior five (5) year period (the "**Per Pupil Increase**").

(b) **Increases in Basic Rent from the 41st Rental Year through the 48th Rental Year.** The Basic Rent payable by Tenant for the Premises for the period from the 41st Rental Year shall be equal to the Fair Market Rental Value for the Premises. The Fair Market Rental Value for the Premises shall be determined in accordance with the following procedure (the "**FMV Procedure**"):

(i) No later than July 1, 2061, Landlord and Tenant shall use their commercially reasonable efforts to agree upon the Fair Market Rental Value for the Premises for the Premises for the eight (8) year period commencing on the first day of the 41st Rental Year. In the event Landlord and Tenant cannot reach agreement by August 31, 2061, Landlord and Tenant shall each select a reputable, independent, qualified, licensed real estate appraiser having an office in New York City, with at least fifteen (15) years' experience as a commercial real estate appraiser, who is familiar with appraising the rentals then being charged in comparable buildings in comparable locations (and if feasible, for comparable, educational uses) in upper Manhattan and the South Bronx (respectively, "**Landlord's Appraiser**" and "**Tenant's Appraiser**"), who shall confer promptly after their selection by Landlord and Tenant and shall use their commercially reasonable efforts to agree upon the Fair Market Rental Value for the Premises. If Landlord's Appraiser and Tenant's Appraiser cannot reach agreement by October 15, 2061, then within ten (10) days thereafter, they shall designate a third reputable, independent, similarly qualified, licensed real estate appraiser having an office in New York City and being part of a nationally recognized firm with at least fifteen (15) years' experience as a real estate appraiser, who is familiar with appraising comparable buildings in comparable locations (and if feasible, for comparable uses the "**Independent Appraiser**"). Upon the failure of Landlord's Appraiser and Tenant's Appraiser to agree upon the designation of the Independent Appraiser, then the Independent Appraiser shall be appointed by the American Arbitration Association (the "AAA") or if the AAA is no longer in existence then by a Justice of the Supreme Court of the State of New York, County of New York upon ten (10) days' notice, or by any other court in New York County having jurisdiction and exercising functions similar to those exercised by the Supreme Court of the State of New York. Concurrently with such appointment, Landlord's Appraiser and Tenant's Appraiser shall each submit a letter to the Independent Appraiser, with a copy to Landlord and Tenant, setting forth such appraiser's estimate of the Fair Market Rental Value for the Premises (respectively, "Landlord's Letter" and "Tenant's Letter").

(ii) In determining Fair Market Rental Value of the Premises, the aforementioned appraisers shall be instructed to take into account that the Premises as existing as of the date of determination of the Fair Market Value Rental, the highest and best use of the Premises as existing as of such date and treating the Premises as ready for a new tenant to accept in its "as is" condition as such date, presuming that Tenant would vacate and leave the Premise in broom-swept clean condition.

(iii) The Independent Appraiser shall conduct such investigations and hearings as he or she may deem appropriate and shall, within sixty (60) days after the date of his or her designation, select either the Fair Market Rental in the Landlord's Letter or the Fair

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mortgagee so that Tenant may close on its financing), the inability of Landlord to obtain such an SNDA from the holder of any future mortgages shall not be deemed a default on the Landlord's part of its obligations hereunder, or impose any claim in favor of Tenant against Landlord by reason thereof, or affect the validity of this Lease. Any costs or expenses imposed by any lender (or its attorneys) in connection with obtaining such SNDA shall be paid by Tenant."

6. **Tenant's Initial Construction.**

(a) Section 26.01(b) of the Lease is hereby deleted in its entirety and replaced with the following:

"**Construction Security:** Tenant shall provide a Letter of Credit in substantially the form as **Exhibit 4** attached hereto."

(b) Section 26.02(b)(vii) of the Lease is hereby deleted in its entirety and replaced with the following:

"Tenant has delivered to Landlord a construction contract with a general contractor, or a design-build contract, together with contracts for each of the Major Contractors, or a construction management contract together with contracts for each of the Major Contractors (collectively, the "**Construction Contracts**"), for the construction of the Facility, meeting the requirements of this **Article 26**; and"

7. **Exhibits 4-A and 4-B.** The placeholder pages for these exhibits shall be deleted in their entirety and replaced with "Exhibit 4- Construction Security Letter of Credit, see attached."

8. **Non-Consent Work.** Section 27.01 of the Lease is hereby modified by the addition of the following sentence at the end of the Section:

"For the purposes of this Section 27.01, Non-Consent Work shall include any lead and/or asbestos abatement work that is required to be performed in the Building prior to Tenant's obtaining Permits."

9. **Ownership of Leasehold Improvements.**

(a) Section 27.07(a) of the Lease is hereby deleted in its entirety and replaced with the following:

"**Miscellaneous.** (a) At all times during the Term, for federal tax purposes, the Facility, all other Improvements, all Alterations, and all Personal Property acquired (or leased) by Tenant or Tenant's Affiliates shall be the property of Tenant, but shall remain on the Premises except as hereinafter provided. To the extent that the Lease is terminated under the terms of the Lease, at such termination, the Facility, all other Improvements, all Alterations, and all Personal Property acquired (or leased) by Tenant or Tenant's Affiliates shall become the sole property of Landlord at no cost to Landlord, free and clear of all liens, leases

(06097771.6)

and encumbrances and in good condition, subject only to reasonable wear and tear, except that Tenant shall remove from the Premises at the Expiration Date any of Tenant's Personal Property that is moveable, but any damage caused by such removal shall be repaired by Tenant in a good and workmanlike manner. To the extent Tenant leaves any moveable property in the Premises it shall be deemed abandoned and any cost Landlord incurs to remove such Personal Property shall be promptly reimbursed by Tenant."

(b) The second sentence of Section 27.07(b) of the Lease is hereby deleted in its entirety and replaced with the following:

"Any such replacements, with the exception of moveable Personal Property, shall remain on the Premises and become the property of Landlord at the termination of this Lease as provided above."

