

---

---

**BUILDING LOAN AGREEMENT**

**Dated as of October 1, 2023**

by and between

**ROCKLAND COUNTY ECONOMIC ASSISTANCE CORPORATION,**  
a local development corporation created pursuant to the Not-for-Profit Corporation Law of the  
State of New York, having its principal office at  
254 South Main Street, Suite 410, New City, New York 10956,  
as “**Issuer**”

and

**CONGREGATION PE’ER BAIS YAAKOV,**  
a not-for-profit corporation organized and existing under the Article 10 of the Religious  
Corporation Law of the State of New York, having its principal office at  
133 Route 59, Monsey, New York 10952,  
as “**Institution**”

\$9,500,000

Rockland County Economic Assistance Corporation  
Educational Facilities Revenue Bonds  
(Congregation Pe’er Bais Yaakov High School Project) 2023 Series

---

---

Relating to Property Located at:

<u>Address</u>	<u>Section</u>	<u>Block</u>	<u>Lot</u>
607 Route 306 Hamlet of Monsey, Town of Ramapo, New York 10901	32.15	2	15

Record and Return to:  
Hawkins Delafield & Wood LLP  
Seven World Trade Center  
250 Greenwich Street  
New York, New York 10007  
Attention: Daniel Birmingham, Esq.

**TABLE OF CONTENTS**

**ARTICLE I**

**DEFINITIONS AND CONSTRUCTION**

Section 1.1. Definitions.....3  
Section 1.2. Construction .....20

**ARTICLE II**

**REPRESENTATIONS AND WARRANTIES**

Section 2.1. Representations and Warranties by Issuer .....21  
Section 2.2. Representations and Warranties by the Institution.....22

**ARTICLE III**

**APPLICATION OF LOAN PROCEEDS; THE PROJECT; MAINTENANCE; REMOVAL OF  
PROPERTY AND TITLE INSURANCE**

Section 3.1. Application of Loan Proceeds; Advances Generally .....27  
Section 3.2. Certain Conditions Precedent to the Initial Bonds Purchaser’s  
Obligation to Make Advances of the Loan .....31  
Section 3.3. Special Conditions Precedent to Initial Bonds Purchaser’s Obligation to  
Make the Final Advance .....33  
Section 3.4. Manner of Project Completion.....34  
Section 3.5. Maintenance .....36  
Section 3.6. Alterations and Improvements .....36  
Section 3.7. Removal of Property of the Facility.....37  
Section 3.8. Implementation of Additional Improvements and Removals .....38  
Section 3.9. Title Insurance.....38

**ARTICLE IV**

**LOAN; PAYMENT PROVISIONS; INSURANCE**

Section 4.1. Loan of Proceeds.....39  
Section 4.2. Promissory Note.....39  
Section 4.3. Loan Payments; Pledge of this Agreement and of the Promissory Note .....40  
Section 4.4. Loan Payments and Other Payments Payable Absolutely Net.....42  
Section 4.5. Nature of Institution’s Obligation Unconditional .....42  
Section 4.6. Advances by the Issuer, the Initial Bonds Purchaser or the Trustee .....43  
Section 4.7. No Warranty of Condition or Suitability .....43  
Section 4.8. Insurance .....44  
Section 4.9. Yield Maintenance for Changes in Law.....46  
Section 4.10. Determination of Taxability .....47  
Section 4.11. Change in Tax Rate.....47

ARTICLE V

REAL ESTATE AND SALES TAXES; FINANCIAL ASSISTANCE; RECAPTURE OF PUBLIC BENEFITS

Section 5.1. Payments in Lieu of Real Estate Taxes.....48  
Section 5.2. Sales Tax Exemption.....48  
Section 5.3. Recapture of Public Benefits.....48

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 6.1. Damage, Destruction and Condemnation .....50  
Section 6.2. Loss Proceeds.....51  
Section 6.3. Election to Rebuild or Terminate.....51  
Section 6.4. Effect of Election to Build .....52

ARTICLE VII

COVENANTS OF THE ISSUER

Section 7.1. Assignment of Promissory Note and Assignment of Mortgage .....54  
Section 7.2. Issuance of Initial Bonds.....54  
Section 7.3. Issuance of Additional Bonds .....54  
Section 7.4. Pledge and Assignment to Trustee.....54  
Section 7.5. Issuer to Make Bond Registration Books Available .....55

ARTICLE VIII

COVENANTS OF THE INSTITUTION

Section 8.1. Construction .....55  
Section 8.2. Indemnity .....55  
Section 8.3. Compensation and Expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents; Administrative and Project Fees .....57  
Section 8.4. Current Facility Personalty Description.....58  
Section 8.5. Signage at Facility Site.....58  
Section 8.6. Employment Matters .....59  
Section 8.7. Non-Discrimination.....60  
Section 8.8. Assignment of this Agreement or Lease of Facility .....61  
Section 8.9. Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of Facility .....64  
Section 8.10. Discharge of Liens .....64  
Section 8.11. Filing .....65  
Section 8.12. No Further Encumbrances Permitted.....67  
Section 8.13. Documents Automatically Deliverable to the Issuer .....68

Section 8.14.	Requested Documents .....	68
Section 8.15.	Periodic Reporting Information for the Issuer .....	69
Section 8.16.	Taxes, Assessments and Charges .....	70
Section 8.17.	Compliance with Legal Requirements .....	70
Section 8.18.	Operation as Approved Facility .....	71
Section 8.19.	Restrictions on Dissolution and Merger.....	72
Section 8.20.	Preservation of Exempt Status .....	73
Section 8.21.	Securities Law Status .....	74
Section 8.22.	Security Interest and Further Assurances.....	74
Section 8.23.	Continuing Disclosure.....	74
Section 8.24.	Tax Regulatory Agreement .....	75
Section 8.25.	Compliance with the Indenture .....	75
Section 8.26.	Reporting Information for the Trustee and the Initial Bonds Purchaser .....	75
Section 8.27.	Equal Opportunity Employment .....	76
Section 8.28.	Minimum Debt Service Coverage Ratio .....	76
Section 8.29.	Additional Covenants.....	76

## ARTICLE IX

### REMEDIES AND EVENTS OF DEFAULT

Section 9.1.	Events of Default.....	80
Section 9.2.	Remedies on Default .....	82
Section 9.3.	Bankruptcy Proceedings.....	83
Section 9.4.	Remedies Cumulative .....	83
Section 9.5.	No Additional Waiver Implied by One Waiver .....	83
Section 9.6.	Effect on Discontinuance of Proceedings .....	83
Section 9.7.	Agreement to Pay Fees and Expenses of Attorneys and Other Consultants.....	84
Section 9.8.	Certain Continuing Representations .....	84
Section 9.9.	Late Delivery Fees .....	84

## ARTICLE X

### TERMINATION OF THIS AGREEMENT

Section 10.1.	Termination of this Agreement .....	85
Section 10.2.	Actions on Termination.....	85
Section 10.3.	Survival of Institution Obligations.....	86

## ARTICLE XI

### CERTAIN PROVISIONS RELATING TO THE BONDS

Section 11.1.	Issuance of Additional Bonds .....	86
Section 11.2.	[Reserved] .....	86
Section 11.3.	Mandatory Redemption of Bonds as Directed by the Issuer.....	86

Section 11.4.	Mandatory Redemption As a Result of Project Gifts or Grants .....	87
Section 11.5.	Right to Cure Issuer Defaults .....	88
Section 11.6.	Prohibition on the Purchase of Bonds .....	88
Section 11.7.	Investment of Funds .....	88

## ARTICLE XII

### MISCELLANEOUS

Section 12.1.	Force Majeure .....	88
Section 12.2.	Assignment of Mortgage and Pledge under Indenture .....	89
Section 12.3.	Amendments .....	89
Section 12.4.	Service of Process .....	90
Section 12.5.	Notices .....	90
Section 12.6.	Consent to Jurisdiction .....	92
Section 12.7.	Prior Agreements Superseded .....	92
Section 12.8.	Severability .....	92
Section 12.9.	Effective Date; Counterparts .....	92
Section 12.10.	Binding Effect .....	93
Section 12.11.	Third Party Beneficiaries .....	93
Section 12.12.	Law Governing .....	93
Section 12.13.	Waiver of Trial by Jury .....	93
Section 12.14.	Recourse Under This Agreement .....	93

### SCHEDULES

Schedule A	Form of Requisition
Schedule B	Lien Law Affidavit

### EXHIBITS

Exhibit A	Description of the Land
Exhibit B	Description of the Facility Personalty
Exhibit C	Authorized Representative
Exhibit D	Form of Required Disclosure Statement
Exhibit E	Form of Promissory Note
Exhibit F	Project Cost Budget
Exhibit G	Form of Project Completion Certificate
Exhibit H	Labor Policies
Exhibit H-1	Local Construction Labor Policy
Exhibit H-2	Construction Period Prevailing Wage Policy

## **BUILDING LOAN AGREEMENT**

This **BUILDING LOAN AGREEMENT**, made and entered into as of October 1, 2023 (this “**Agreement**”), by and between **ROCKLAND COUNTY ECONOMIC ASSISTANCE CORPORATION**, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York, having its principal office at 254 South Main Street, Suite 410, New City, New York 10956 (the “**Issuer**”), party of the first part, and **CONGREGATION PE’ER BAIS YAAKOV**, a not-for-profit corporation organized and existing under the Article 10 of the Religious Corporation Law of the State of New York, having its principal office in 133 Route 59, Monsey, New York 10952 (the “**Institution**”), party of the second part (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in Section 1.1 of this Agreement);

### **WITNESSETH:**

**WHEREAS**, Section 1411 of the Not-For-Profit Corporation Law of the State of New York (“**Section 1411**”) authorizes and provides for the incorporation of organizations as not-for-profit local development corporations operated for specified charitable or public purposes; and

**WHEREAS**, by Resolution No. 357 of 2010 the Legislature of the County of Rockland (the “**County Legislature**”) directed the establishment of the Issuer as a not-for-profit local development corporation to act as an instrumentality of the County of Rockland (the “**County**”) for the purpose of providing assistance in financing projects of not-for-profit organizations to be located within the County; and

**WHEREAS**, the Issuer was created pursuant to and in accordance with Section 1411 and is empowered under its Certificate of Incorporation and By-Laws to undertake the financing of projects for not-for-profit organizations; and

**WHEREAS**, by Resolution No. 95 of 2011 the County Legislature approved the By-Laws of the Issuer; and

**WHEREAS**, the Institution submitted an Application for Financial Assistance to the Issuer for the construction and financing of a new building to be located at 607 Route 306 in Monsey, New York for purposes of a girls’ high school (such property being in the Town of Ramapo, County of Rockland), for use as an institution of secondary education; and

**WHEREAS**, the Institution desires the Issuer to issue bonds to finance a portion of the cost of the Project; and

**WHEREAS**, the Institution has requested the Issuer to issue its Educational Facilities Revenue Bonds (Congregation Pe’er Bais Yaakov High School Project) 2023 Series in the aggregate principal amount of \$9,500,000; and

**WHEREAS**, to facilitate the Project and the issuance by the Issuer of its Educational Facilities 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 principal amount of the Initial Bonds, to the Institution pursuant to this Agreement, and (ii) the Institution will execute the Promissory Note in favor of the Issuer to evidence the Institution's obligation under this Agreement to repay the Loan, and the Issuer will endorse the Promissory Note to the Trustee; and

**WHEREAS**, to provide funds for 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 hereinafter mentioned, the Issuer adopted the Bond Resolution on December 1, 2022, authorizing the issuance of its Initial Bonds pursuant to the Indenture; and

**WHEREAS**, the Indenture, in addition to the issuance of the Initial Bonds, authorizes the issuance of additional bonds subject to the conditions set forth in the Indenture; and

**WHEREAS**, all things necessary to constitute this Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Agreement have in all respects been duly authorized by the Issuer and the Institution; and

**WHEREAS**, the Institution acknowledges that the Issuer is providing financing for the Project in furtherance of the Issuer's corporate purposes and that the use of and interest in the Project as provided hereby are in furtherance of the discharge of a public purpose; and

**WHEREAS**, in order to further secure the Initial Bonds, the Institution will grant a mortgage lien on and a security interest in its fee interest in the Facility to the Issuer and the Trustee pursuant to a Mortgage and Security Agreement (Building Loan), dated the Closing Date (the "**Mortgage**"), and the Issuer will assign its right, title and interest (except for the Issuer's Reserved Rights) under the Mortgage to the Trustee pursuant to the Assignment of Mortgage and Security Agreement, dated the Closing Date, from the Issuer to the Trustee (the "**Assignment of Mortgage**"); and

**NOW, THEREFORE**, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

Section 1.1. Definitions. In addition to the definitions set forth in Sections 5.3 and 8.1(a), the following terms shall have the respective meanings in this Agreement:

**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).

**Advance** shall mean the requisition of a specified amount of (i) the proceeds of the Bonds by the Institution pursuant to the Indenture and this Agreement, the transfer of an amount equal to such requisitioned amount by the Initial Bonds Purchaser to the Trustee for deposit in the Bond Account of the Project Fund and (ii) a portion of the Project Equity held by the Initial Bonds Purchaser, the transfer of an amount equal to such requisitioned amount to the Trustee for deposit in the Equity Account of the Project Fund, and the subsequent transfer of such amounts in the 2023 Series Bonds Account and the Equity Account, respectively, to the Institution or its designees as payment for Project Costs.

**Affiliate** when referring to 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.

**Agreement** shall mean this Building 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, initially \$500.00 per year, as generally applicable to Entities receiving or that have received financial assistance from the Issuer (subject to such exceptions from such general applicability as may be established by the Issuer's Board of Directors).

**Approved Facility** shall mean the Facility as occupied, used and operated by the Institution substantially for the Approved Facility 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 Facility Operations** shall mean use by the Institution of the facilities located at 607 Route 306, Monsey, New York 10901 for purposes of a girls' high school education.

**Architect** shall mean Richard Bienenfeld Architect, P.C., a New York professional service corporation, and any replacement thereof approved by the Initial Bonds Purchaser.



**Assignment of Mortgage** shall mean the Assignment of Mortgage and Security Agreement relating to the Facility, dated as of even date herewith, from the Issuer to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Authorized Denomination** shall have the meaning set forth in Section 3.02 of the Indenture.

**Authorized Principal Amount** shall mean, in the case of the Initial Bonds, \$9,500,000.

**Authorized Representative** shall mean, (i) in the case of the Issuer, the Chairman, Secretary or President of the Issuer, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties under the Indenture, under any other Project Documents or hereunder, 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.

**Benefits** shall have the meaning set forth in Section 5.3(a).

**Bond Account** shall mean the 2023 Series Bonds Account within the Project Fund, established pursuant to Section 5.01 of the Indenture.

**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 Registrar** shall mean the Trustee acting as registrar as provided in Section 3.10 of the Indenture.

**Bond Resolution** shall mean the resolution of the Issuer adopted on December 1, 2022, authorizing the issuance of the Initial Bonds.

**Bonds** shall mean the Initial Bonds and any Additional Bonds.

**Building Loan Deficiency Amount** shall have the meaning set forth in Section 3.1(p).

**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 of New York are authorized by law or executive order to close; or
- (iii) a day on which the New York Stock Exchange is closed.

**Change in Control** means a change in any two (2) year period of sixty percent (60%) of the board of directors of the Institution.