10. Miscellaneous.

(a) This Amendment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(b) Except as expressly modified and amended herein, the Lease shall be deemed unmodified and in full force and effect and is hereby ratified and confirmed.

(c) The covenants, agreements, terms and conditions contained in this Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and their respective assigns.

(d) This Amendment may be executed in one (1) or more counterparts, each of which counterpart shall be deemed an original and all of which together shall constitute a single instrument. Each party expressly agrees that if the signature of either party on this Amendment is not an original, but is a digital, mechanical, or electronic reproduction (such as, but not limited to, a photocopy, fax, email, PDF, Adobe image, jpeg, telegram, telex, or telecopy), then such digital, mechanical, or electronic reproduction shall be as enforceable, valid, and binding as, and the legal equivalent to, an authentic and traditional ink-on paper original wet signature penned manually by its signatory.

[SIGNATURE PAGE TO FOLLOW]

(06097771.6)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment on the date first above written.

528 W 162 LLC, Landlord

By:

Name:
Title:

Gary Spindler
Gary Spindler
Manager

FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC., Tenant

By:

Name: Arnold Adlin
Title: Board Chair

Arnold Adlin
Arnold Adlin
Board Chair

(06097771.6)

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SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (this “Sublease”) dated as of the 15th day of June 2021, by and between Friends of WHIN Music Community Charter School, Inc. (“Sublandlord”), and WHIN Music Community Charter School (“Subtenant”).

WHEREAS, Sublandlord is the tenant under a lease made by 528 W 162 LLC (“Overlandlord”) to Sublandlord dated as of April 16, 2021 for those certain premises located at 528 West 162nd Street, New York, NY 10032 (said lease, the “Lease” (attached hereto as **Exhibit A**), and said premises, the “Premises”); and

WHEREAS, Sublandlord desires to sublease to Subtenant the Premises, subject to the terms and conditions of the Lease; and

WHEREAS, Subtenant desires to sublease the Premises from the Sublandlord, all upon the terms and subject to the provisions and conditions hereinafter set forth; and

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, conditions and agreements hereinafter contained, do hereby agree as follows:

- Sublease.** Sublandlord, for and in consideration of the covenants and agreements herein contained on the part of Subtenant to be performed, hereby subleases the Premises to Subtenant, and Subtenant accepts from Sublandlord, the Premises and agrees to perform each and every obligation set forth therein.
- Term.** The term (the “Term”) of this Sublease shall be for approximately forty (40) years, commencing on Commencement Date (as defined in the Lease)¹ and shall terminate on the date the Lease shall terminate, *to wit*: on the last day of the month immediately prior to the fortieth (40th) anniversary of the Commencement Date.
- Rental; Additional Rent.** This Sublease is made for and in consideration of rent (the “Base Rent”), payable to Sublandlord on or before the first of each month during the Term (and renewal periods, if applicable) as set forth in **Schedule 1** attached hereto and incorporated by reference herein, with each Sublease Year running from July 1st to June 30th. Notwithstanding the foregoing, the first (1st) Rental Year shall run from the Commencement Date through June 30th of the year in which the Commencement Date occurs.

¹ Under the Lease, the Commencement Date shall be determined as follows: once Sublandlord secures a loan commitment (the “Commitment”) for a loan (the “Loan”) to finance Sublandlord’s Work (as defined herein), Sublandlord must send Landlord a written notice (the “Tenant Commencement Notice”) which will identify a date on which Sublandlord believes it will close on the loan, the date being two (2) months (subject to a two (2) month extension if the loan cannot close by the Loan Closing Outside Date, as defined in the Lease) after Friends Of receives the Commitment (and regardless of the actual loan closing date, the Commencement Date shall be the date set forth in the Tenant Commencement Notice).

[00054812.4]

[528 W. 162nd Sublease Signature Page]

HVAC maintenance, snow removal, trash removal and extermination services) and facilities management services required for the Premises.

- Maintenance.** Subtenant shall be responsible for all maintenance, repair and replacement required in the Premises, except to the extent Overlandlord shall be responsible or Sublandlord shall be responsible for the same under the Lease or Sublease, respectively.
- Sublandlord’s Work.** Sublandlord shall be responsible for completing certain work within the Premises to prepare the Premises for Subtenant’s occupancy pursuant to the general plans and specifications (“Sublandlord’s Work”) as outlined in **Schedule 2**.
- Assignment and Sublease.** Subtenant may not, without Overlandlord’s and Sublandlord’s prior written consent, assign this Sublease or further sublease any portion or all of the Premises. Any attempted assignment or subletting made contrary to the provisions of this Sublease shall be null and void.
- Indemnity from Liens.** Subtenant agrees to indemnify and hold Overlandlord and Sublandlord harmless from and against any and all mechanic’s or other liens or claims for work, labor or services performed, or for materials furnished, and all costs, damages and expenses in connection therewith, by reason of any act or omission on the part of Subtenant.
- Indemnity.** Subtenant shall indemnify and hold Overlandlord and Sublandlord and their respective directors, officers, employees, contractors, representatives and agents harmless from all liabilities, charges, expenses (including reasonable counsel fees), and costs on account of all claims for damages by reason of any injury or injuries to any person or property of any kind whatsoever, which is occasioned by the negligence or willful actions of Subtenant or third parties they engage to work, services or duties on their behalf. Sublandlord shall save and hold Subtenant and its directors, officers, employees, contractors, representatives and agents harmless from all liabilities, charges, expenses (including counsel fees), and costs on account of all claims for damages by reason of any injury or injuries to any person or property of any kind which is occasioned by the negligence or willful actions of Overlandlord and Sublandlord.
- Insurance Coverage.** To the extent not the obligation of Sublandlord under the Lease, Subtenant shall during the entire term of this Sublease, at Subtenant’s own expense, keep in force all insurance as shall be required under the Lease, naming Overlandlord and Sublandlord as additional insureds on a primary and non-contributory basis. Additionally, Subtenant shall also provide evidence on an annual basis of its insurance coverage including without limitation general liability, workers’ compensation, automobile, personal property (with coverage for 100% full replacement cost) and business interruption insurance equal to 12 months of rent, and name Sublandlord as an additional insured on such policies as the carriers will permit, provided that Subtenant shall not be required to do so if a carrier charges additional costs/premiums.
- Personal Property Taxes.** Subtenant shall pay all taxes, public rates, dues and special assessments of every kind which shall become due and payable or which are assessed against or levied upon any personal property or other items placed upon the Premises by Subtenant.

[00054812.4]

Additionally, should a period increase to Basic Rent under Sections 3.02 of the Lease or a one-time increase to Basic Rent under Section 3.03 of the Lease be triggered, the Base Rent due hereunder shall be increased by such amounts.

Furthermore, xcept as otherwise set forth herein, Subtenant shall pay all other payments due and owing by Sublandlord to Overlandlord under the Lease or Subtenant to Sublandlord under this Sublease as Additional Rent, said payments payable as and when the same are due to the Overlandlord under the Lease or if due under this Sublease, within twenty (20) days of receipt of invoice.

- No Default under Lease.** To the best of the knowledge and belief of Subtenant and Sublandlord, the Lease is, as of the date hereof, in full force and effect, and no event of default has occurred under the Lease and no event has occurred and is continuing that would constitute an event of default under the Lease but for the requirement of the giving of notice and/or the expiration of the period of time to cure.
- Payments made by Sublandlord.** If Subtenant shall default in making any payment required to be made by Subtenant or in performing any obligation of Subtenant under this Sublease which shall require the expenditure of money and such default shall continue beyond applicable notice and cure periods provided herein (except in case of emergency in which case no notice shall be required), Sublandlord may, but shall not be obligated to, make such payment on behalf of Subtenant or expend such sum as may be necessary to perform or fulfill such obligation. Any sums so paid by Sublandlord shall be deemed rent and shall be due and payable to Sublandlord immediately.
- Improvements by Subtenant.** Subtenant may construct such improvements within the Premises only under the conditions and only to the extent that Sublandlord would be permitted to construct same under the Lease. Subtenant shall cause such construction work to be done and completed in good and workmanlike manner, free from faults and defects and in compliance with all legal requirements. Subtenant shall provide and pay for all labor, materials, goods, supplies, equipment, appliances, tools, construction equipment and machinery necessary for the proper execution and completion of such work; promptly pay when due all costs and expenses incurred in connection with such work; and at all times maintain the Premises free and clear from any and all liens, claims, security interests and encumbrances arising from or in connection with such work.
- Security Deposit.** On the date that Sublandlord delivers the Tenant Commencement Notice to Landlord as set forth above, Subtenant shall if in cash, deposit with Sublandlord (or, at Sublandlord’s option, Landlord directly), the sum of \$225,000 or if in the form of a letter of credit, a letter of credit in the amount of \$225,000 with Landlord named as the beneficiary (if in the form of cash or a letter of credit- the “Security Deposit”). The Security Deposit shall be reduced and returned to Tenant under the conditions set forth in Article 6 of the Lease.
- Services.** Except to the extent Overlandlord is responsible under the Lease or except as specifically provided for as Sublandlord’s responsibility under this Sublease, Subtenant shall be responsible for the cost of all utilities, service contracts (including without limitation custodial,

[00054812.4]

- Obligations of Subtenant; Default.** Subtenant shall perform all obligations of Sublandlord under the Lease. Any default or event of default under the Lease, which is, under this Sublease, the obligation of Subtenant, shall be a default under this Sublease. It is agreed that Subtenant shall be in default if Subtenant shall file bankruptcy or otherwise become insolvent. In the event a default occurs as set forth above, Sublandlord may terminate this Sublease, take possession of the Premises and recover any other damages allowable by law.
- Casualty.** If the Premises should be totally destroyed by fire or other casualty or if they should be so damaged so that rebuilding cannot reasonably be completed within the period set forth for such rebuilding under the Lease, this Sublease shall terminate and the rent shall abate pursuant to the terms of the Lease.
- Laws, Rules and Regulations.** Subtenant shall fully comply with and obey all laws, rules and regulations of regularly constituted authorities which govern the use of the Premises.
- Surrender at Termination.** At the termination of this Sublease, Subtenant shall surrender the Premises to Sublandlord in the condition required under the Lease for surrender.
- Compliance with Regulations.** It is expressly understood that the parties intend that this Sublease will comply with all applicable rules and regulations of all governmental, regulatory and accreditation authorities. Accordingly, the parties agree to renegotiate, in good faith, any term, condition or provision of this Sublease, or any other agreement between the parties, that any such authority determines to be in contravention of any federal, state or local regulation or law.
- Holding Over.** Should Subtenant, with or without the express or implied consent of Sublandlord, continue to hold and occupy the Premises after the expiration of the term of this Sublease, all payments due from Sublandlord to Overlandlord during any period of holding over shall be an obligation of Subtenant under this Sublease, payable as and when due to the Overlandlord under the Lease. Subtenant shall, unless otherwise directed by Sublandlord, pay all such payments directly to the Overlandlord.
- Waivers.** No waiver of any default or breach of any covenant, agreement or condition of this Sublease shall be construed to be a waiver of the rights as to any future default or breach by Subtenant or Sublandlord.
- Remedies to be Cumulative.** The remedies available to the parties under the terms of this Sublease and in law or equity shall be cumulative and the exercise of any remedy shall not constitute an election of remedies.
- Notice.** Any notice required to be given hereunder shall be in writing and shall be served by hand delivery or by reputable overnight express courier for next business day delivery. All such notices shall be sent as follows:

If to Sublandlord:

[00054812.4]

Prior to the Commencement Date:
Friends of WHIN Music Community Charter School, Inc.
401 West 164th Street
New York, NY 10001
Attn: Board Chair

After the Commencement Date: the Premises

If to Subtenant:

Prior to the Commencement Date:
WHIN Music Community Charter School
401 W. 164th Street
New York, NY 10032
Attn: Board Chair

After the Commencement Date: the Premises

Either party may hereafter and from time to time designate in writing a different address for the mailing of notices.