**Change in Law** means the occurrence, after the Closing Date, of any of the following of general applicability: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any governmental authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or, pursuant to the accord commonly referred to as “Basel III” or the United States or foreign regulatory authorities, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

**Claims** shall have the meaning set forth in Section 8.2(a).

**Closing Date** shall mean, the date of the initial issuance and delivery of the Initial Bonds.

**Closing Equity** shall mean the amount of \$454,531.33, which the Institution is required to deposit into the Pledge Account on the Closing Date in order to satisfy the required minimum equity.

**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.

**Commencement Deadline** shall have the meaning given in Section 3.2(j).

**Completion Date** shall mean Issuance of the Certificate of Occupancy (C/O) or any Temporary C/O by the designated Municipal Authority.

**Conduct Representation** shall mean any representation by the Institution under Section 2.2(q), or by any other Person in any Required Disclosure Statement delivered to the Issuer.

**Construction Manager** shall mean Eastgate Management Service Corp., a New York corporation, and any replacement thereof approved by the Initial Bonds Purchaser.

**Construction Phase** means, with respect to the Initial Bonds, the period beginning on the date of issuance of the Initial Bonds and ending on the first day of the month following the earliest to occur of (i) the completion of construction and opening of the Facility for the Approved Facility Operations or (ii) the first day of the month immediately following the twenty-fourth full calendar months following the issuance of the Initial Bonds. If the Initial Bonds are issued on the first day of a month, that month will be considered the first full calendar month following the date of issuance of the Initial Bonds.

**Consultant** shall mean the construction consultant or inspector selected by the Initial Bonds Purchaser, in its sole discretion, in connection with its review and oversight of the progress of construction of the Project and such other tasks as set forth herein.

**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: counsel fees (including fees of Bond Counsel, counsel to the Initial Bonds Purchaser, Trustee’s counsel, Issuer’s counsel and Institution’s counsel, as well as any other specialized counsel fees incurred in connection with the borrowing); financial advisor fees of any financial advisor to the Issuer or the Institution incurred in connection with the issuance of the Initial Bonds; engineering and feasibility study costs; guarantee fees (other than Qualified Guarantee Fees, as defined in the Tax Regulatory Agreement); 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.

**County** shall mean the County of Rockland in the State of New York.

**Date of Taxability** means, with respect to any Bonds, the date as of which interest paid or payable on such Bonds is includable in the gross income of any Bondholder thereof (including any former Holder) for Federal income tax purposes as a result of the occurrence of a Determination of Taxability.

**Debt Service Coverage Ratio** means the quotient obtained by dividing (i) the Institution’s change in net assets having no donor restrictions, plus depreciation and amortization, plus unrealized and realized decline in investments having no donor restrictions, minus unrealized and realized appreciation in investments having no donor restrictions, plus the annual endowment draw as authorized by the Institution’s current endowment spending policy in

an amount not to exceed five percent (5%) of the total average cash and investments having no donor restrictions, plus investments restricted to financial aid for the three most recent fiscal years of the Institution (but only to the extent such amount is not included in the Institution's most recent statement of activities), plus unrealized decline in hedging agreements, if any, or minus any unrealized appreciation in hedging agreements, if any, plus interest expense, by (ii) the sum of current maturities of long term debt (including any capital lease payments) plus interest expense. For purposes of the foregoing calculation, assets deemed to have "no donor restrictions" may include donations if donor or board restricted solely to provide tuition or other assistance directly for the benefit of the Institution's students.

**Default Rate** shall mean four percentage points (4.00%) in excess of the otherwise applicable interest rate.

**Defeasance Obligations** shall mean Government Obligations that are not subject to redemption prior to maturity.

**Deferred Equity** shall mean an amount not to exceed \$1,500,000, which the Institution shall be required to deposit into the Pledge Account following the Closing Date and in any event, no later than the end of the Construction Phase.

**Determination of Taxability** shall mean:

(i) 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;

(ii) the issuance of a public or private ruling or a technical advice memorandum by the Internal Revenue Service in which the Institution has participated or has been given the opportunity to participate, and which ruling or memorandum the Institution, in its discretion, does not contest or from which no further right of judicial review or appeal exists;

(iii) a determination from which no further right of appeal exists of any court of competent jurisdiction in the United States in a proceeding in which the Institution has participated or has been a party, or has been given the opportunity to participate or be a party; or

(iv) the admission in writing by the Institution; or

(v) the failure by bond counsel to issue an updated opinion as to the tax-exempt status of the Bonds in connection with any Advance as of the Funding Date; or

in any case, to the effect that the interest payable on the Bonds (or any portion thereof) of a Holder or a former Holder thereof is includable in gross income for Federal income tax purposes; provided, however, that no such Determination of Taxability described in clauses (ii) or (iii) hereof shall be considered to exist unless (1) the Holder or former Holder of the Bond involved in such proceeding (A) gives the Institution and the Trustee

prompt notice of the commencement thereof and (B) (if the Institution agrees to pay all expenses in connection therewith) offers the Institution the opportunity to control the defense thereof and (2) either (A) the Institution does not agree within thirty (30) days of receipt of such offer to pay such expenses and to control such defense or (B) the Institution shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Institution determines to be appropriate. No Determination of Taxability described above will result from the inclusion of interest on any Bond in the computation of minimum or indirect taxes.

**DOL** shall have the meaning set forth in Section 8.7(c).

**Due Date** shall have the meaning set forth in Section 9.9(a).

**Earnings Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Employment Information** shall have the meaning set forth in Section 8.6(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.

**Equity Account** shall mean the account so designated within the Project Fund, established pursuant to Section 5.01 of the Indenture.

**Excess Equity** shall mean such equity deposited into the Pledge Account by the Institution which is in excess of the required Project Equity.

**Event of Default** shall have the meaning specified in Section 9.1.

**Existing Facility Property** shall have the meaning set forth in Section 3.7(a).

**Facility** shall mean, collectively, the Facility Personalty and the Facility Realty.

**Facility Personalty** shall mean those items of machinery, equipment and other items of personalty the acquisition and/or the installation of which is to be financed or refinanced 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 this Agreement and described in Exhibit B — “Description of the Facility Personalty,” together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of Section 3.7, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 3.7.

**Facility Realty** shall mean, collectively, the Land and the Improvements.

**Fiscal Year** shall mean a year of 365 or 366 days, as the case may be, commencing on July 1 and ending on June 30 of the next calendar year, or such other fiscal year of similar length used by the Institution for accounting purposes as to which the Institution shall have given prior written notice thereof to the Issuer and the Trustee at least ninety (90) days prior to the commencement thereof.

**Fitch** shall mean Fitch Ratings, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Fixed Date Deliverables** shall have the meaning set forth in Section 9.9(a)(ii).

**Funding Date** shall mean the date on which an Advance is funded by the Initial Bonds Purchaser by transferring the amount of such Advance to the Trustee for deposit in the Bond Account of the Project Fund.

**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.

**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.

**Guarantor** shall mean, with respect to the Initial Bonds, Morris Zakheim.

**Hard Costs** means the “costs of an improvement” (as such term is defined in Section 2(5) of the New York Lien Law).

**Hazardous Materials** shall include any petroleum, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation.

**Impositions** shall have the meaning set forth in Section 8.17(a).

**Improvements** shall mean:

(i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Closing Date and erected or situated on the Land;

(ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land; and

(iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

**Indemnification Commencement Date** shall mean December 1, 2022, 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).

**Indemnity Agreement** shall mean the Environmental Indemnity Agreement, dated as of even date herewith, from the Institution in favor of the Issuer, the Trustee, and the Bondholder and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

**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 approved by the Issuer, the Initial Bonds Purchaser and the Trustee (such approvals not to be unreasonably withheld or delayed).

**Independent Engineer** shall mean a Person (not an employee of either the Issuer or the Institution or any Affiliate of either thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Institution, and approved in writing by the Initial Bonds Purchaser (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 \$500.00.

**Initial Bonds** shall mean the Issuer's \$9,500,000 Educational Facilities Revenue Bonds (Congregation Pe'er Bais Yaakov High School Project) 2023 Series authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

**Initial Bonds Purchaser** shall mean Eastern Savings Bank fsb as the initial purchaser and registered Holder of one hundred percent (100%) of the Outstanding Bonds.

**Institution** shall mean Congregation Pe'er Bais Yaakov, a not-for-profit corporation organized and existing under Article 10 of the Religious Corporation Law of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Institution under Section 8.9 or 8.20.

**Institution's IRS Determination Letter** shall mean that certain ruling letter dated March 7, 2018, issued by the Internal Revenue Service to the Institution confirming that the Institution is a Tax-Exempt Organization.

**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, the first day of each month, commencing November 1, 2023, and with respect to any Series of Additional Bonds, the dates set forth therefor in the Supplemental Indenture pursuant to which such Series of Additional Bonds is issued.

**Issuer** shall mean Rockland County Economic Assistance Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the County, 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 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;



(iv) the right of the Issuer to amend with the Institution the provisions of Section 5.3 without the consent of the Trustee or any Bondholder;

(v) 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 Sections 3.4, 3.5, 3.6, 3.7, 4.4, 4.5, 4.6, 4.7, 5.1, 5.2, 5.3, 6.1, 6.2, 6.3, 6.4, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 8.12, 8.13, 8.14, 8.15, 8.16, 8.17, 8.18, 8.19, 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26, 8.28, 8.29, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 10.1, 10.2, 10.3, 11.1, 11.3, 11.5, 12.1, 12.3, 12.4, 12.5, 12.6, 12.11, 12.13 and 12.14; and

(vi) the right of the Issuer in its own behalf to declare a default with respect to any of the Issuer's Reserved Rights and exercise the remedies set forth in Section 9.2(b).

**Land** shall mean that certain lot, piece or parcel of land designated as Tax Lot 32.15-2-15, generally known by the street address 607 Route 306, Monsey, New York 10901 more fully described in Exhibit A – “Description of the Land”.

**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 wages, and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the County, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Institution, (ii) the Facility or any part thereof, or (iii) any use or condition of the Facility or any part thereof.

**Liability** shall have the meaning set forth in Section 8.2(a).

**Lien Law** shall have the meaning set forth in Section 4.1(a).

**Liens** shall have the meaning specified in Section 8.11(a).

**Limited Funds** shall have the meaning specified in Section 3.1(e).

**Loan** shall mean the loan made by the Issuer to the Institution pursuant to this Agreement as described in Section 4.1.

**Loan Payment Date** shall mean the twenty-fifth (25<sup>th</sup>) day of each month (or, if the twenty-fifth (25<sup>th</sup>) day shall not be a Business Day, the immediately preceding Business Day), commencing November 1, 2023.

**Loss Event** shall have the meaning specified in Section 6.1.

**Majority Holders** shall mean, so long as the Initial Bonds Purchaser is the only Holder of the aggregate principal amount of the Bonds Outstanding, the Initial Bonds Purchaser, and after the issuance of any Additional Bonds shall mean the holder(s) of a majority of the Bonds Outstanding and the holder of the Initial Bonds.

**Maturity Date** shall mean the maturity date so specified in any Bond.

**Merge** shall have the meaning specified in Section 8.19(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 the Mortgage and Security Agreement (Building Loan), dated the Closing Date, from the Institution to the Issuer and the Trustee, and shall include any and all amendments thereof and supplements thereto and assignments thereof hereafter made in conformity therewith and with the Indenture.

**Mortgaged Property** shall have the meaning set forth in the Indenture.

**Nationally Recognized Bond Counsel** shall mean Hawkins Delafield & Wood LLP or other counsel acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

**Net Building Loan** means the aggregate of all Hard Costs.

**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, the Initial Bonds Purchaser or the Trustee) incurred in the collection thereof.

**Notice Parties** shall mean the Issuer, the Institution, the Initial Bonds Purchaser, the Bond Registrar, the Paying Agents and the Trustee.

**Notification of Failure to Deliver** shall have the meaning specified in Section 9.9(b).

**Operations Commencement Date** shall mean the date of issuance of the certificate of occupancy for the Facility.

**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, the Initial Bonds Purchaser and the Trustee) with respect to such matters as required under any Project Document or as the Issuer, the Initial Bonds Purchaser or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer, the Initial Bonds

Purchaser and the Trustee, including but not limited to the 501(c)(3) status of the Institution or other Person.

**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 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 have 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.

With respect to Drawdown Bonds, prior to payment by the Initial Bonds Purchaser of the full purchase price of such Drawdown Bonds, the principal amount of such Drawdown Bonds Outstanding shall be deemed to be limited solely to the principal amount of the Drawdown Bonds for which the purchase price has been paid to and received by the Trustee. This is also referred to as the Funded Amount.

**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.

**Permitted Encumbrances** shall mean:

(i) the Mortgage, the Assignment of Mortgage, 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 mechanics', 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 8.10(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 herein provided or adversely affect the fair market value of the property;

(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 and 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 3.9 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 and is otherwise covered in whole by insurance;

(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 and approved by the Initial Bonds Purchaser in writing from the County, the State or any governmental body, agency or instrumentality; and

(xiii) any lien, security interest, encumbrances or charge which exists in favor of the Trustee or to which the Trustee and the Initial Bonds Purchaser shall consent in writing.

**Person** shall mean an individual or any Entity.

**Pledge Account** means that certain account established with the Initial Bonds Purchaser, which will hold the Project Equity, and will be used solely for Advances to pay Project Costs, as set forth herein and the applicable Requisition. The Institution shall be required to deposit, from time to time, additional equity into the Pledge Account as required by this Agreement, and may also deposit additional equity in excess of the required Project Equity into the Pledge Account.

**Predecessor Institution** shall have the meaning specified in Section 8.20(b)(ii).

**Principal Account** shall mean the special trust account of the Bond Fund so designated, established pursuant to Section 5.01 of the Indenture.

**Principal Payment Date** shall mean any date on which in accordance with Article II of the Indenture the principal is due on any Bond.

**Principals** shall mean, with respect to any Entity, the most senior three officers of such Entity and/or Trustees, 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. If the entity is a religious corporation Principals shall mean the members/Trustees of the board of such corporation and the three most senior executives (by job responsibility, not length of service) of such corporation.

**Project** shall mean the acquisition and the construction of the Facilities comprising a new building to be located at 607 Route 306 in Monsey, New York 10901 in the County for purposes of a girls’ high school, the acquisition of Facility Personalty, and the financing of certain costs of issuance of the Initial 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 Cost Budget** has the meaning set forth in Section 2.2(l).

**Project Costs** shall mean:

with respect to the Initial Bonds:

- (i) Hard Costs and all other costs of acquisition, construction and installation of the Facility;
- (ii) all costs of title insurance as provided in Section 3.7; and
- (iii) the payment of the Costs of Issuance with respect to the Initial Bonds; and

with respect to Additional Bonds, all of the foregoing as they relate to the project for which the proceeds of the Additional Bonds are to be applied, plus all other costs and expenses relating to the issuance of a Series of Additional Bonds.

“Project Costs” shall not include (i) fees or commissions of real estate brokers, (ii) moving expenses, or (iii) operational costs.

**Project Documents** shall mean, collectively, the Indemnity Agreement and the Security Documents.

**Project Equity** shall mean the total amount of equity, including the Closing Equity and the Deferred Equity, required to be on deposit in the Pledge Account that, when taken together with the undrawn balance of the Loan, is sufficient to pay all remaining Project Costs.

**Project Fee** shall mean, with respect to the issuance of the Initial Bonds, \$48,749.99.

**Project Fund** shall mean the special trust fund so designated, established pursuant to Section 5.01 of the Indenture.

**Project Work** shall mean (i) the design, construction and/or renovation of the Improvements, including the acquisition of building materials and fixtures, and (ii) the acquisition, whether by title or lease, of the Facility Personalty and any work required to install same.