25. Captions. The paragraph captions in this Sublease are for convenience only and shall have no effect upon the terms and provisions of this Sublease.

26. No Joint Venture. Nothing contained in this Sublease shall be deemed or construed to create the relationship of principal and agent or of partnership or joint venture or of any association whatsoever between Sublandlord and Subtenant, except that of sublandlord and subtenant.

27. Quiet Enjoyment. Sublandlord represents that it has good right and authority to lease the Premises and that Subtenant shall quietly enjoy the Premises so long as it complies with the terms and conditions of this Sublease.

28. Severable Provisions. The provisions of this Sublease shall be severable and if any provisions shall be invalid or void or unenforceable in whole or in part for any reason, the remaining provisions shall remain in full force and effect.

29. Entire Agreement. This Sublease and any other agreements executed and delivered contemporaneously herewith contain the entire agreement of the parties and supersede any and all prior agreements between the parties, written or oral, with respect to the subject matter contemplated hereby. This Sublease may not be changed or terminated orally but may only be changed by an agreement in writing signed by the party or parties against whom enforcement of any waiver, change, modification, extension, discharge or termination is sought.

[00054812.4]

38. Sublease Adjustments. Given the length of the Term of this Sublease and Sublandlord and Subtenant's inability to predict with precision a variety of factors including without limitation the final cost of Landlord's Work and certain unknowns with respect to the costs that Subtenant may incur in connection with operating the Premises (the "Variables"), Sublandlord and Subtenant agree to work collaboratively from time to time as may be necessary to address such Variables as they may arise, which may include, without limitation, amending the Base Rent due under this Sublease and responsibility for certain services and maintenance obligations set forth hereunder.

[SIGNATURE PAGE FOLLOWS]

[00054812.4]

30. Binding Effect. This Sublease shall be binding and shall inure to the benefit of the parties hereto, and their respective heirs, legatees, executors, administrators, successors and assigns.

31. Incorporation and Reference. The terms of the Lease and the Sublease are incorporated herein. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Sublease.

32. Self-Help. If Sublandlord or Subtenant shall default in the performance or observance of any agreement, condition or other provision in this Sublease and shall not cure such default within thirty days after notice in writing from the other party specifying the default (or shall not within said period commence to cure such default and thereafter prosecute the curing of such default to completion with due diligence) the non-defaulting party may (in addition to any other remedy available to the non-defaulting party at law or in equity) at any time thereafter cure such default and the defaulting party shall reimburse the non-defaulting party for any amount paid and any expense or contractual liability so incurred, and any amounts due from Subtenant shall be deemed additional rent due and payable with the next installment of monthly rent and any amount due from Sublandlord may be deducted by Subtenant from any rent due hereunder; provided however, that either may cure any such default as aforesaid prior to the expiration of said cure period but after notice to the other party, if it is necessary to protect the Premises, or to prevent injury or damages to persons or property.

35. Overlandlord and Sublandlord Access. Consistent with the terms of the Lease, Overlandlord (and by extension through this Sublease- Sublandlord), and Overlandlord's and Sublandlord's agents, contractors, consultants, mortgagees and insurers shall have access to the Premises in any emergency at any time, and at reasonable times and upon reasonable notice to Subtenant, for purposes of determining the general condition of the Premises, or for the purpose of complying with the laws, regulations or directions of governmental authorities, or for the purpose of showing the Premises to prospective tenants all while observing Subtenant's security procedures.

36. Subordination; Non-Disturbance. This Sublease is subject and subordinate to all mortgages that may now or hereafter affect the Premises (the "Underlying Mortgages") and to all renewals, modifications, consolidations, replacements and extensions of any such Underlying Mortgages. This clause shall be self-operative, and no further instrument of subordination shall be required by any mortgagee affecting this Sublease or the real property of which the Premises are a part. Subtenant shall, nevertheless, promptly execute and deliver such further instruments confirming the subordination of this lease as may be desired by the holder of any Underlying Mortgage, or by the Overlandlord and Sublandlord without charge or delay. Notwithstanding the foregoing, consistent with the terms of the Lease, Sublandlord shall obtain for its benefit and by extension, the benefit of Subtenant a subordination, nondisturbance and attornment agreement from any Overlandlord mortgagee or ground lessor.

37. Landlord Consent Not Required. Pursuant to Section 2.01 of the Lease, Landlord's consent is not required for this Sublease.

[00054812.4]

IN WITNESS WHEREOF, Sublandlord and Subtenant have hereunto executed this Sublease on the day and year first above written.

SUBLANDLORD:

**FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.**

By:  DocuSigned by:
Name: ARNOLD ADLIN
Title: Board Chair

SUBTENANT:

**WHIN MUSIC COMMUNITY
CHARTER SCHOOL**

By:  DocuSigned by:
Name: Gregory David
Title: Chair

[00054812.4]

[528 W. 162nd Sublease Signature Page]

EXHIBIT A

Lease

see attached.