**Promissory Note** shall mean, with respect to the Initial Bonds, that certain Promissory Note in substantially the form of Exhibit E - “Form of Promissory Note” to this Agreement, and, 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 shall include in each case any and all amendments thereof and supplements thereto made in conformity with this Agreement and the Indenture.

**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.

**Recapture Event** shall have the meaning set forth in Section 5.3(a).

**Recapture Period** shall have the meaning set forth in Section 5.3(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 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.

**Required Disclosure Statement** shall mean that certain Required Disclosure Statement in the form of Exhibit D — “Form of Required Disclosure Statement.”

**Requisition** shall mean a requisition by the Institution of proceeds of Bonds in compliance with this Agreement, the form of which is attached hereto as Schedule A.

**S&P** shall mean S&P Global Ratings, its successors and their assigns, and, if such corporation 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, 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).

**Scheduled Completion Date** shall mean October 31, 2025

**Securities Act** shall mean the Securities Act of 1933, as amended, together with any rules and regulations promulgated thereunder.

**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 and Assignment of Promissory Note, the Indenture, the Tax Regulatory 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.

**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.

**State** shall mean the State of New York.

**Successor Institution** shall have the meaning specified in Section 8.19(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.

**Taxable Equivalent Rate** shall mean four percentage points in excess of the otherwise applicable interest rate.



**Tax-Exempt Organization** shall mean an Entity organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code and exempt from Federal income taxes under 501(a) of Code, or corresponding provisions of Federal income tax laws from time to time in effect.

**Tax Regulatory Agreement** shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer and the Institution to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Termination Date** shall mean such date on which this Agreement may terminate pursuant to Article X.

**Title Company** shall mean Riverside Abstract and/or Old Republic National Title Insurance Company.

**Transfer** shall have the meaning specified in Section 8.20(a)(iv).

**Trustee** shall mean Zions Bancorporation, National Association, 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.

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

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).

(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.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties by Issuer. The Issuer makes the following representations and warranties:

(i) The Issuer is a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State, and is duly organized and validly existing under the laws of the State.

(ii) 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.

(iii) 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.

(iv) 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.

(v) The Issuer as a not-for-profit local development corporation established at the direction of and authorized to act as an instrumentality of the County for the purpose of providing assistance in financing projects of not-for-profit organizations to be located within the County.

(vi) 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.

(vii) 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.

Section 2.2. Representations and Warranties by the Institution. The Institution makes the following representations and warranties, knowing that the Issuer, the Trustee and the Bondholders will rely on such representations and warranties as an incentive to issue the Bonds and enter into all related transactions:

(a) The Institution is a not-for-profit corporation organized and existing under Article 10 of the Religious Corporation Law of the State of New York, and its successors and assigns, 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. The Institution is accredited by the Board of Regents of the State University of New York as an institution of learning for the grade levels of its student body. Except for the names "Congregation Pe'er Bais Yaakov", "Yeshiva Pe'er Bais Yaakov" and "Pe'er Bais Yaakov School", the Institution has no trade names, fictitious names, assumed names or "doing business as" names under which it has done or is doing business and will not, following the Closing Date, do business under any other tradenames, fictitious names, assumed names or "doing business as" names without the prior written consent of the Initial Bonds Purchaser. Except for Peerby LLC, a New York limited liability company, the Institution does not have any subsidiaries and will not, following the Closing Date, create any new subsidiaries, without the prior written consent of the Initial Bonds Purchaser.

(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, except as enforcement may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights.

(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 litigation, investigation, action or proceeding pending or, to the best of the Institution's knowledge, after diligent inquiry, threatened, by or against the Institution or its assets by or before any court or administrative agency that (i) might have a material adverse effect on 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, (ii) might adversely affect the financial condition of the Institution, (iii) might impair the value of the Project, (iv) seeks to enjoin or similarly prevent the Project Work or the use of the Improvements, or (v) might question the validity of this Agreement.

(e) Undertaking the Project is anticipated to serve the corporate public purposes of the Issuer by establishing and maintaining jobs, assisting the Institution in obtaining lower cost financing and easing the burdens on government.

(f) The Facility will be the Approved Facility and perform Approved Facility Operations.

(g) Except as permitted by Section 8.8, no Person other than the Institution and individuals attending the Institution or providing services in furtherance of the Institution's educational purposes is or will be in use, occupancy or possession of any portion of the Facility.

(h) 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.

(i) The Facility is designed to be, and is, in compliance with all applicable Legal Requirements.

(j) The Institution is in compliance, and will continue to comply, with all applicable Legal Requirements relating to the Facility and its operation.

(k) The Institution has not used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and to the best of the Institution's knowledge, no prior owner or occupant of the Facility has used Hazardous Materials on, from, or affecting the Facility in any manner that violates any applicable Legal Requirements.

(l) The Project Cost Budget attached as Exhibit F — “Project Cost Budget” represents a true, correct and complete budget as of the Commencement 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 Commencement 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.

(m) 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 not derived 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.

(n) All of the Land comprises approximately 2.00 acres of a single tax lot.

(o) Subject to Section 3.7 and Article VI, no property constituting part of the Facility shall be located at any site other than at the Facility Realty.

(p) The Fiscal Year is true and correct.

(q) None of the Institution, the board members of the Institution, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Institution:

(i) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Issuer or the County, unless such default or breach has been waived in writing by the Issuer or the County, as the case may be;

(ii) has been convicted of a felony and/or any crime involving moral turpitude in the ten (10) preceding years;

(iii) has received written notice of default in the payment of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(iv) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by in rem tax foreclosure, other than a property which has been released or is in the process of being released to such Person.

(r) 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.

(s) 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.

(t) The property to be financed from the proceeds of the Initial Bonds is either property of the character subject to the allowance for depreciation under Section 167 of the Code, or land.

(u) 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.

(v) The Institution has fee title in the Facility Land and has no present intention to sell, directly or indirectly, in whole or in part, its interest in the Facility.

(w) 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.

(x) The Institution is exempt from Federal income taxes under Section 501(a) of the Code.

(y) The Institution is an organization described in Section 501(c)(3) of the Code and has received the Institution's IRS Determination Letter. The facts and circumstances which form the basis of the Institution's IRS Determination Letter continue substantially to exist as represented to the Internal Revenue Service. The Institution's 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 Institution's IRS Determination Letter.

(z) The Institution is not a "private foundation," as defined in Section 509 of the Code.

(aa) The Institution, the Guarantor, the Project and the Project Work are in material compliance with all Legal Requirements applicable to the Institution, the Guarantor, the Project or the Project Work, and no written notice of noncompliance with any such Legal Requirements has been received by the Institution, the Guarantor or, to the best of Institution's knowledge, by any other person or entity.

(bb) All management, leasing, marketing, engineering, architectural, construction and maintenance contracts, relating to the Project or the Project Work to which the Institution or any affiliates of the Institution is a party are listed in the schedule of contracts most

recently furnished to Initial Bonds Purchaser by the Institution, and true and complete copies of all such contracts, including all amendments thereto, have been made available to the Initial Bonds Purchaser or its Consultant. All contracts listed in such schedule are in full force and effect in accordance with their respective terms, and, except as described in such schedule, no party to any such contract has asserted any written claim of default or offset against the Institution or any affiliate of the Institution, with respect thereto, which claim, default or offset has not been cured or resolved.

(cc) The Institution has not sold, conveyed, assigned or otherwise transferred, or agreed to sell, convey, assign or otherwise transfer, any development, air or floor-area-ratio rights with respect to the Property.

(dd) The Lien Law Statement has been prepared in accordance with Section 22 of the Lien Law. The Project Cost Budget sets forth all of the costs, expenses and fees (including costs, expenses and fees in connection with the making of the Loan) that Institution expects to pay or anticipates becoming obligated to pay to complete the Project Work. The Institution is not aware of any permits required for the completion of the Project that should not be available as-of-right upon the submission of all required applications therefor.

(ee) The Institution has not dealt with any mortgage broker or other broker or finder in connection with the Loan other than as identified in the Lien Law Affidavit attached hereto.

(ff) All necessary action has been taken, or will be taken pursuant to Section 3.2(i) to permit the Project Work according to the Project Cost Budget and the full use of the Improvements for their intended purpose under all Legal Requirements. When completed according to the Project Cost Budget, the Improvements will comply with all Legal Requirements.

(gg) All utility services necessary for the Project Work and the use of the Improvements are available to the Facility or will be available upon completion of the Project Work. All roads necessary for the full use of the Project for its intended purpose have been completed, or the necessary rights-of-way therefor have been acquired or dedicated, and all necessary steps to date have been taken to insure the completion thereof.

(hh) The Institution has advised the Title Company in writing prior to the issuance of a title insurance policy whether any survey, soils testing, site development, excavation or other work related to the construction of the Improvements was begun or done before the Mortgage was recorded.

(ii) The Institution is not in violation of any agreement the violation of which might reasonably be expected to have a material adverse effect on the Institution's business or assets.

(jj) This Agreement does not contain any untrue statement of a material fact.

(kk) No condemnation or taking by eminent domain of any portion of the Facility, or affecting any roadways or utilities abutting the Facility, or access to the Facility therefrom has commenced, or is threatened or contemplated by any governmental authority.

(ll) All financial statements of the Institution heretofore given and hereafter to be given to the Initial Bonds Purchaser, are and will be true and complete in all respects as of their respective dates, fairly represent the financial conditions of the businesses or persons to which they pertain, and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof.

(mm) All documents furnished to the Initial Bonds Purchaser, or to be furnished to the Initial Bonds Purchaser, by or on behalf of the Institution, as part of or in support of the any application or pursuant to this Agreement or otherwise in connection with the Loan or the Project Documents, are true, correct, complete and accurately represent the matters to which they pertain.

(nn) The Institution is, and upon consummation of the transaction contemplated by this Agreement, the Project Documents and any other related documents, will be, solvent.

(oo) The Institution's estate, rights, title and interest in, to and under the Mortgaged Property are subject to no liens, charges or encumbrances other than the Permitted Encumbrances, and the Mortgage, when executed, delivered and recorded, shall constitute a valid lien on such estate, rights, title and interest (which shall be subject only to Permitted Encumbrances).

(pp) All representations and warranties contained herein shall be deemed continuing and in effect at all times while the Institution remains indebted pursuant to this Agreement and shall be deemed to be incorporated by reference in each requisition for advance by the Institution, unless the Institution specifically notifies the Notice Parties of any change therein.

### **ARTICLE III**

#### **APPLICATION OF LOAN PROCEEDS' THE PROJECT; MAINTENANCE; REMOVAL OF PROPERTY AND TITLE INSURANCE**

##### **Section 3.1. Application of Loan Proceeds; Advances Generally.**

###### **Advances Generally.**

(a) Subject to the terms and conditions of this Agreement and confirmation by the Initial Bonds Purchaser that the requirements under this Agreement have been satisfied with respect to the applicable Advance, the Initial Bonds Purchaser shall make each Advance upon the Institution in an amount determined by the Initial Bonds Purchaser to be equal to the total Hard Costs paid for or payable by the Institution (subject to Section 3.1(1)) and then due through the end of the period covered by the applicable Requisition less the aggregate amount of Advances previously made. The Initial Bonds Purchaser shall determine the amount of the Advance that is to be funded from Bond proceeds and the amount that is to be funded from the



Pledge Account, in accordance with the provisions below and such approved amount shall be set forth in the applicable Requisition.

(b) Until such time that the required Project Equity has been fully deposited into the Pledge Account, the Initial Bonds Purchaser shall fund Advances jointly from Bond proceeds and the Pledge Account. Such Advances shall be based on the proportion of equity remaining to be deposited to satisfy the Project Equity and the remaining Bond proceeds to be advanced by the Initial Bonds Purchaser, as follows. Any determination by the Initial Bonds Purchaser of such proportion shall be deemed final, and shall be set forth in the Requisition and approved by the Initial Bonds Purchaser prior to the disbursement of any Advance. Until such time that there is a material change in the Project Costs, the Initial Bonds Purchaser shall use its initial calculation to fund Advances at 82% from Bond proceeds and 18% from the Pledge Account. Following an increase or decrease in the aggregate Project Costs of more than five percent (5%), the Initial Bonds Purchaser shall update its calculation to equal the proportion of the total Bond proceeds advanced and to be advanced, and the total Project Costs, the remainder of which shall be funded from Project Equity.

(c) If, at any time, the balance of the Pledge Account is insufficient to fund its portion of an Advance, the Initial Bonds Purchaser may, in its sole and absolute discretion, demand that the Institution deposit additional equity into the Pledge Account to cover such inadequacy, or, in the discretion of the Initial Bonds Purchaser it may disburse from the Bond proceeds at a higher percentage for that particular Advance.

(d) Notwithstanding the foregoing, at any time there is Excess Equity in the Pledge Account, whether due to excess deposits by the Institution or reduction to Project Costs, the Initial Bonds Purchaser will permit the Institution to fund 100% of an Advance with funds from the Pledge Account. However, any such Advances using Excess Equity will only be disbursed following payment to the Initial Bonds Purchaser of the applicable prepayment premium calculated on the amount of Excess Equity to be disbursed, as set forth in Section 2.03 of the Indenture, which prepayment premium also must be funded by Excess Equity.

(e) In the event the disbursement of Bond proceeds is replaced by Excess Equity in accordance with subsection (d) above, the ability of the Institution to request an advance of such Bond proceeds shall be limited in accordance with this subsection (the “**Limited Funds**”). After disbursement of all of the remaining Bond proceeds other than the Limited Funds, the Institution may request an advance of the Limited Funds for additional Hard Costs only, provided that the proportion of Limited Funds to be advanced does not exceed sixty-five percent (65%) of the total Advance requested, and the remainder shall be funded by Project Equity. In the event the Institution requests a disbursement of Limited Funds, the Institution will not be entitled to a refund of any prepayment premium that was paid in connection with the use of the Excess Equity in accordance with subsection (d) above. In the event Limited Funds are used and later prepaid, there shall be no prepayment premium payable for the repayment of such Limited Funds, and any such prepayment is not counted against the Institution’s ability to make prepayments without premium in accordance with Section 2.03(a)(viii) of the Indenture. In addition to the foregoing, the Institution will not be required to pay a prepayment premium, as applicable, for any unused Limited Funds under Section 2.03 of the Indenture.

(f) The Initial Bonds Purchaser shall not be required to make an Advance more than once in any thirty (30) day period.

(g) The Initial Bonds Purchaser shall not be required to make an Advance if the sum of that Advance plus the sum of all Advances previously made, when deducted from the amount of Net Building Loan, leaves an amount that the Initial Bonds Purchaser determines is insufficient to pay in full the remaining Hard Costs necessary to complete the Project Work unless the Institution shall provide the Initial Bonds Purchaser with evidence satisfactory to the Initial Bonds Purchaser in its sole but reasonable discretion that the Institution has the balance of the required funds to pay for the remaining Hard Costs necessary to complete the Project Work and such funds are deposited into the Pledge Account.