Schedule 1

Base Rent

Sublease Year	Base Rent (Annualized)	Base Rent (Monthly)
1 (FY 22)	\$ 210,000	\$ 17,500
2	\$ 420,000	\$ 35,000
3	\$ 2,559,294	\$ 213,275
4	\$ 2,769,294	\$ 230,775
5	\$ 2,769,294	\$ 230,775
6	\$ 2,853,294	\$ 237,775
7	\$ 2,853,294	\$ 237,775
8	\$ 2,853,294	\$ 237,775
9	\$ 2,853,294	\$ 237,775
10	\$ 2,853,294	\$ 237,775
11	\$ 2,945,694	\$ 245,475
12	\$ 2,945,694	\$ 245,475
13	\$ 2,945,694	\$ 245,475
14	\$ 2,945,694	\$ 245,475
15	\$ 2,945,694	\$ 245,475
16	\$ 3,047,334	\$ 253,945
17	\$ 3,047,334	\$ 253,945
18	\$ 3,047,334	\$ 253,945
19	\$ 3,047,334	\$ 253,945
20	\$ 3,047,334	\$ 253,945
21	\$ 3,159,138	\$ 263,262
22	\$ 3,159,138	\$ 263,262
23	\$ 3,159,138	\$ 263,262
24	\$ 3,159,138	\$ 263,262
25	\$ 3,159,138	\$ 263,262
26	\$ 3,282,122	\$ 273,510
27	\$ 3,282,122	\$ 273,510
28	\$ 3,282,122	\$ 273,510
29	\$ 3,282,122	\$ 273,510
30	\$ 3,282,122	\$ 273,510
31	\$ 3,417,405	\$ 284,784
32	\$ 3,417,405	\$ 284,784
33	\$ 3,417,405	\$ 284,784
34	\$ 3,417,405	\$ 284,784
35	\$ 3,417,405	\$ 284,784
36	\$ 3,566,216	\$ 297,185
37	\$ 3,566,216	\$ 297,185
38	\$ 1,636,922	\$ 136,410
39	\$ 1,636,922	\$ 136,410
40	\$ 1,636,922	\$ 136,410

[00054812.4]

[00054812.4]

Schedule 2

Sublandlord's Work

- Construction: Sublandlord will provide a facility that consists of twelve (12) core classrooms serving K through 5, a cafeteria and a full auditorium for performances at street level along with all the support spaces required for a fully functional school.
- Roof Top Play Area: Sublandlord will convert a three-story parking structure into a four-story school with a roof top play area.
- Enclosed Roof: Sublandlord will add an enclosed fourth floor on the existing roof.
- Bulkhead: Sublandlord will build a bulkhead above the new roof to house services and equipment.
- Egress: Sublandlord will provide a code compliant egress consisting of two internal stairs and an elevator to access the full building from cellar to roof.
- The program will consist of 12 core classrooms serving K through 12, a cafeteria and a full auditorium for performances at street level along with all the support spaces required for a fully functional school.
- Façade and Windows: Sublandlord will restore the façade and replace all windows with energy efficient sound attenuating characteristics.
- HVAC Systems: Sublandlord will provide a complete heating, cooling and ventilation system for all the occupied spaces.
- Utilities: Sublandlord will provide full services for the building including new gas, water and electrical services from the street with code complicate utility rooms in the cellar.

Preliminary Floor Plans are attached hereto

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[00054812.4]

**FIRST AMENDED AND RESTATED
SUBLEASE AGREEMENT**

THIS FIRST AMENDED AND RESTATED SUBLEASE AGREEMENT (this "Sublease") dated as of the 29th day of June 2022, by and between Friends of WHIN Music Community Charter School, Inc. ("Sublandlord"), and WHIN Music Community Charter School ("Subtenant").

WHEREAS, Sublandlord is the tenant under a lease made by 528 W 162 LLC ("Overlandlord") to Sublandlord dated as of April 16, 2021 (the "Original Lease") for those certain premises located at 528 West 162nd Street, New York, NY 10032 (the "Premises"); and

WHEREAS, by that certain Sublease dated as of June 15, 2021 (the "Original Sublease"), Subtenant subleased from Sublandlord the Premises, on the terms and conditions as more fully set forth in the Sublease; and

WHEREAS, the Original Lease was amended by that certain First Amendment of Lease, dated as of April 4, 2022, between Overlandlord and Sublandlord (the "First Amendment"), and that certain Second Amendment of Lease, dated as of June 14, 2022, between Overlandlord and Sublandlord (the "Second Amendment"; together with the Original Lease and the First Amendment- the "Lease"); and

WHEREAS, to reflect amendments to the Lease and changes to other terms, Sublandlord and Subtenant wish to amend certain aspects of the Original Sublease;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, conditions and agreements hereinafter contained, do hereby agree as follows:

1. Sublease. Sublandlord, for and in consideration of the covenants and agreements herein contained on the part of Subtenant to be performed, hereby subleases the Premises to Subtenant, and Subtenant accepts from Sublandlord, the Premises and agrees to perform each and every obligation set forth therein.

2. Term. This Sublease shall be effective on the Commencement Date of the Lease, which shall be confirmed by Sublandlord to Subtenant in writing within ten (10) business days of such date (the "Commencement Date Notice"). The term (the "Term") of this Sublease shall commence on July 1, 2024 and shall expire on the day that is one (1) day prior to the Expiration Date as defined in the Lease and confirmed in the Commencement Date Notice.

3. Base Rent; Additional Rent.

- a. **Base Rent**. This Sublease is made for and in consideration of rent (the "Base Rent"), which shall commence on July 1, 2024 (the "Rent Commencement Date"), payable to Sublandlord on or before the first of each month during the Term (and renewal periods, if applicable) as set forth in Schedule 1 attached hereto and incorporated by reference herein, with

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in connection with such work; and at all times maintain the Premises free and clear from any and all liens, claims, security interests and encumbrances arising from or in connection with such work.

7. Security Deposit. Sublandlord acknowledges that as of the date hereof, Subtenant has already deposited with Overlandlord the sum of \$225,000.00 as the Security Deposit, as defined in and required by the Lease. The Security Deposit shall be reduced and returned to Subtenant under the conditions set forth in Article 6 of the Lease.

8. Services. Except to the extent Overlandlord is responsible under the Lease or except as specifically provided for as Sublandlord's responsibility under this Sublease, Subtenant shall be responsible for the cost of all utilities, service contracts (including without limitation custodial, HVAC maintenance, snow removal, trash removal and extermination services) and facilities management services required for the Premises.