(h) The Initial Bonds Purchaser shall not be required to make any Advance other than to pay for, or to reimburse to the Institution for amounts paid for, those line items of Hard Costs set forth in the Project Cost Budget (“**Line Item**”). The Initial Bonds Purchaser shall not be required to make any Advance for any Line Item that would cause the aggregate amount advanced for such Line Item to exceed the Project Cost Budget amount for such Line Item. The Initial Bonds Purchaser shall not be required to make any Advance that would reduce the undisbursed portion of any Line Item below an amount that the Initial Bonds Purchaser (or the Initial Bonds Purchaser’s Consultant) determines is the amount of such Line Item that is necessary to complete the Project Work. the Initial Bonds Purchaser further reserves the right to require that the Institution deposit with the Initial Bonds Purchaser, within ten (10) days of the Initial Bonds Purchaser’s demand therefor, good and readily available funds equal to the amount that the Initial Bonds Purchaser (or the Initial Bonds Purchaser’s Consultant) determines is in excess of the Project Cost Budget amount of such Line Item that is necessary to complete the Project Work and the undisbursed portion of such Line Item (“**Line Item Deficiency Amount**”).

(i) The Initial Bonds Purchaser shall not be required to make Advances for building materials that have not been incorporated into the Improvements, unless: (i) the Initial Bonds Purchaser’s Consultant shall have inspected such materials and found them to be of acceptable quality and in conformance with the Project Cost Budget; (ii) the Institution shall have delivered to the Initial Bonds Purchaser bills of sale or other evidence reasonably satisfactory to the Initial Bonds Purchaser of the cost of, and the Institution's title to, such materials; (iii) the Institution shall have delivered evidence reasonably satisfactory to the Initial Bonds Purchaser specifying (1) the security measures that have been taken to protect such materials from theft, casualty or deterioration, and (2) the steps that have been taken to identify and to segregate such materials so as adequately to give notice to all third parties of the Institution's title in and to such materials; (iv) the Institution shall have provided evidence reasonably satisfactory to the Initial Bonds Purchaser that such materials are insured against all risk of loss for their full replacement cost; (v) such materials shall be stored on the Property; and (vi) to the extent that Advances with respect to materials that have not been incorporated in the Improvements shall exceed Fifty Thousand Dollars (\$50,000), the Initial Bonds Purchaser shall have received UCC-1 financing statements or other evidence reasonably satisfactory to the Initial Bonds Purchaser of the Initial Bonds Purchaser’s perfected first (1<sup>st</sup>) priority lien on and security interest in such materials.

(j) Regardless of whether the Institution has submitted a Requisition therefor, the Initial Bonds Purchaser, in its sole and absolute discretion, may, from time to time, advance amounts that become due for Hard Costs for which the Institution is responsible for payment provided that the Institution has not paid same within ten (10) days of receipt of notice from the Initial Bonds Purchaser. Such advances may be made directly to (i) parties to whom such amounts are due, or (ii) to reimburse the Initial Bonds Purchaser for sums due to it. All such advances (“**Direct Advances**”) shall be deemed Advances hereunder and shall be secured by the Project Documents to the same extent as if they were made directly to the Institution.

(k) All Advances, other than Direct Advances, from the Bond proceeds shall be made to the Bond Account and from the Pledge Account shall be made to the Equity Account, respectively, in the sole but commercially reasonable discretion of the Initial Bonds Purchaser.

(l) If the Initial Bonds Purchaser, the Initial Bonds Purchaser’s Consultant or Title Company shall so require, the Institution shall submit with its Requisitions, estoppel certificates, lien waivers or other similar certifications in form satisfactory to the Initial Bonds Purchaser and Title Company showing amounts paid and amounts due to all persons or organizations furnishing labor or materials in connection with the completion of the Improvements.

(m) The making of an Advance by the Initial Bonds Purchaser shall not constitute the Initial Bonds Purchaser’s approval or acceptance of the construction theretofore completed. The Initial Bonds Purchaser’s inspection and approval of the Project Cost Budget, the Project Work, the Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on the Initial Bonds Purchaser, the sole obligation of the Initial Bonds Purchaser as the result of such inspection and approval being to make the Advances if, and to the extent, required by this Agreement. Any disbursement made by the Initial Bonds Purchaser without the Initial Bonds Purchaser having received each of the items to which it is entitled under this Agreement shall not constitute breach or modification of this Agreement, nor shall any written amendment to this Agreement be required as a result thereof.

(n) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO THE INSTITUTION. NO POTENTIAL LIENOR SHOULD EXPECT THE INITIAL BONDS PURCHASER TO MAKE ADVANCES OF THE LOAN IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO THE INSTITUTION. MOREOVER, ALL POTENTIAL LIENORS ARE REMINDED THAT SUBDIVISION (3) OF SECTION 13 OF THE LIEN LAW PROVIDES THAT “NOTHING IN THIS SUBDIVISION SHALL BE CONSIDERED AS IMPOSING UPON THE INITIAL BONDS PURCHASER ANY OBLIGATION TO SEE THE PROPER APPLICATION OF SUCH ADVANCES BY THE OWNER,” AND THE INITIAL BONDS PURCHASER HAS NO INTENTION OF VOLUNTARILY IMPOSING SUCH OBLIGATION ON ITSELF.

(o) If at any time the undisbursed balance of a Line Item is, in the Initial Bonds Purchaser’s judgment, excessive, the excess may be reallocated to any other Line Item balance which the Initial Bonds Purchaser deems to be insufficient.

(p) Notwithstanding anything contained herein to the contrary, if at any time the Initial Bonds Purchaser notifies the Institution that, in the Initial Bonds Purchaser's sole judgment, the undisbursed balance of the Loan together with the then balance of the Pledge Account is insufficient to pay the remaining Hard Costs, the Institution shall within twenty (20) days of the Initial Bonds Purchaser's notification as aforesaid, deposit with the Initial Bonds Purchaser to be held in the Pledge Account an amount equal to such deficiency (the "**Building Loan Deficiency Amount**"), which the Initial Bonds Purchaser may from time to time use to fund Advances as set forth herein. The Institution hereby agrees that the Initial Bonds Purchaser shall have a lien on and security interest in any and all sums deposited in the Pledge Account and that the Institution shall have no right to withdraw any such sums. The Initial Bonds Purchaser shall have no obligation to make any further Advances of proceeds of the Loan until the sums required to be deposited pursuant this Section (l) have been exhausted, and, the Loan is back "in balance". Any such sums not used as provided in this Section (l) shall be released to the Institution when and to the extent that the Initial Bonds Purchaser determines that the amount thereof is more than the excess, if any, of the total remaining Hard Costs of completion of the Improvements over the undisbursed balance of the Loan, provided, however, that should an Event of Default occur, the Initial Bonds Purchaser may, at its option, apply such amounts either to the costs of completion of the Improvements or to the immediate reduction of outstanding principal and/or interest under the Note.

(q) The Initial Bonds Purchaser shall have absolutely no obligation to make any Advances after the Scheduled Completion Date. The Institution shall indemnify the Initial Bonds Purchaser, and hold the Initial Bonds Purchaser harmless from, any liability or claim of any nature whatsoever that arises from the Initial Bonds Purchaser's due right under this Agreement to discontinue Advances following the Completion Date.

(r) Advances of the Loan are to be applied solely to Hard Costs in accordance with the Project Cost Budget. The Initial Bonds Purchaser shall have no obligation to permit use of proceeds of the Loan for any other purpose.

(s) The Initial Bonds Purchaser shall not be required to make any Advances to fund any deposit due in connection with any construction contract for Hard Costs, nor shall the Initial Bonds Purchaser be required to make Advances to reimburse the Institution for any funds previously expended by the Institution to fund any deposit due in connection with any construction contract for Hard Costs.

(t) The Initial Bonds Purchaser is subject to regulatory limits on how much credit may be outstanding to any one the Institution under 12 CFR Section 32.1, et seq. (the "Loans to One Institution Limit"). The Initial Bonds Purchaser shall have no obligation to make any advance under this Agreement if such advance would cause the Initial Bonds Purchaser to exceed the Loans to One Institution Limit.

Section 3.2. Certain Conditions Precedent to the Initial Bonds Purchaser's Obligation to Make Advances of the Loan. The Initial Bonds Purchaser shall not be obligated to make any Advance unless all of the following conditions shall be satisfied as of the proposed Funding Date of such Advance:

(a) Initial Bonds Purchaser and Initial Bonds Purchaser's Consultant shall have each received a Requisition from the Institution, at least fifteen (15) Business Days prior to the proposed Funding Date, together with (i) paid receipts (including invoices, bills and copies of payments made in connection therewith) and lien waivers for all Hard Costs that were included in any prior Advances and invoices and conditional lien waivers for all Hard Costs proposed to be included in the applicable Advance and (ii) an application and certificate for payment (AIA G702) signed by the Architect and Construction Manager, along with a completed continuation sheet (AIA G703).

(b) If payment or reimbursement is being requested for any Hard Costs, or any fees of architects and engineers, or construction management fees, Initial Bonds Purchaser shall have received a written statement from Initial Bonds Purchaser's Consultant, at least five (5) Business Days prior to the proposed Funding Date, certifying to Initial Bonds Purchaser (i) the amount of Hard Costs (broken down by Line Item) and the amount of any fees of architects and engineers, or construction management fees, that have been incurred by the Institution, (ii) the estimated total Hard Costs (broken down by Line Item) necessary to complete the Project Work in accordance with the Project Cost Budget, (iii) whether all municipal governmental agency inspections that should have occurred with respect to the completed construction have occurred, and (iv) whether the completed construction has been performed in a good and workman like manner and in accordance with the Project Cost Budget.

(c) At the Institution's sole cost and expense, Initial Bonds Purchaser shall have received an endorsement to the Title Policy pursuant to the pending disbursements clause thereof, changing the date of the Title Policy to the applicable Funding Date, insuring that there has been no change in the state of title to the Property since the previous Advance and that the Mortgage remains a first (1<sup>st</sup>) lien encumbering the Facility, and increasing the coverage of the Title Policy to include the amount of the applicable Advance. If an Advance is being requested for payment of funds expended for exterior work performed with respect to the Improvements, such endorsement shall include either (i) an update of the survey reading that is included in the Title Policy, which update shall show no new encroachments unless such new encroachments shall be permitted by applicable law and the Title Policy shall insure that such new encroachments may remain as long as the Improvements shall stand, or (ii) a statement to the effect that the Title Policy shall not be subject to any exceptions by reason of such survey reading having not been updated.

(d) Initial Bonds Purchaser shall have received evidence satisfactory to Initial Bonds Purchaser that there are no conditional sales contracts, chattel mortgages, leases of personality, financing statements or title retention agreements affecting any of the Mortgaged Property (as such term is defined in the Mortgage).

(e) Each of the representations and warranties contained in this Agreement shall be true and correct as of the proposed Funding Date, as determined by Initial Bonds Purchaser.

(f) No Event of Default shall have occurred and be continuing and no event that with the passage of time or notice, or both, would constitute an Event of Default shall have occurred or be continuing.

(g) The Institution shall have paid to Initial Bonds Purchaser all fees and expenses required to be paid by the Institution under this Agreement, including, without limitation, an administration fee in the amount of \$50.00 per Requisition and a draw review administration fee in the amount of \$500.00 per Requisition for any Requisition submitted in connection with Hard Costs, and Initial Bonds Purchaser's Consultant's fees, as charged by the Initial Bonds Purchaser's Consultant, including any fee for inspection of completed work by the Initial Bonds Purchaser's Consultant.

(h) The Institution shall provide evidence to the Initial Bonds Purchaser that the proceeds of the most recent previous Advance hereunder have been applied to Hard Costs, and otherwise to construct the Improvements, subject to the Initial Bonds Purchaser's confirmation and approval in its sole discretion.

(i) The Institution shall have provided a supplemental opinion of Bond Counsel as to the tax exemption of any Advance.

(a) Special Conditions Precedent to the Initial Bonds Purchaser's Obligation to Make the First Advance: In addition to the terms and conditions set forth in Section 3.1 and this Section 3.2 hereof and elsewhere in this Agreement, prior to the first Advance hereunder, the Institution shall provide to Initial Bonds Purchaser: (A) evidence satisfactory to Initial Bonds Purchaser that the Institution has obtained all required permits and approvals in accordance with applicable Legal Requirements from the applicable municipal authorities as are necessary to commence and complete the Project Work, as confirmed by Initial Bonds Purchaser in its sole but commercially reasonable discretion; (B) construction budgets and draw schedules for the Project satisfactory to Initial Bonds Purchaser in its sole and absolute discretion; (C) receipt by the Initial Bonds Purchaser of the fully executed Architect's Agreement made by the Architect in favor of the Trustee, for the benefit of the Initial Bonds Purchaser; (D) receipt by the Initial Bonds Purchaser of the fully executed Contractor's Agreement made by the General Contractor in favor of the Trustee, for the benefit of the Initial Bonds Purchaser; (E) receipt by the Initial Bonds Purchaser of the fully executed Assignment of Project Documents and Security Agreement made by the Institution in favor of the Trustee, for the benefit of the Initial Bonds Purchaser; (F) proof that no other outstanding conditions remain related to the approval of the proposed Improvements; (G) proof that the Institution has obtained Builder's Risk insurance and flood insurance coverage acceptable to Initial Bonds Purchaser; (H) conditional lien waivers from the Construction Manager, and all contractors and all subcontractors that worked on the Project; and (I) receipt from the Institution of an executed Loans To One Institution Certification for the then current quarter and (J) receipt by the Initial Bonds Purchaser of evidence of the Payment and Performance Bond (as defined below, subject to the terms and conditions of the Post-Closing Agreement (as defined below).

Section 3.3. Special Conditions Precedent to Initial Bonds Purchaser's Obligation to Make the Final Advance. Without limiting the generality of the foregoing, Initial Bonds Purchaser shall not be obligated to make the final advance ("**Final Advance**"), unless, in addition to the terms and conditions set forth in Section 3.1 and 3.2 hereof and elsewhere in this Agreement, the additional following conditions shall be satisfied as of the proposed Funding Date for the Final Advance:

(a) The Initial Bonds Purchaser and the Initial Bonds Purchaser's Consultant shall have received a completed AIA Form G704 signed by the Architect, Construction Manager, and the Institution evidencing that the Project Work has been substantially completed;

(b) The Initial Bonds Purchaser shall have received a temporary certificate of occupancy for the entire Project (and each individual unit constructed thereat in accordance with the Plans) issued by the municipal body or agency having the authority to do so, all other permits and licenses necessary for occupancy and use of the Project, on or prior to the Scheduled Completion Date, and there must be no violations of the City, State or Federal Government encumbering the Property;

(c) The Initial Bonds Purchaser and the Initial Bonds Purchaser's Consultant shall have received a signed and sealed "as-built" survey of the Project dated within ten (10) days of the proposed Funding Date, certified to the Initial Bonds Purchaser and Title Company, and showing the completed Improvements, and showing no new encroachments unless (i) such new encroachments shall be permitted by applicable law and (ii) the applicable title policy shall insure that such new encroachments may remain as long as the Improvements shall stand.

(d) The Initial Bonds Purchaser shall have received written certification from the Construction Manager and the Initial Bonds Purchaser's Consultant, each in form satisfactory to the Initial Bonds Purchaser, that the Project Work has been at least one hundred (100%) percent completed in accordance with the Project Cost Budget.

(e) The Initial Bonds Purchaser shall have received an original hazard insurance policy written complying with the terms of the Mortgage and evidence that the current premium or installment payment due on such policy has been paid and that the policy is in full force and effect.

(f) The Initial Bonds Purchaser shall have received an endorsement to the Title Policy, insuring that the Mortgage is a first (1st) lien encumbering the Project for the amount of the outstanding principal indebtedness of the Note.

(g) The Initial Bonds Purchaser shall have received final lien waivers from the Construction Manager and all contractors and all subcontractors that worked on the Project.