9. Maintenance. Subtenant shall be responsible for all maintenance, repair and replacement required in the Premises, except to the extent Overlandlord shall be responsible or Sublandlord shall be responsible for the same under the Lease or Sublease, respectively.

10. Sublandlord's Work. Sublandlord shall be responsible for completing certain work within the Premises to prepare the Premises for Subtenant's occupancy pursuant to the general plans and specifications ("Sublandlord's Work") as outlined in Schedule 2.

11. Assignment and Sublease. Subtenant may not, without Overlandlord's and Sublandlord's prior written consent, assign this Sublease or further sublease any portion or all of the Premises. Any attempted assignment or subletting made contrary to the provisions of this Sublease shall be null and void.

12. Indemnity from Liens. Subtenant agrees to indemnify and hold Overlandlord and Sublandlord harmless from and against any and all mechanic's or other liens or claims for work, labor or services performed, or for materials furnished, and all costs, damages and expenses in connection therewith, by reason of any act or omission on the part of Subtenant.

13. Indemnity. Subtenant shall indemnify and hold Overlandlord and Sublandlord and their respective directors, officers, employees, contractors, representatives and agents harmless from all liabilities, charges, expenses (including reasonable counsel fees), and costs on account of all claims for damages by reason of any injury or injuries to any person or property of any kind whatsoever, which is occasioned by the negligence or willful actions of Subtenant or third parties they engage to work, services or duties on their behalf. Sublandlord shall save and hold Subtenant and its directors, officers, employees, contractors, representatives and agents harmless from all liabilities, charges, expenses (including counsel fees), and costs on account of all claims for damages by reason of any injury or injuries to any person or property of any kind which is occasioned by the negligence or willful actions of Overlandlord and Sublandlord.

14. Insurance Coverage. To the extent not the obligation of Sublandlord under the Lease, Subtenant shall during the entire term of this Sublease, at Subtenant's own expense, keep in force all insurance as shall be required under the Lease, naming Overlandlord and Sublandlord as

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each Sublease Year running from July 1st to June 30th commencing with July 1, 2024. Notwithstanding the foregoing, the Base Rent as set forth in Schedule 1 presumes a periodic increase in Base Rent of 10% every five (5) years commencing with July 1, 2029; however, Basic Rent under the Lease is subject to: (i) an additional increase related to the Per Pupil Increase (as defined and set forth in Section 3.02(a) of the Lease); (ii) with respect to the 41st Rental Year through the 48th Rental Year, a Fair Market Value Rental adjustment (as defined and set forth Section 3.02(b) of the Lease); and (iii) a one-time increase to Basic Rent under Section 3.03 of the Lease, and should any of these increases/adjustments be triggered/applied under the Lease, a corresponding increase shall be applied to Base Rent under this Sublease. Subtenant shall pay all Rent due under this Sublease by wire transfer directly to Account No. 1160818400 of the Sublandlord, held at BNY Mellon (routing number: 021000018; account name: "BNYC Whin Deposit account").

- b. **Additional Rent**. Except as otherwise set forth herein, Subtenant shall pay all other payments due and owing by Sublandlord to Overlandlord under the Lease or Subtenant to Sublandlord under this Sublease as Additional Rent, said payments payable as and when the same are due to the Overlandlord under the Lease or if due under this Sublease, within twenty (20) days of receipt of invoice.

4. No Default under Lease. To the best of the knowledge and belief of Subtenant and Sublandlord, the Lease is, as of the date hereof, in full force and effect, and no event of default has occurred under the Lease and no event has occurred and is continuing that would constitute an event of default under the Lease but for the requirement of the giving of notice and/or the expiration of the period of time to cure.

5. Payments made by Sublandlord. If Subtenant shall default in making any payment required to be made by Subtenant or in performing any obligation of Subtenant under this Sublease which shall require the expenditure of money and such default shall continue beyond applicable notice and cure periods provided herein (except in case of emergency in which case no notice shall be required), Sublandlord may, but shall not be obligated to, make such payment on behalf of Subtenant or expend such sum as may be necessary to perform or fulfill such obligation. Any sums so paid by Sublandlord shall be deemed rent and shall be due and payable to Sublandlord immediately.

6. Improvements by Subtenant. Subtenant may construct such improvements within the Premises only under the conditions and only to the extent that Sublandlord would be permitted to construct same under the Lease. Subtenant shall cause such construction work to be done and completed in good and workmanlike manner, free from faults and defects and in compliance with all legal requirements. Subtenant shall provide and pay for all labor, materials, goods, supplies, equipment, appliances, tools, construction equipment and machinery necessary for the proper execution and completion of such work; promptly pay when due all costs and expenses incurred

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additional insureds on a primary and non-contributory basis. Additionally, Subtenant shall also provide evidence on an annual basis of its insurance coverage including without limitation general liability, workers' compensation, automobile, personal property (with coverage for 100% full replacement cost) and business interruption insurance equal to 12 months of rent, and name Sublandlord as an additional insured on such policies as the carriers will permit, provided that Subtenant shall not be required to do so if a carrier charges additional costs/premiums.

15. Personal Property Taxes. Subtenant shall pay all taxes, public rates, dues and special assessments of every kind which shall become due and payable or which are assessed against or levied upon any personal property or other items placed upon the Premises by Subtenant.

16. Obligations of Subtenant, Default. Subtenant shall perform all obligations of Sublandlord under the Lease. Any default or event of default under the Lease, which is, under this Sublease, the obligation of Subtenant, shall be a default under this Sublease. It is agreed that Subtenant shall be in default if Subtenant shall file bankruptcy or otherwise become insolvent. In the event a default occurs as set forth above, Sublandlord may terminate this Sublease, take possession of the Premises and recover any other damages allowable by law.

17. Casualty. If the Premises should be totally destroyed by fire or other casualty or if they should be so damaged so that rebuilding cannot reasonably be completed within the period set forth for such rebuilding under the Lease, this Sublease shall terminate and the rent shall abate pursuant to the terms of the Lease.