(h) The Initial Bonds Purchaser shall have received an opinion of Bond Counsel as to the tax exemption of all Advances made under the Bonds.

#### Section 3.4. Manner of Project Completion.

(a) The Institution will complete the Project Work, or cause the Project Work to be completed, by the Completion Date, 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, the Initial Bonds Purchaser (which consents shall not be unreasonably withheld, delayed or conditioned).

(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 Trustee all vendors' warranties received by the Institution in connection with the Project, including any warranties given by contractors, manufacturers or service organizations who perform Project Work.

(c) Project Costs shall be paid from the Bond Account and/or the Equity Account.

(d) The Institution shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the vesting with the Issuer of a leasehold estate in the Facility, or attributable to periods prior to such vesting, as set forth in Section 3.1, and (iii) all shipping and delivery charges and other 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 Initial Bonds Purchaser the final Project Cost and the Project Cost Budget, which budget will include a comparison with the final Project Cost and the Project Cost Budget, and indicate the source of funds (i.e., Bond proceeds, equity, etc.) for each cost item, and (z) evidence completion of the Project 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 Project Cost Budget supplied to the Initial Bonds Purchaser contains a true and accurate estimate of the cost of the Project and the same will be updated by the Institution at the request of Initial Bonds Purchaser at any time during the term of the Loan. Any and all amendments to the Project Cost Budget must be approved in writing by the Initial Bonds Purchaser; provided, however, the Initial Bonds Purchaser's prior written consent shall not be required for any change order which individually does not cause the Project Cost Budget to be increased or decreased by more than Twenty-Five Thousand Dollars (\$25,000.00), provided, however, that notwithstanding the foregoing, the Initial Bonds Purchaser's prior written consent shall be required for any change order that, when added to all previous change orders, causes the Project Cost Budget to be increased or decreased by more than One Hundred Thousand Dollars (\$100,000.00) in the aggregate.

Section 3.5. 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 3.6. Alterations and Improvements.

(a) The Institution shall have the privilege of making such alterations of or additions to the Facility Realty ("**Additional Improvements**") or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that:

(i) as a result of the Additional Improvements, the fair market value of the Facility is not reduced below its 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.

(c) If the Institution shall make any Additional Improvements, the Institution shall notify an Authorized Representative of the Issuer and the Initial Bonds Purchaser of such Additional Improvements by delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements.

### Section 3.7. Removal of Property of the Facility.

(a) The Institution shall have the right from time to time to remove from that property constituting part of the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other item of personal property constituting part of the Facility Personalty (in any such case, the “**Existing Facility Property**”) and thereby removing such Existing Facility Property from that property constituting part of the Facility and the lien and security interest of the Mortgage; provided, however:

(i) such Existing Facility Property is substituted or replaced by property (y) having equal or greater fair market value, operating efficiency and utility and (z) free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances, or

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration, the Institution shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund and thereby cause a redemption of Bonds to be effected in an amount (to the nearest integral multiple of Authorized Denomination) equal to the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition; provided that no such redemption shall be required when such amount received in connection with any removal or series of removals does not exceed, in the aggregate, \$25,000.

No such removal set forth in paragraph (i) or (ii) above shall be effected if (v) such removal would cause the interest on the Bonds to cease to be excludable from gross income for Federal income tax purposes, (w) such removal would change the nature of the Facility as the Approved Facility, (x) such removal would materially impair the usefulness, structural integrity or operating efficiency of the Facility, (y) such removal would materially reduce the fair market value of the Facility below its value immediately before such removal (except by the amount by

which the Bonds are to be redeemed as provided in paragraph (ii) above), or (z) there shall exist and be continuing an Event of Default hereunder. Any amounts received pursuant to paragraph (ii) above in connection with any removal or series of removals, which are not in excess of \$25,000, shall be retained by the Institution.

(b) The removal from the Facility of any Existing Facility Property pursuant to the provisions of Section 3.7(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 3.8. Implementation of Additional Improvements and Removals.

(a) In the event of any Additional Improvements or substitution or replacement of property pursuant to Section 3.6 or 3.7, the Institution shall deliver or cause to be delivered to the Issuer, the Initial Bonds Purchaser 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 and 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 3.6, Additional Improvements to, or releasing, in accordance with Section 3.7, Existing Facility Property from, the lien and security interest of the Mortgage.

(c) The Institution agrees, upon request of the Issuer or the Trustee, to furnish to the Issuer, the Initial Bonds Purchaser 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 3.6 and (ii) effect the removal of Existing Facility Property in compliance with Section 3.7(a), pursuant to Sections 8.15(d) and (e), respectively.

Section 3.9. Title Insurance. On or prior to the Closing Date, the Institution will obtain and deliver (i) to the Trustee and the Issuer a mortgagee title insurance policy in an amount not less than the Authorized Principal Amount insuring the Trustee's and the Issuer's interest under the Mortgage as holders of a mortgage lien on the Mortgaged Property, subject only to Permitted Encumbrances, and (ii) a current or updated survey of each of the Mortgaged Property certified to the Trustee, to the Initial Bonds Purchaser, to the Issuer and to 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: (i) full coverage against mechanics' liens; (ii) no exceptions other than those approved by the Issuer, the Initial Bonds Purchaser and the Trustee; (iii) an undertaking by the title insurer to provide the notice of title continuation or endorsement; and (iv) such other matters as the Issuer, the Initial Bonds Purchaser and/or the Trustee shall request. Any proceeds of such mortgagee title insurance shall be paid to the Trustee for deposit in the Renewal Fund and applied to remedy the applicable defect in title in respect of which such proceeds shall be derived (including the reimbursement to the Institution for any costs incurred by the Institution in remedying such defect in title). If not so capable of being applied or if a balance remains after such application, the amounts in the Renewal Fund shall be transferred by the Trustee to the Redemption Account

of the Bond Fund and used to redeem an equivalent principal amount of the Initial Bonds to the nearest integral multiple of Authorized Denominations.

## ARTICLE IV

### LOAN; PAYMENT PROVISIONS; INSURANCE

Section 4.1. Loan of Proceeds. The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to make the Loan and lend to the Institution an amount equal to the principal amount of the Initial Bonds. The Loan is a drawdown loan and shall be made in installments and, with respect to each Advance, shall be executed by the Initial Bonds Purchaser transferring funds in an amount equal to the amount of the Advance to the Trustee for deposit in the Bond Account and the Equity Account, respectively, the amount of the applicable Advance. The amount of each Advance from the Bonds Account shall constitute proceeds of the purchase price from the sale of the Initial Bonds to the Initial Bonds Purchaser. Such proceeds shall be disbursed to or on behalf of the Institution as provided in the Indenture.

(a) Building Loan Agreement. This Agreement, the Indenture, and the Mortgage shall, taken together, constitute the building loan agreement for the financing of the Hard Costs of the Facility. The proceeds of the Loan shall be secured by, among other things, the Mortgage and shall be deposited, disbursed, applied and advanced subject to and in accordance with the applicable provisions of the Indenture and this Agreement. The Institution and the Issuer (at the sole cost and expense of the Institution) shall on demand by the Trustee do any act or execute any additional documents reasonably required by the Trustee to confirm the lien of the Mortgage or to comply with the provisions of the Lien Law of the State of New York (the “**Lien Law**”), including Section 13 thereof. The Institution shall further cause to be filed in the clerk’s office of the County of Rockland, New York, all necessary amendments to this Agreement as may be appropriate to reflect any changes in the amount of the Hard Costs. The Institution hereby agrees to use the proceeds of this loan to pay only for Hard Costs in accordance with this Agreement.

(b) Trust Fund. This Agreement, the Indenture, the Mortgage and all loan proceeds disbursed hereunder are subject to the Trust Fund provisions of Section 13 of the Lien Law. The Institution shall receive all advances of the loan proceeds and will hold the right to receive the same as a trust fund for the purpose of paying any “trust claim” as defined in Section 71 of the Lien Law and shall apply the same first to such payment before using any part thereof for any other purpose permitted hereunder. In addition, a true statement under oath, verified by the Institution, as required by Section 22 of the Lien Law, is attached hereto as Schedule B and made a part hereof. The Institution shall indemnify the Issuer and the Trustee and hold each harmless from and against any and all claims, damages, judgments, liabilities, costs and expenses of every kind (including, without limitation, reasonable attorneys’ fees and disbursements and court costs) that the Issuer and the Trustee may suffer by reason of the foregoing statement being untrue or deficient in any respect.

Section 4.2. Promissory Note. The Institution’s obligation to repay the Loan and to pay any other amounts due from the Institution or the Issuer to the Initial Bonds Purchaser

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. The Issuer is authorized to endorse the Promissory Note to the Trustee as security for the Initial Bonds.

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) and (v) 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 amount due on the next 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, an amount equal to the amount due on the next Principal Payment Date (after taking into account any amounts on deposit in the Principal Account of the Bond Fund, and as shall be available to pay principal on the Initial Bonds on such next succeeding Principal Payment Date), 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, however, 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) [Reserved].

(iv) on each redemption date, with respect to the Redemption Price 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; and

(v) if there are any amounts available pursuant to this Agreement that remain undrawn as of the Completion Date, the Institution shall pay to the Initial Bonds Purchaser an amount that would be the amount of premium that would be payable with

respect to prepaid Bonds had such undrawn amounts had been drawn by the Institution and then prepaid.

(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 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 and subject to the terms of the Indenture including, without limitation, Section 2.03 thereof; 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 and the Initial Bonds Purchaser, setting forth (i) the amount of the advance loan payment, (ii) the principal amount of Bonds Outstanding requested to be redeemed with such advance loan payment (which principal amount shall be in such minimum amount as shall be permitted in the Indenture), and (iii) 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, the Initial Bonds Purchaser and the Trustee a certificate of an Authorized Representative of the Institution stating that, as a result of the occurrence of the event giving rise to such redemption, the Institution has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes. Such advance loan payment shall be paid to the Trustee in legal tender, for deposit in the Redemption Account of the Bond Fund on or before the redemption date and shall be an amount which, when added to the amounts on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in connection with such 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 (i) all other amounts due and payable under this Agreement and the other Security Documents, and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement.

(d) [Reserved]

(e) In the event Defaulted Interest (as defined in Section 2.02(g) 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(g) 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 Earnings Fund, the Rebate Fund, the Bond Fund, the Project Fund or the Renewal Fund after payment in full of (i) the Bonds (in accordance with Article X of the Indenture), (ii) the fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in accordance with the Indenture, (iii) all loan payments and all other amounts payable hereunder and under the Promissory Note, and all amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or the Indenture, and (iv) all amounts required to be paid under any Security Document, 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 Bond Fund is not sufficient to pay the principal of, Sinking Fund Installments for, any redemption premium on, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Institution shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund.

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 or by the Issuer under the Indenture and the Bonds, 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 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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser or the Trustee, after first notifying the Institution in writing of any such failure on its part (except that no prior notification of the Institution shall be required in the event of an emergency condition that, in the reasonable judgment of the Issuer, the Initial Bonds Purchaser or the Trustee, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Issuer, the Initial Bonds Purchaser or the Trustee under this Agreement or any other Security Document to which the Issuer, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser or the Trustee shall become an additional obligation of the Institution to the Issuer, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser or the Trustee, as applicable. Any remedy vested in the Issuer, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser or the Trustee for the collection of all such amounts so advanced. No advance shall be made by the Trustee except upon the written direction of the Majority Holders.

Section 4.7. 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 FINANCE IN WHOLE THE EXISTING INDEBTEDNESS INCURRED BY THE INSTITUTION WITH RESPECT TO THE FACILITY. 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.

Section 4.8. Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Project, the Institution shall maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Institution. all of which shall be subject to the approval of the Issuer and the Initial Bonds Purchaser, which approval shall not be unreasonably withheld or delayed; provided, however, that, except as may be expressly required below, in no event shall the Issuer or the Initial Bonds Purchaser require insurance materially different in type, coverage or limits than that typically required by a lender, including, without limitation:

(i) To the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Institution and the Issuer in a minimum amount of \$1,000,000.00 coverage per occurrence for personal injury and property damage;

(ii) Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" during any period of construction or reconstruction of the Project, and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris and insuring the buildings, structures, machinery, equipment, facilities, fixtures and other property constituting a part of the Project against loss or damage to the Project by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Institution or the Issuer from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than 100% of the actual replacement value of the Project as determined by a qualified insurance appraiser or insurer (selected by the Institution and approved by the Issuer) upon the request of the Issuer, at the expense of the Institution, and any such insurance may provide that the insurer is not liable to the extent of the first \$10,000 with the result that the Institution is its own insurer to the extent of \$10,000 of such risks;

(iii) Public liability insurance in accordance with customary insurance practices for similar operations with respect to the Project and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence, which insurance (A) will also provide coverage of the Institution's obligations of indemnity under Section 8.2, (B) may be effected under overall blanket, umbrella or excess coverage policies of the Institution or any Affiliate thereof provided; however, that at least \$500,000 is effected by a comprehensive liability insurance policy, and (C) shall not contain any provisions for a deductible amount;

(iv) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus located on the Project realty from risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar business enterprises;

(v) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Institution or the Issuer is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Institution or any contractor or subcontractor performing work with respect to the Project; the Institution shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by the law;

(vi) Flood insurance, if the Project realty is located in a flood hazard area designated as such under the National Flood Insurance Act of 1968, as amended, and qualifies for coverage under such Act, in the maximum amount available; and

(vii) Such other insurance in such amounts and against such insurable hazards as the Issuer from time to time may reasonably require.

(b) All insurance required by Section 4.8(a) shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State with a rating of A-X or better by A.M. Best.

(c) Each of the policies or binders evidencing the insurance required above to be obtained shall

(i) designate (except in the case of workers' compensation insurance) the Initial Bonds Purchaser, the Issuer and the Trustee as an additional insured;

(ii) provide that there shall be no recourse against the Issuer for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that in respect of the respective interests of the Issuer in such policies, the insurance shall not be invalidated by any action or inaction of the Institution or any other Person and shall insure the Issuer regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Issuer to the extent that such other insurance provides the Issuer with contingent and/or excess liability insurance with respect to its respective interest as such in the Project;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Issuer or the Trustee until at least thirty (30) days after receipt by the Issuer and the Trustee of written notice by such insurers of such cancellation, lapse, expiration or change;

(vi) waive any right of subrogation of the insurers thereunder against the Issuer insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Issuer insured under such policy; and

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Project would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Project owned or operated by it.

(d) Subject to the requirements of the Mortgage, the Net Proceeds of any insurance received with respect to any loss or damage to the property of the Project shall be applied in accordance with Section 6.2 of this Agreement.

(e) The Institution shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Issuer to collect from insurers for any loss covered by any insurance required to be obtained by this Section. The Institution shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section would or might be suspended or impaired.

(f) THE ISSUER, THE TRUSTEE AND THE INITIAL BONDS PURCHASER DO NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE INSTITUTION.

Section 4.9. Yield Maintenance for Changes in Law. If, after the Closing Date, the Initial Bonds Purchaser shall have reasonably determined that a Change in Law shall have occurred that has or would have the effect of reducing the rate of return on the Initial Bonds Purchaser's capital or otherwise, as a consequence of its making the Loan to the Institution to a level below that which the Initial Bonds Purchaser could have achieved but for such adoption, change or compliance (taking into consideration the Initial Bonds Purchaser's or its affiliates' policies with respect to capital adequacy) by an amount deemed by the Initial Bonds Purchaser to be material, then from time to time, promptly upon demand by the Initial Bonds Purchaser, the

Institution hereby agrees to pay the Initial Bonds Purchaser such additional interest as will compensate the Initial Bonds Purchaser for such reduction. The Institution shall pay to the Initial Bonds Purchaser such additional interest as will compensate the Initial Bonds Purchaser for such reduction, provided that at such time the Initial Bonds Purchaser shall generally be assessing such amounts on a non-discriminatory basis against Institution having loans similar to the Loan and provided that the Institution shall not be obligated to pay any amount accruing more than six (6) months prior to the date assessed. The Initial Bonds Purchaser shall deliver to the Institution and the Trustee a certificate (i) stating that the net economic return to the Initial Bonds Purchaser with respect to the interest payable on the Loan has been reduced as a result of the occurrence of a Change in Law, (ii) specifying the amount of any reduction in the net economic return on the Loan to the Initial Bonds Purchaser, (iii) specifying the amount of additional interest which is necessary in order for the net economic return of the Initial Bonds Purchaser (from the effective date of the Change in Law until the Loan has been paid in full) to be equal to the net economic return which would have been realized by the Initial Bonds Purchaser if such Change in Law had not occurred, and (iv) setting forth the amount or amounts of additional interest payable pursuant to this paragraph and the dates on which the payments of additional interest are to be made. Such certificate of the Initial Bonds Purchaser shall be conclusive absent manifest error. In determining any such amount, the Initial Bonds Purchaser may use any reasonable averaging and attribution methods. The Initial Bonds Purchaser shall notify the Institution and the Trustee in writing of any adjustments pursuant to this paragraph. Any amounts payable retroactively (i.e., as a result of a reduction in such net economic return prior to the date of the certification as described above) shall be payable, at the option of the Institution, within thirty (30) days of the Initial Bonds Purchaser's written demand, in one lump sum or prorated over the remaining term of the Loan and any amounts payable prospectively (i.e., as a result of a reduction in such net economic return beginning on the date of such certifications and continuing until Loan has been repaid in full) shall be payable in installments in the amounts and on the dates set forth in the certification described above.

Section 4.10. Determination of Taxability. (a) Any provisions hereof notwithstanding, upon the occurrence of a Determination of Taxability with respect to any Bonds, then, from and after the corresponding Date of Taxability, the interest rate on such Bond shall be the Taxable Equivalent Rate. The determination of the Taxable Equivalent Rate for any Bonds by the related Bondholder shall, absent manifest error, be conclusive and binding on the Issuer, the Institution and the Trustee.

(b) In addition to the supplemental interest set forth in subsection (a) above, the Institution agrees to pay to the Bondholder (including any previous Bondholder) an amount equal to any penalties or other charges assessed against such Holder for failure to include interest on the Bonds in the gross income of such Bondholder, together with any and all reasonable attorneys' fees, court costs, or other out-of-pocket costs incurred by the Bondholder in connection therewith.

Section 4.11. Change in Tax Rate. If at any time after the Closing Date, there should be an increase in the maximum marginal rate of federal income tax applicable to the taxable income of the Holder of the Bonds, its successors or assigns (the "**2023 Series Bonds Purchaser Tax Rate**"), then the Interest Rate in effect hereunder from time to time as herein provided, shall be adjusted upward, effective as of the effective date of any such change in the

2023 Series Bonds Purchaser Tax Rate, by multiplying the Interest Rate by a fraction, the denominator of which is one hundred percent (100%) minus the 2023 Series Bonds Purchaser Tax Rate in effect on the Closing Date, and the numerator of which is one hundred percent (100%) minus the 2023 Series Bonds Purchaser Tax Rate after giving effect to such change.

## ARTICLE V

### REAL ESTATE AND SALES TAXES; FINANCIAL ASSISTANCE; RECAPTURE OF PUBLIC BENEFITS

Section 5.1. Payments in Lieu of Real Estate Taxes. The Institution shall not claim or assert an exemption from real estate taxes resulting or occasioned by the Issuer's involvement with the Project or the Facility Realty, it being the intent of the parties hereto that the only basis for exemption from real estate taxes, if any, shall derive from the exempt status of the Institution or of any other occupant or users of the Facility Realty, and not from the Issuer. In the event the Institution is not an eligible not-for-profit corporation pursuant to the applicable regulations for purposes of determining exemption of the Facility Realty from real estate taxes, or the Institution allows the whole or any portion of the Facility Realty to be used or occupied by an entity that is not exempt from real estate taxes, the Institution would thereby be obligated to pay real estate taxes with respect to the Facility Realty.

Section 5.2. Sales Tax Exemption. The Institution shall not claim or assert an exemption from Sales Taxes resulting from or occasioned by the Issuer's involvement with the Project or the Facility, it being the intent of the parties hereto that no purchases or leases of property shall be subject to an exemption from Sales Taxes by reason of the Issuer's involvement with the Project or the Project Work.

Section 5.3. Recapture of Public 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) For purposes of this Section 5.3, the following terms shall have the meanings specified below:

**Benefits** shall mean the exemption from any applicable mortgage recording taxes, and filing and recording fees.

**Recapture Event** shall mean any one of the following events:

(i) The Institution shall have failed to complete, or caused to be completed, the Project by the Completion Date.

(ii) Except as permitted by written consent of the Issuer pursuant to and in accordance with Section 8.20, the Institution shall have liquidated all or substantially all of its operating assets or shall have ceased all or substantially all of its operations.

(iii) The Institution shall have transferred all or substantially all of the employees at the Facility to a location outside of the County.

(iv) The Facility has ceased to be the Approved Facility and/or the Institution shall have substantially changed the scope and nature of its operations at the Facility Realty.

(v) Except as permitted by written consent of the Issuer pursuant to and in accordance with Section 8.20, the Institution shall have sold, leased or otherwise disposed of all or substantially all of the Facility Realty.

(vi) The Institution shall have subleased all or part of the Facility Realty in violation of Section 8.9.

(vii) The Institution shall have relocated all or substantially all of its operations at the Facility Realty to another site; provided, however, and notwithstanding the foregoing, such relocation shall not be a Recapture Event if (A) the Institution has relocated its operations at the Facility Realty and at least 90% of its employees employed at the Facility Realty prior to the relocation, to another site within the County, (B) the Institution maintains, for the remaining balance of the Recapture Period, an employment level equal to at least 90% of the number of employees employed by the Institution at the Facility Realty prior to relocation, and (C) the Institution shall satisfy such other additional conditions as the Issuer may from time to time impose provided such additional conditions are reasonable and uniformly imposed, at the time, to other similar transactions under similar circumstances. There shall arise another Recapture Event upon the failure of the Institution to satisfy continuously the foregoing requirements for the remaining balance of the Recapture Period. Upon the occurrence of such subsequent Recapture Event, the Issuer shall have the right to demand payment of all amounts due under Section 5.3(a) or (b), and the calculation of interest pursuant to Section 5.3(b)(iii) shall assume that the subsequent Recapture Event replaces the original Recapture Event for purposes of that computation. The determination of the pre-relocation, 90%-employment level shall be done in a manner, and in respect of a date or period of time, that the Issuer deems appropriate in its sole discretion.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event:

(A) shall have arisen as a direct, immediate result of (x) force majeure as defined in Section 12.1, (y) a taking or condemnation by governmental authority of all or substantially all of the Facility Realty, or (z) the inability at law of the Institution to rebuild, repair, restore or replace the Facility Realty after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Institution or any Affiliate, or

(B) is deemed, in the sole discretion of the Issuer, to be (x) as necessitated by law, (y) minor in nature, or (z) a cause of undue hardship to the Institution were the Issuer to recapture any Benefits.

**Recapture Period** shall mean the period of time commencing on the Closing Date, and expiring on the date which is the tenth anniversary of the Operations Commencement Date.

(b) If there shall occur a Recapture Event during the Recapture Period, but such Recapture Event occurs after the Operations Commencement Date, the Institution shall pay to the Issuer, from its own funds and not Loan proceeds, 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.

(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 mortgage recording taxes, or 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.

(c) 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.

(d) The provisions of this Section 5.3 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

## 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, the Initial Bonds Purchaser and the Trustee, generally describing the nature and extent thereof.

#### Section 6.2. Loss Proceeds.

(a) The Issuer, the Trustee, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser 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. 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.

#### 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 one (1) year of the Loss Event, promptly and diligently rebuild, replace, repair or 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, 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, the Initial Bonds Purchaser 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 shall be subject to the lien and security interest of the Mortgage,

(ii) be effected only if the Institution shall deliver to the Issuer, the Initial Bonds Purchaser and the Trustee a certificate from an Authorized Representative of the Institution acceptable to the Issuer, the Initial Bonds Purchaser and the Trustee to the

effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Facility as the Approved Facility,

(iii) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for by the Institution in accordance with the terms of the applicable contract(s) therefor,

(iv) restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, and to a state and condition that will permit the Institution to use and operate the Facility as the Approved Facility,

(v) be effected only if the Institution shall have complied with Section 8.1(c),

(vi) be preceded by the furnishing by the Institution to the Trustee of a labor and materials payment bond, or other security, satisfactory to the Initial Bonds Purchaser, and

(vii) if the estimated cost of such rebuilding, replacement, repair or restoration is in excess of \$500,000, 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, the Initial Bonds Purchaser 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 subject to the mortgage liens and security interests 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, the Initial Bonds Purchaser 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 mechanics', 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, the Initial Bonds Purchaser 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. The Issuer and the Institution recognize that 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 (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. The issuance of any Additional Bonds shall require the consent of the holder of the Initial Bonds as long as any Initial Bonds are Outstanding

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, (i) the Institution shall, pursuant to the Mortgage, grant to the Issuer and the Trustee a mortgage lien on and security interest in its fee interest in the Facility, (ii) the Issuer shall assign its right, title and interest in the Mortgage to the Trustee pursuant to the Assignment of Mortgage, (iii) the Issuer shall pledge and assign to the Trustee 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 (except for the Issuer's Reserved Rights) in this Agreement, including all loan payments thereunder and hereunder, and (iv) in furtherance of said pledge, the Issuer will unconditionally assign such loan

payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture. The Institution consents to the pledge and assignment of the Mortgage, this Agreement and the Promissory Note described in this Section 7.4.

Section 7.5. Issuer to Make Bond Registration Books Available. The Issuer shall at all times make available or cause to be made available to the Institution its registration books (maintained at the designated corporate trust office of the Trustee) containing the names and addresses of the Bondholders if known.

## ARTICLE VIII

### COVENANTS OF THE INSTITUTION

#### Section 8.1. Construction.

(a) The Institution shall cause the Project Work to be performed continuously and in a timely manner in accordance with the Project Cost Budget approved by Initial Bonds Purchaser and in compliance with all Legal Requirements, so that the Project Work shall be complete by the Completion Date, TIME BEING OF THE ESSENCE, subject to force majeure events if any exists, for such period, and as otherwise extended by the Initial Bonds Purchaser in its sole and absolute discretion.

(b) The Institution shall receive the proceeds of the Loan subject to the trust fund provisions of Section 13 of the Lien Law. Institution shall use such proceeds solely and exclusively for the Line Items set forth in the Project Cost Budget, subject to no changes except such changes as have been approved by Initial Bonds Purchaser.

(c) The Institution shall cause the Construction Manager to furnish and maintain in full force and effect payment and performance payment bonds in the full amount of the Hard Costs (the **“Payment and Performance Bond”**). Said Payment and Performance Bond shall be in form and substance and issued by a corporate surety reasonably satisfactory to the Issuer, the Trustee and the Initial Bonds Purchaser. Said Payment and Performance Bonds shall be in favor the Issuer, the Trustee and the Initial Bonds Purchaser. Notwithstanding the foregoing, the Payment and Performance Bond may be delivered following the Closing Date pursuant to, and in accordance with, the terms of that certain Post-Closing Agreement dated as of October 19, 2023, by and among the Institution, the Trustee, the Issuer and the Initial Bonds Purchaser (the **“Post-Closing Agreement”**).

(d) The Institution shall commence construction of the Improvements within sixty (60) days from the date of this Agreement (the **“Commencement Deadline”**). If the Institution shall not commence construction by the Commencement Deadline, the Initial Bonds Purchaser shall be under no further obligation to disburse any funds.

#### Section 8.2. Indemnity.

(a) The Institution shall at all times indemnify, defend, protect and hold the Issuer, the Trustee, the Bond Registrar, the Initial Bonds Purchaser and the Paying Agent, and any director, member, officer, employee, servant, or 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, furnishing, installation or completion of the Facility or any part thereof or the effecting of any work done in or about the Facility, or any defects (whether latent or patent) in the Facility,
- (iii) the maintenance, repair, replacement, restoration, rebuilding, construction, renovation, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof,
- (iv) the execution and delivery by an Indemnified Party, the Institution or any other Person of, or performance by an Indemnified Party, the Institution or any other Person, as the case may be, of, any of their respective obligations under, this Agreement or any other Project Document, or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby,
- (v) any damage or injury to the person or property of any Person in or on the premises of the Facility,
- (vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, including failure to comply with the requirements of zoning 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 gross negligence or willful misconduct 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 (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

Section 8.3. Compensation and Expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents; Administrative and Project Fees.

(a) The Institution shall pay the fees, costs and expenses of the Issuer together with any 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 Sections 8.3, 8.13, 8.14 and 8.15. (including fees and disbursements of lawyers and other consultants).

(b) On the Closing Date, the Institution shall pay to the Issuer the following amounts: (i) the Initial Annual Administrative Fee, and (ii) the Project Fee.

(c) The Institution further agrees to pay the Annual Administrative Fee to the Issuer on each March 1 following the Closing Date until the Termination Date (the Annual Administrative Fee shall not be prorated 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 further agrees to pay all costs of compliance with the Tax Regulatory Agreement and costs of the Issuer relating to any examination or audit of the Bonds by the Internal Revenue Service (including fees and disbursements of lawyers and other consultants).

(e) 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, (iv) the reasonable fees, costs and expenses of the Bond Registrar, and (v) the reasonable fees, costs and expenses of the Initial Bonds Purchaser, including reasonable counsel fees.

Section 8.4. Current Facility Personalty Description. The Institution covenants and agrees that, until the termination of this Agreement, including upon any replacement, repair, restoration or reconstruction of the Facility pursuant to Article VI, it will cause Exhibit B — “Description of the Facility Personalty,” together with the “Description of the Facility Personalty” 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 Personalty. To this end, the Institution covenants and agrees that (i) no requisition shall be submitted to the Trustee for moneys from the Project Fund for the acquisition or installation of any item of Facility Personalty, (ii) no item of Facility Personalty shall be substituted or replaced by a new item of machinery, equipment or other tangible personal property except pursuant to Section 3.7(a) or Article VI, and (iii) no item of Facility Personalty 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 Personalty,” together with the “Description of the Facility Personalty” 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, the Initial Bonds Purchaser 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. During any period of construction or renovation of the Facility (including the commencement of any demolition and/or excavation) and during the six-month period following the making of the Loan, 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  
ROCKLAND COUNTY ECONOMIC ASSISTANCE CORPORATION*

In addition, the Sign shall satisfy the following requirements: (i) format and appearance generally shall be stipulated by the Issuer in writing or electronically; (ii) the minimum size of the Sign shall be four (4) feet by eight (8) feet; and (iii) the Sign shall have no imprint upon it other than that of the Issuer. The Sign shall remain in place at the Facility until completion of the construction and/or renovations and during the six-month period following the making of the Loan. The Institution may erect other signs in addition to the Sign.