18. Laws, Rules and Regulations. Subtenant shall fully comply with and obey all laws, rules and regulations of regularly constituted authorities which govern the use of the Premises.

19. Surrender at Termination. At the termination of this Sublease, Subtenant shall surrender the Premises to Sublandlord in the condition required under the Lease for surrender.

20. Compliance with Regulations. It is expressly understood that the parties intend that this Sublease will comply with all applicable rules and regulations of all governmental, regulatory and accreditation authorities. Accordingly, the parties agree to renegotiate, in good faith, any term, condition or provision of this Sublease, or any other agreement between the parties, that any such authority determines to be in contravention of any federal, state or local regulation or law.

21. Holding Over. Should Subtenant, with or without the express or implied consent of Sublandlord, continue to hold and occupy the Premises after the expiration of the term of this Sublease, all payments due from Sublandlord to Overlandlord during any period of holding over shall be an obligation of Subtenant under this Sublease, payable as and when due to the Overlandlord under the Lease. Subtenant shall, unless otherwise directed by Sublandlord, pay all such payments directly to the Overlandlord.

22. Waivers. No waiver of any default or breach of any covenant, agreement or condition of this Sublease shall be construed to be a waiver of the rights as to any future default or breach by Subtenant or Sublandlord.

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23. Remedies to be Cumulative. The remedies available to the parties under the terms of this Sublease and in law or equity shall be cumulative and the exercise of any remedy shall not constitute an election of remedies.

24. Notice. Any notice required to be given hereunder shall be in writing and shall be served by hand delivery or by reputable overnight express courier for next business day delivery. All such notices shall be sent as follows:

If to Sublandlord:

Prior to the Commencement Date:
Friends of WHIN Music Community Charter School, Inc.
517 West 164th Street
New York, NY 10032
Attn: Board Chair

After the Commencement Date: the Premises

If to Subtenant:

Prior to the Commencement Date:
WHIN Music Community Charter School
517 West 164th Street
New York, NY 10032
Attn: Board Chair

After the Commencement Date: the Premises

Either party may hereafter and from time to time designate in writing a different address for the mailing of notices.

25. Captions. The paragraph captions in this Sublease are for convenience only and shall have no effect upon the terms and provisions of this Sublease.

26. No Joint Venture. Nothing contained in this Sublease shall be deemed or construed to create the relationship of principal and agent or of partnership or joint venture or of any association whatsoever between Sublandlord and Subtenant, except that of sublandlord and subtenant.

27. Quiet Enjoyment. Sublandlord represents that it has good right and authority to lease the Premises and that Subtenant shall quietly enjoy the Premises so long as it complies with the terms and conditions of this Sublease.

28. Severable Provisions. The provisions of this Sublease shall be severable and if any provisions shall be invalid or void or unenforceable in whole or in part for any reason, the remaining provisions shall remain in full force and effect.

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the benefit of Subtenant a subordination, nondisturbance and attornment agreement from any Overlandlord mortgagee or ground lessor.

37. Landlord Consent Not Required. Pursuant to Section 2.01 of the Lease, Landlord's consent is not required for this Sublease.

38. Sublease Adjustments. Given the length of the Term of this Sublease and Sublandlord and Subtenant's inability to predict with precision a variety of factors including without limitation the final cost of Landlord's Work and certain unknowns with respect to the costs that Subtenant may incur in connection with operating the Premises (the "Variables"), Sublandlord and Subtenant agree to work collaboratively from time to time as may be necessary to address such Variables as they may arise, which may include, without limitation, amending the Base Rent due under this Sublease and responsibility for certain services and maintenance obligations set forth hereunder.

[SIGNATURE PAGE FOLLOWS]

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29. Entire Agreement. This Sublease and any other agreements executed and delivered contemporaneously herewith contain the entire agreement of the parties and supersede any and all prior agreements between the parties, written or oral, with respect to the subject matter contemplated hereby. This Sublease may not be changed or terminated orally but may only be changed by an agreement in writing signed by the party or parties against whom enforcement of any waiver, change, modification, extension, discharge or termination is sought.

30. Binding Effect. This Sublease shall be binding and shall inure to the benefit of the parties hereto, and their respective heirs, legatees, executors, administrators, successors and assigns.

31. Incorporation and Reference. The terms of the Lease and the Sublease are incorporated herein. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Sublease.

32. Self-Help. If Sublandlord or Subtenant shall default in the performance or observance of any agreement, condition or other provision in this Sublease and shall not cure such default within thirty days after notice in writing from the other party specifying the default (or shall not within said period commence to cure such default and thereafter prosecute the curing of such default to completion with due diligence) the non-defaulting party may (in addition to any other remedy available to the non-defaulting party at law or in equity) at any time thereafter cure such default and the defaulting party shall reimburse the non-defaulting party for any amount paid and any expense or contractual liability so incurred, and any amounts due from Subtenant shall be deemed additional rent due and payable with the next installment of monthly rent and any amount due from Sublandlord may be deducted by Subtenant from any rent due hereunder; provided however, that either may cure any such default as aforesaid prior to the expiration of said cure period but after notice to the other party, if it is necessary to protect the Premises, or to prevent injury or damages to persons or property.

35. Overlandlord and Sublandlord Access. Consistent with the terms of the Lease, Overlandlord (and by extension through this Sublease- Sublandlord), and Overlandlord's and Sublandlord's agents, contractors, consultants, mortgagees and insurers shall have access to the Premises in any emergency at any time, and at reasonable times and upon reasonable notice to Subtenant, for purposes of determining the general condition of the Premises, or for the purpose of complying with the laws, regulations or directions of governmental authorities, or for the purpose of showing the Premises to prospective tenants all while observing Subtenant's security procedures.

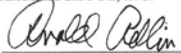
36. Subordination; Non-Disturbance. This Sublease is subject and subordinate to all mortgages that may now or hereafter affect the Premises (the "Underlying Mortgages") and to all renewals, modifications, consolidations, replacements and extensions of any such Underlying Mortgages. This clause shall be self-operative, and no further instrument of subordination shall be required by any mortgagee affecting this Sublease or the real property of which the Premises are a part. Subtenant shall, nevertheless, promptly execute and deliver such further instruments confirming the subordination of this lease as may be desired by the holder of any Underlying Mortgage, or by the Overlandlord and Sublandlord without charge or delay. Notwithstanding the forgoing, consistent with the terms of the Lease, Sublandlord shall obtain for its benefit and by extension,

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IN WITNESS WHEREOF, Sublandlord and Subtenant have hereunto executed this Sublease on the day and year first above written.

SUBLANDLORD:

**FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.**

By: 
Name: Arnold Adlin
Title: Board Chair

SUBTENANT:

**WHIN MUSIC COMMUNITY
CHARTER SCHOOL**

By: _____
Name: Gregory David
Title: Board Chair

IN WITNESS WHEREOF, Sublandlord and Subtenant have hereunto executed this Sublease on the day and year first above written.

SUBLANDLORD:

**FRIENDS OF WHIN MUSIC COMMUNITY
CHARTER SCHOOL, INC.**

By: _____
Name: Arnold Adlin
Title: Board Chair

SUBTENANT:

**WHIN MUSIC COMMUNITY
CHARTER SCHOOL**

By: _____
Name: Gregory David
Title: Board Chair

[528 W. 162nd Sublease Signature Page]
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Schedule 1 Base Rent

Sublease Year	Base Rent (annualized)	Base Rent (monthly)
1	\$3,677,675.01	\$306,472.92
2	\$4,162,675.00	\$346,889.58
3	\$4,202,087.50	\$350,173.96
4	\$4,203,087.50	\$350,257.29
5	\$4,284,187.50	\$357,015.63
6	\$4,287,387.50	\$357,282.29
7	\$4,286,212.50	\$357,184.38
8	\$4,286,662.50	\$357,221.88
9	\$4,287,450.00	\$357,287.50
10	\$4,336,325.00	\$361,360.42
11	\$4,338,875.00	\$361,572.92
12	\$4,338,175.00	\$361,514.58
13	\$4,339,225.00	\$361,602.08
14	\$4,336,700.00	\$361,391.67
15	\$4,442,240.00	\$370,186.67
16	\$4,441,915.00	\$370,159.58
17	\$4,442,365.00	\$370,197.08
18	\$4,438,265.00	\$369,855.42
19	\$4,439,615.00	\$369,967.92
20	\$4,552,569.00	\$379,380.75
21	\$4,553,194.00	\$379,432.83
22	\$4,552,969.00	\$379,414.08
23	\$4,551,569.00	\$379,297.42
24	\$4,553,669.00	\$379,472.42
25	\$4,676,603.40	\$389,716.95
26	\$4,674,078.40	\$389,506.53
27	\$4,673,753.40	\$389,479.45
28	\$4,674,978.40	\$389,581.53
29	\$4,672,103.40	\$389,341.95
30	\$4,810,086.24	\$400,840.52
31	\$4,807,386.24	\$400,615.52
32	\$4,808,961.24	\$400,746.77
33	\$1,484,511.24	\$123,709.27
34	\$1,488,111.24	\$124,009.27
35	\$1,636,922.36	\$136,410.20
36	\$1,636,922.36	\$136,410.20
37	\$1,636,922.36	\$136,410.20
38	\$1,636,922.36	\$136,410.20

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Sublease Year	Base Rent (annualized)	Base Rent (monthly)
39	\$1,636,922.36	\$136,410.20
40	\$1,800,614.60	\$150,051.22
41	\$1,800,614.60	\$150,051.22
42	\$1,800,614.60	\$150,051.22
43	\$1,800,614.60	\$150,051.22
44	\$1,800,614.60	\$150,051.22
45	\$1,980,676.06	\$165,056.34
46	\$1,980,676.06	\$165,056.34
47	\$1,980,676.06	\$165,056.34
48	\$1,980,676.06	\$165,056.34

Schedule 2

Sublandlord's Work

Sublandlord shall perform or cause to be performed certain work to the Premises, as described below.

PROGRAM SUMMARY – see attached program sheet for details

- 370 seat concert hall
- Cafeteria and warming kitchen to serve 2 grades (108 students) per period
- 3280sf gymnasium
- 2 core classrooms for each grade K-8 total 16
- 2 science rooms
- 1 flex classroom
- 7 music classrooms – 2 choral and 5 instrumental
- 2786sf fenced outdoor play deck
- Support spaces for faculty, administration, break out teaching and counselling spaces

BUILDING

- Interior gut demo and full abatement of all hazardous material of existing structure
- New footings
- New fireproofed steel structure snaked through existing to support 5 story overbuild. Lateral system of new designed to tie into existing bringing it into full compliance with current lateral requirements
- 2 new service/egress stairs, 1 new ADA compliant elevator
- Acoustically isolated metal stud partitions
- ACT ceiling systems
- HVAC system
 - o building is fully ventilated, heated and air conditioned
 - o the building uses no fossil fuels relying on energy efficient heat pumps throughout
- Electrical system
 - o new 2400 amps 3 phase
 - o 350KW backup generator
 - o Energy efficient lighting system complete with occupancy/vacancy/ daylight control system as required by code
- Plumbing system
 - o New 2" domestic eater service
 - o New 6" sprinkler service
 - o New 8" waste line
 - o Gang bathrooms for students and single rooms for staff
- Fully code complaint sprinkler, standpipe and fire alarm systems
- Low voltage systems include: security, access control, AV, IT, PA, intercom
- Exterior enclosure
 - o Thermally broken high performance windows
 - o Storefront entry system at grade
 - o Exterior metal rainscreen

- EIFS
- Interiors
 - VCT and LVT flooring
 - Porcelain and ceramic tile bathrooms
 - Resilient sports floor at gym

Schematic Design attached hereto

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