Moreover, the Institution agrees that the Initial Bonds Purchaser shall be permitted to use information related to the Loan in connection with marketing, press releases, and other transaction announcements or updates provided to media and the Initial Bonds Purchaser's other communication sources/publications, including, but not limited to, (i) the placement of "tombstone" advertisements in publications of its choice, and (ii) mutually agreeable project signage and financing monuments during construction, at its own expense.

Section 8.6. 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 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 New York State Department of Labor 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 to comply with applicable laws, rules or regulations.

(c) The Institution hereby authorizes any private or governmental entity, including The New York State Department of Labor ("**DOL**"), to release to the Issuer, and/or to its successors and assigns (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 to comply with applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Institution, or any information previously released as provided by all or any of the foregoing parties (collectively, "**Employment Information**") may be disclosed by the Information Recipients in connection with the administration of the programs of the Issuer,



and/or its successors and assigns, and/or the County, 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 as required, (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) Local Construction Labor Policy. The Company shall be obligated to comply with the Issuer's Local Construction Labor Policy, which is attached hereto as Appendix H-1, provided, however, this covenant shall apply only if the Institution is not required to pay prevailing wages pursuant to the Prevailing Wage Policy.

(e) Prevailing Wage Policy. The Company shall comply with the Issuer's Prevailing Wage Policy which is attached hereto as Appendix H-2. Concurrently with the execution of this Agreement, the Company shall submit a completed Availability Of Public Funds Worksheet as set forth in Appendix H-2. The Company represents on behalf of itself that the Project is not a Covered Project. The Company has delivered to the Issuer the materials and documentation required in Appendix H-2 if the project is determined to not be a Covered Project. If future events cause the conclusion to no longer be valid, the Company agrees that it will not accept any public funds benefits that would result in the public funds benefits received equaling or exceeding 30% of the Project Hard Costs. If such threshold is exceeded, Company shall return to the Issuer for reimbursement to the affected taxing jurisdictions such amounts as the Issuer in its sole determination determines to be sufficient compensate the affected taxing jurisdictions for lost revenues, plus interest at rates equaling rates for overdue real property taxes, plus Agency and taxing jurisdictions costs of collection and enforcement, including counsel fees.

(f) Administration of Compliance With Labor Requirements. The Issuer retains a third party consultant (the "Labor Compliance Monitor") to represent the Issuer in monitoring Company compliance with provisions of applicable labor policies required by this Agreement. The Company agrees to allow the Labor Compliance Monitor access to inspect labor staffing at the project site during business hours, without prior notice. The Company further agrees to make such construction labor employment records available to the Labor Compliance Monitor in such format as the Labor Compliance Monitor reasonably requests. The fees and expenses of the Labor Compliance Monitor for performing these services shall be payable by the Company directly to the Labor Compliance Monitor

(g) 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.

(h) 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 8.7. 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 8.8. Assignment of this Agreement or Lease of Facility.

(a) The Institution shall not at any time, except as permitted by Section 8.19, assign or transfer this Agreement without the prior written consents of the Issuer, the Initial Bonds Purchaser and the Trustee (which consents may be withheld by the Issuer, the Initial Bonds Purchaser or the Trustee in their absolute discretion); provided further, that if the Issuer, the Initial Bonds Purchaser and the Trustee consent to any such assignment or transfer,

(i) the Institution shall deliver to the Issuer, the Initial Bonds Purchaser and the Trustee a certificate of an Authorized Representative to the effect that the transfer or assignment to the assignee or transferee (the “**New Institution**”) shall not cause the Facility to cease being the Approved Facility;

(ii) the New Institution shall be liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party;

(iii) the New Institution shall have assumed in writing (and shall have executed and delivered to the Issuer, the Initial Bonds Purchaser 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) in the Opinion of Counsel addressed to the Issuer and the Trustee (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 deliver to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Issuer acting in its sole discretion, then the Institution shall be in default under this Agreement;

(viii) each such assignment shall contain such other provisions as the Issuer, the Initial Bonds Purchaser or the Trustee may reasonably require; and

(ix) in the opinion of Nationally Recognized Bond Counsel addressed to the Issuer, the Initial Bonds Purchaser and the Trustee, 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, the Initial Bonds Purchaser and the Trustee a copy of any such assignment or transfer in substantially final form at least thirty (30) days prior to the date of execution thereof.

(b) The Institution shall not at any time lease all or substantially all of the Facility, without the prior written consents of the Issuer, the Initial Bonds Purchaser and the Trustee (which consents may be withheld by the Issuer, the Initial Bonds Purchaser or the Trustee in their absolute discretion); nor shall the Institution lease part (*i.e.*, not constituting substantially all) of the Facility without the prior written consents of the Issuer, the Initial Bonds Purchaser 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 if the Issuer, the Initial Bonds Purchaser and the Trustee consent to any such letting,

(i) the Institution shall deliver to the Issuer, the Initial Bonds Purchaser 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, the term of each such lease shall not exceed five (5) years at any given date, and no more than an aggregate of twenty percent (20%) of the Rentable Square Footage shall be leased by the Institution;

(vii) in the Opinion of Counsel addressed to the Issuer and the Trustee, 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 4.8 hereof and the Institution shall furnish written evidence satisfactory to the Issuer and the Trustee that such insurance coverage shall in no manner be diminished or impaired by reason of such assignment, transfer or lease;

(ix) any such lessee shall deliver to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer, provided that if any modification to the form of such Required Disclosure Statement is not acceptable to the Issuer acting in its sole discretion, then the Institution shall be in default under this Agreement;

(x) each such lease shall contain such other provisions as the Issuer, the Initial Bonds Purchaser or the Trustee may reasonably require; and

(xi) in the opinion of Nationally Recognized Bond Counsel addressed to the Issuer and the Trustee, 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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser and the Trustee consent to any other or subsequent assignment, transfer or lease, or as modifying or limiting the rights of the Issuer, the Initial Bonds Purchaser or the Trustee under the foregoing covenant by the Institution.

(d) For purposes of this Section 8.8, 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 8.8.

Section 8.9. Retention of Title to or of Interest in Facility; Grant of Easements; Release of Portions of Facility.

(a) The Institution shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its fee title to or interest in the Facility, 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, and Section 8.8 or in this Section, without the prior written consents of the Issuer, of the Initial Bonds Purchaser and of the Trustee, and any purported disposition without such consents shall be void.

(b) The Institution may, with the prior written consents of the Issuer, the Initial Bonds Purchaser 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 Mortgaged Property, 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 Mortgaged Property, 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) No conveyance or release effected under the provisions of this Section 8.9 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 8.10. Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment,

decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called “**Liens**”), whether or not valid, is made against the Trust Estate, the Facility or any part thereof or the interest therein of the Institution or against any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Security Documents, or the interest of the Issuer or the Institution in any Security Document, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 8.10(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 Initial Bonds Purchaser and the Trustee and take all action (including the payment of money and/or the securing of a bond with respect to any such Lien) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full of such Lien and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Issuer for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien not permitted under this Section 8.10(a).

(b) The Institution may at its sole cost and expense contest (after prior written notice to the Issuer, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser 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) neither the Institution, the Issuer, the Initial Bonds Purchaser nor 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, the Initial Bonds Purchaser or the Trustee to protect the security intended to be offered by the Security Documents.

#### Section 8.11. 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 County Clerk in the County of Rockland and in the office of the Secretary of State of the State in the City of Albany, New York, which financing statements shall be in accordance with the New York State Uniform Commercial Code-Secured Transactions.

(b) The Issuer and the Institution acknowledge that, as of the Closing Date,

(i) Section 9-515 of the New York State Uniform Commercial Code-Secured Transactions provides that an initial financing statement filed in connection with a “public-financed 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 financed transaction, and

(ii) Section 9-102(67) of the New York State Uniform Commercial Code-Secured Transactions defines a public-finance transaction as a secured transaction in connection with which, in substance, (x) bonds are issued, (y) all or a portion of the bonds have an initial stated maturity of at least twenty (20) years, and (z) the debtor, obligor, secured party or assignee with respect to the collateral or secured obligation is a governmental unit of a state.

(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 securities with a term that is greater than (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.

Subsequent to the foregoing filings, if in the Opinion of Counsel to the Institution (described hereinbelow), to preserve (after the fifth (5th) anniversary of the Closing Date) the lien and security interest of the Indenture, it is necessary to re-file financing statements and/or file continuation statements and/or take any other actions (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) deliver or cause to be delivered to the Issuer and the Trustee the Opinion of Counsel (which counsel shall be selected and identified by the Institution at such time) 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)” hereinabove, 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)” and “(B)” no later than ten (10) days prior to (i)(y) the fifth (5th) 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.

The Opinion of Counsel to the Institution shall be addressed to the Institution, the Issuer and the Trustee. Counsel shall deliver successive Opinions of Counsel in respect of (i)(y) the fifth (5th) anniversary of the Closing Date, and (z) every five-year period thereafter through the term of the Initial Bonds, and/or (ii) the date of any required Continuation Action not

covered by clause “(i),” in each case not later than fifteen (15) days prior to the date on which a Continuation Action is required to be taken. In the Opinion of Counsel to the Institution, counsel shall opine as to: (i) what Continuation Actions are necessary; and (ii) the deadline dates for the required Continuation Actions; and (iii) the jurisdictions in which the Continuation Actions must be effected. Counsel in such opinion shall additionally opine that, upon performance of the Continuation Actions by, as the case may be, (i) the Trustee with instruments and papers prepared by the Institution, or (ii) the Institution through electronic filing, or (iii) the Trustee as to some Continuation Actions, and the Institution as to the others through electronic filings, all appropriate steps shall have been taken on the part of the Institution, the Issuer and the Trustee then requisite to the maintenance of the perfection of the security interest of the Trustee in and to all property and interests which by the terms of the Indenture are to be subjected to the lien and security interest of the Indenture.

(d) Any filings with respect to the Uniform Commercial Code financing statements may be made electronically, and the Issuer shall have the right to designate a company (which shall be reasonably acceptable to the Trustee) to facilitate the filing of the Uniform Commercial Code financing statements.

(e) The Institution acknowledges and agrees that neither the Issuer nor the Trustee, nor any of their respective directors, members, officers, employees, servants, agents, persons under its control or supervision, or attorneys (including Bond Counsel to the Issuer), shall have any responsibility or liability whatsoever related in any way to the filing or re-filing of any Uniform Commercial Code financing statements or continuation statements, or the perfection or continuation of perfection of any security interests, or the recording or re-recording of any document, or the failure to effect any act referred to in this Section, or the failure to effect any such act in all appropriate filing or recording offices, or the failure of sufficiency of any such act so effected.

(f) The Institution agrees to perform all other acts (including the payment of all fees and expenses) necessary in order to enable the Issuer and the Trustee to comply with this Section and with Section 7.07 of the Indenture, including but not limited to, providing prompt notice to the Trustee of any change in either of the name or address of the Institution. The Institution agrees that the Issuer, the Initial Bonds Purchaser 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 8.12. 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 (other than Permitted Encumbrances) prior to the mortgage liens thereon, and security interests therein, granted by the Mortgage.



Section 8.13. 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 Section 4.8 to the Issuer, the Trustee and the Initial Bonds Purchaser.

(e) Within 120 days after the close of each Fiscal Year during which action was taken by the Institution pursuant to Section 3.6, the Institution shall deliver written notice of the Additional Improvement(s) to the Issuer.

(f) If a removal involving Existing Facility Property having a value in the aggregate exceeding \$25,000 was taken by the Institution pursuant to Section 3.5(a), the Institution shall deliver written notice of such removal to the Issuer within five (5) Business Days following such removal.

(g) 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 8.14. Requested Documents. Upon request of the Issuer, the Institution shall deliver or cause to be delivered to the Issuer and the Initial Bonds Purchaser within five (5) Business Days of the date so requested:

(a) a copy of the most recent annual audited financial statements of the Institution and of its subsidiaries, if any (including balance sheets as of the end of the Fiscal Year and the related statement of revenues, expenses and changes in fund balances and, if applicable, income, earnings, and changes in financial position) for such Fiscal Year, prepared in accordance with GAAP and certified by an Independent Accountant;

(b) a certificate of an Authorized Representative of the Institution certifying that the insurance the Institution complies with the provisions of Section 4.8, 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 4.8;

(c) copies of any 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 that either (i) the Institution did not take any action described in Section 3.6 resulting in Additional Improvements to the Facility Realty during the preceding Fiscal Year or (ii) the Institution did take action or actions described in Section 3.6 resulting in Additional Improvements to the Facility Realty during the preceding Fiscal Year and the Institution complied with the provisions of Section 3.6;

(e) a certificate of an Authorized Representative of the Institution certifying that either (i) the Institution did not take any action described in Section 3.7(a) resulting in the removal of Existing Facility Property having a value in the aggregate exceeding \$25,000 during the preceding Fiscal Year or (ii) the Institution did take action or actions described in Section 3.7(a) resulting in the removal of Existing Facility Property having a value in the aggregate exceeding \$25,000 during the preceding Fiscal Year and the Institution complied with the provisions of Section 3.7(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 except for covenants which by their terms need not be continuously meet, 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, with the passage of time or the giving of notice or both, would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Representative has knowledge;

(h) employment information requested by the Issuer pursuant to Section 8.7(b); and

(i) information regarding non-discrimination requested by the Issuer pursuant to Section 8.8.

Section 8.15. Periodic Reporting Information for the Issuer. The Issuer is subject to periodic reporting requirements with applicable State agencies and officials. Such requirements may include, among other things, information concerning the Institution or the Project, including, without limitation, information relating to the Bonds, information on tax

benefits claimed and job creation or retention. The Institution agrees to promptly comply with all requests made by the Issuer for purposes of complying with such reporting and information requirements.

#### Section 8.16. 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 if and 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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser or the Institution in any Project Document, (ii) none of the Trust Estate, the Facility nor any part thereof or interest of the Institution in the Facility, or any of the loan payments or other amounts payable under this Agreement, the Promissory Note or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, would be in any danger of being sold, forfeited or lost, (iii) neither the Institution, the Issuer, the Initial Bonds Purchaser nor 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, the Initial Bonds Purchaser or the Trustee to protect the security intended to be offered by the Security Documents.

#### Section 8.17. 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, 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, the Initial Bonds Purchaser 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 (after prior written notice to the Issuer, the Initial Bonds Purchaser and the Trustee) 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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser or the Trustee to protect the security intended to be offered by the Security Documents for failure to comply therewith.

#### Section 8.18. Operation as Approved Facility.

(a) The Institution will not take any action, or suffer or permit any action, if such action would cause the Facility not to be the Approved Facility. The parties acknowledge that the Approved Facility Operations will be conducted by the Institution.

(b) The Institution will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be the Approved Facility.

(c) The Institution will permit the Trustee and its duly authorized agents, at all reasonable times upon written notice to enter upon the Facility and to examine and inspect the Facility and exercise its rights hereunder, under the Indenture and under the other Security Documents with respect to the Facility. The Institution will further permit the Issuer, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facility, but solely for the purpose of assuring that the Institution is operating the Facility, or is causing the Facility to be operated, as the Approved Facility consistent with the Approved Facility Operations and with the corporate purposes of the Issuer.

Section 8.19. 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 educational 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), and

(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).

(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,

(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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser and the Trustee, in form and substance acceptable to the Issuer, the Initial Bonds Purchaser and the Trustee, an Opinion of Counsel to the effect that (y) this Agreement and all other Project Documents to which the Predecessor Institution shall be a party constitute the legal, valid and binding obligations of the Successor Institution and each is enforceable in accordance with their respective terms to the same extent as it was enforceable against the Predecessor Institution, and (z) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents,

(7) the Successor Institution shall have delivered to the Issuer, the Initial Bonds Purchaser and the Trustee, in form and substance acceptable to the Issuer, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser 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.

Section 8.20. Preservation of Exempt Status. The Institution agrees that (i) it shall 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; (ii) it shall 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 Section 501(c)(3) organizations; (iii) it shall not directly or indirectly use the proceeds of the Bonds to make or finance loans to Persons other than governmental units or Section 501(c)(3) organizations; (iv) it shall 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 (v) it shall use its best efforts to maintain the tax-exempt status of the Bonds.

Section 8.21. Securities Law Status. The Institution covenants that (i) 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, (ii) 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 (iii) it shall not perform any act nor enter into any agreement which shall change such status as set forth in this Section.

Section 8.22. Security Interest and Further Assurances. (a) The Issuer shall pledge and assign to the Trustee 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 said pledge the Issuer will unconditionally assign such loan payments to the Trustee for deposit in the Bond Fund in accordance with the Indenture.

(b) 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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser or the Trustee hereunder, under the Indenture or under any other Security Document.

Section 8.23. 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 8.23. The Institution agrees that the Issuer shall have no continuing disclosure obligations.

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, all at its own cost and expense.

(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.

Section 8.25. Compliance with the Indenture. The Institution will comply with the provisions of the Indenture with respect to the Institution, which shall include the obligation to make any payments due from the Issuer to the Initial Bonds Purchaser or any holder of Additional Bonds. 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 and the Initial Bonds Purchaser.

(a) The Institution shall furnish or cause to be furnished to the Trustee and the Initial Bonds Purchaser, (i) as soon as available and in any event within ninety (90) days after the close of each Fiscal Year, a copy of the annual financial statements of the Institution, including balance sheets as at the end of each such Fiscal Year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for each such Fiscal Year, as audited by the Institution's Independent Accountant and prepared in accordance with GAAP, (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 tools and building materials stored 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) as soon as available and in any event within ninety (90) days after the applicable filing date, copies of all tax returns filed by the Institution.

(b) The Institution shall deliver to the Trustee and the Initial Bonds Purchaser with each delivery of annual financial statements required by Section 8.26(a)(i), (i) a certificate of an Authorized Representative of the Institution as to whether or not, as of the close of such preceding Fiscal Year, and at all times during such Fiscal Year, the Institution was in compliance with all the provisions which relate to the Institution in this Agreement and in any other Project Document to which it shall be a party, and (ii) a certificate of an Authorized Representative of the Institution that the insurance it maintains complies with the provisions of Section 4.8 of this 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 the Trustee and are in full force and effect. In addition, upon twenty (20) days prior 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.

(c) The Institution shall promptly deliver to the Trustee and the Initial Bonds Purchaser such other financial documentation as the Trustee or the Initial Bonds Purchaser may reasonably request in order to monitor the operations and stabilization of the Institution and the Facility.

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

(e) The Institution shall deliver to the Trustee all insurance-related documents required by Sections 4.8.

Section 8.27. Equal Opportunity Employment. New employment opportunities created as a result of this Project shall be listed with the New York State department of labor community services division and with the administrative entity created by the Federal Job Training Partnership Act (P.L. No. 97-300) in the area in which the Project is located.

Section 8.28. Minimum Debt Service Coverage Ratio. Beginning with fiscal year ending July 31, 2027, and each year thereafter, the Institution shall maintain a Debt Service Coverage Ratio of not less than 1.25 to 1.00, measured for the prior twelve (12) months as of each fiscal year end.

Section 8.29. Additional Covenants.

(a) The Institution shall receive the proceeds of the Loan subject to the trust fund provisions of Section 13 of the Lien Law. The Institution shall use such proceeds solely and exclusively for the Line Items set forth in the Project Cost Budget, subject to no changes except such changes as have been approved by Issuer.

(b) The Institution shall keep the Project free from liens and encumbrances (except for the Mortgage), shall pay promptly all persons or entities supplying work or materials with respect to the Project Work and shall immediately discharge by bond or otherwise, or make other arrangements acceptable to Issuer with respect to, any mechanic's or other lien filed against the Project or the Institution.

(c) The Institution shall pay promptly when due and before the accrual of penalties thereon all taxes including all real and personal property taxes and assessments levied or assessed against Institution or the Project and all utility fees and charges in connection with the Project, and to provide Issuer with receipted bills therefor if requested by Issuer.

(d) The Institution shall maintain in effect at all times while Institution is indebted to Initial Bonds Purchaser the insurance policies required by the Mortgage, and shall notify the Initial Bonds Purchaser of any change in the status of such insurance within five (5) days of the Institution's receipt of notice of any such change. The Institution shall repair and restore any casualty loss to the Improvements whether completed or under construction, except to the extent that the Initial Bonds Purchaser does not make casualty insurance proceeds available to Institution for that purpose.

(e) The Institution shall pay all commitment, loan, reasonable servicing, administrative and inspection fees of Initial Bonds Purchaser, and all expenses involved in perfecting the lien status or priority provided by the Project Documents and all other out-of-pocket expenses of Initial Bonds Purchaser directly related to the Loan, the protection and preservation of the Project or the enforcement of any provision of this Agreement or of the Project Documents, including, without limitation, recording fees and taxes, tax, title and lien search charges, title insurance charges, architects, engineers (including the Initial Bonds Purchaser's Consultant's fees) and reasonable attorneys' fees (including fees for appellate proceedings), real property taxes, personal property taxes and insurance premiums, and shall indemnify and hold the Initial Bonds Purchaser harmless against all claims, losses, expenses and liabilities, including reasonable attorneys' fees, incurred by the Initial Bonds Purchaser on account of any claim by any party arising out of the Loan or Initial Bonds Purchaser's interest in or lien upon the Property or Improvements.

(f) The Institution shall deposit the Building Loan Deficiency Amount and/or the Line Item Deficiency Amount with the Initial Bonds Purchaser within twenty (20) days after the Initial Bonds Purchaser's demand therefor.

(g) The Institution shall: (i) furnish promptly to the Initial Bonds Purchaser such information as the Initial Bonds Purchaser may reasonably require concerning: costs, progress of construction, marketing, and such other factors as the Initial Bonds Purchaser may specify; (ii) notify the Initial Bonds Purchaser promptly of (A) any litigation instituted or threatened against the Institution or any Guarantor, any deficiencies asserted or liens filed by the Internal Revenue Service against the Institution, any Guarantor, the Property or the Improvements, any audits of any Federal or State tax return of Institution or any Guarantor, and the results of any such audit, (B) any condemnation or similar proceedings with respect to any of the Property or Improvements or any proceeding seeking to enjoin the Project Work and/or the intended use of the Improvements, (C) all changes in governmental requirements pertaining to the Project Work, the Project, utility availability, and Institution's anticipated cost of completion of the Project Work, and (D) any other matters which could reasonably be expected to adversely affect the Institution's ability to perform its obligations under this Agreement.

(h) Institution shall maintain complete and accurate account books and records with respect to the Loan, the Project, and the Project Work, which books and records shall reflect the consistent application of accepted accounting principles, and to make such books and records available at reasonable times and upon reasonable notice for inspection and copying by the Initial Bonds Purchaser or its agent.

(i) The Institution shall permit the Initial Bonds Purchaser and its agents to have access to the Project at reasonable times; shall permit the Initial Bonds Purchaser to maintain a sign on the Property and otherwise publicize the Initial Bonds Purchaser's role as Initial Bonds Purchaser; and shall name the Initial Bonds Purchaser as construction lender in the Institution's publicity and promotion.

(j) The Institution shall not authorize or permit any changes to the Project Cost Budget or the working drawings with respect to any portion of the Project Work, without the prior written consent of (i) all governmental bodies having jurisdiction to the extent such approval is required by law or regulation, (ii) the Initial Bonds Purchaser, and (iii) the Initial Bonds Purchaser's Consultant.

(k) The Institution shall notify the Initial Bonds Purchaser promptly of the names and addresses of all contractors, subcontractors and materialmen who are employed in connection with the construction of the Improvements, and whose names and addresses were not heretofore supplied to the Initial Bonds Purchaser.

(l) The Institution shall furnish to the Initial Bonds Purchaser, if the Initial Bonds Purchaser so requests, the contracts, bills of sale, receipted vouchers and agreements, or any of them, under which Institution claims title to the materials, articles, fixtures and other personal property used or to be used in the construction or operation of the Improvements.

(m) The Institution shall not permit any materials, equipment, fixtures or any other part of the Improvements to be purchased or installed under any security agreement or other arrangement wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation in the Project, unless authorized in advance by the Initial Bonds Purchaser in writing.

(n) The Institution shall, at the Initial Bonds Purchaser's request, execute and deliver to the Initial Bonds Purchaser all further documents and perform all other acts which the Initial Bonds Purchaser reasonably deems necessary or appropriate to perfect or protect its security for the Loan.

(o) The Institution shall not enter into any agreement or take any action that would result in the occurrence of an Event of Default or would otherwise cause the Institution's representations and warranties contained herein to be incorrect or misleading.

(p) The Institution shall not engage in any business other than the operating, owning, managing, developing, and leasing of the Project.

(q) The Institution shall furnish to the Initial Bonds Purchaser's Consultant copies of all construction contracts, and any modifications thereto, when and as the same shall be executed and delivered. Each construction contract (and each agreement with respect to the Project and/or Project Work between the Institution and the Architect or the Construction Manager) shall contain provisions in form and substance reasonably satisfactory to the Initial Bonds Purchaser pursuant to which the Initial Bonds Purchaser shall be entitled to notice and an opportunity to cure any defaults by the Institution thereunder and to assume (at the Initial Bonds

Purchaser's sole option) the rights and obligations of the Institution thereunder following the occurrence and during the continuance of any Event of Default.

(r) The Institution shall timely obtain all permits required for the completion of the Project Work.

(s) The Institution (i) shall permit and shall cause each contractor to permit the Initial Bonds Purchaser's Consultant and any other agent or representative of the Initial Bonds Purchaser, at the Institution's sole cost and expense, to enter upon the Project at all reasonable times during the Project Work, upon reasonable notice and accompanied by the Institution or the Institution's agents, to inspect the Project Work, the Improvements and all materials to be used in the Project, and (ii) shall permit the Initial Bonds Purchaser, the Initial Bonds Purchaser's Consultant and any other agent or representative of the Initial Bonds Purchaser, at reasonable times upon reasonable notice, to examine all information and documents, including books, contracts and records, relating to the Project Work and/or the Project, and shall cooperate and cause each contractor to cooperate with the Initial Bonds Purchaser's Consultant to enable it to perform its functions hereunder. At the time of each inspection by the Initial Bonds Purchaser's Consultant, the Institution shall make available to the Initial Bonds Purchaser's Consultant daily log sheets, if available, covering substantially all of the period since the immediately preceding inspection, showing, for each day during such period, contractors and sub-contractors on the job, the number of workers employed by each, delays encountered and the status of construction. Notwithstanding the foregoing, the Initial Bonds Purchaser shall not have any duty to make inspections or cause inspections to be made and shall not incur any liability or obligation as a result of making or not making any such inspection.

(t) The Institution, upon written demand of the Initial Bonds Purchaser's Consultant, together with a reasonable explanation therefor, shall correct or cause the responsible contractor(s) to correct all defects in the Project Work, or any part thereof, that may be noted by the Initial Bonds Purchaser's Consultant. The making of any Advance shall not constitute a waiver of the right of the Initial Bonds Purchaser to require compliance with this covenant with respect to any such defects.

(u) The Institution shall not make any payment to any contractor with respect to labor or materials relating to the Project unless, in compliance with Section 34 of the Lien Law, the Institution shall simultaneously obtain a lien waiver from such contractor with respect to labor performed or materials furnished by such contractor.

(v) The Institution shall duly perform and observe, or shall cause to be performed and observed, all of the covenants, agreements and conditions on its part to be performed and observed under the Note, the Project Documents, and by this reference all of such covenants, agreements and conditions are hereby made a part of this Agreement to the same extent as if fully set forth herein.

(w) The Institution shall give notice to the Initial Bonds Purchaser within two (2) Business Days after Institution becomes aware of any representation or warranty of the Institution contained herein is no longer true and correct.

(x) All Project Work shall be done in a manner that shall adequately protect tenants, if any, under and leases, and their employees and invites, from personal injury and loss of property, and shall otherwise be consistent with the requirements of such leases with respect to the continued occupancy of such tenants during the Project Work.

(y) The Institution shall deliver this Agreement and the Lien Law Statement to the Title Company for filing in the County Clerk's Office in the County of Rockland, State of New York when and as required by Section 22 of the Lien Law.

(z) The Institution shall employ suitable means to protect from theft or vandalism all portions of the Improvements and all tools and building materials stored on the Property.

(aa) Following the initial Advance of funds for deposit in the 2023 Series Bonds Account in the Project Fund and delivery of the original opinion of Bond Counsel with respect to the 2023 Series Bonds, in connection with each future Advance of funds to such account, the applicable Requisition of funds for such purpose shall include a line item instruction to the Trustee to pay a fee in the amount of \$1,000.00 to Bond Counsel that issued the original opinion of Bond Counsel with respect to the 2023 Series Bonds, in accordance with payment instructions provided by Bond Counsel, from funds included in the Advance and deposited in the Equity Account of the Bond Fund as consideration for delivering a supplemental opinion of Bond Counsel relating to the applicable Advance.

## **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 Section 9.1(a) hereof) 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, 5.2, 5.3, 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 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 Tax Regulatory Agreement, or (iv) by or on behalf of the Institution or any other Person in any Required Disclosure Statement, or (v) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(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 (as set forth in a written notice by the Initial Bonds Purchaser to the Issuer and the Trustee) shall occur and be continuing;

(i) If any Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion;

(j) The occurrence of a Change in Control without the prior written consent of the Initial Bonds Purchaser;

(k) The Institution's failure to commence construction by the Commencement Deadline; or

(l) Failure of the Institution to comply with the reporting requirements of Section 8.26; or

(m) Failure of the Institution to satisfy the minimum Debt Service Coverage Ratio requirements of Section 8.28.

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:

(b) 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;

(i) 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

(ii) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder.

(c) 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.

(d) No action taken pursuant to this Section 9.2 or by operation of law or otherwise shall, except as expressly provided herein, relieve the Institution from the Institution's obligations hereunder, all of which shall survive any such action.

Section 9.3. Bankruptcy Proceedings. In case proceedings shall be pending for the bankruptcy or for the reorganization of the Institution under the Federal bankruptcy laws or any other applicable law, or in case a receiver or trustee (other than the Trustee under the Indenture) shall have been appointed for the property of the Institution or in the case of any other similar judicial proceedings relative to the Institution or the creditors or property of the Institution, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Agreement and the Promissory Note, irrespective of whether the principal of the Bonds (and the loan payments payable pursuant to the Promissory Note and Section 4.3(a)) shall have been accelerated by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand for payment hereunder or thereunder, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Institution, the creditors or property of the Institution, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution.

Section 9.4. Remedies Cumulative. The rights and remedies of the Issuer or the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Issuer or the Trustee allowed by law with respect to any default under this Agreement. Failure by the Issuer or the Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Institution hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy the strict compliance by the Institution with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Institution be continued or repeated.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Issuer and/or the Trustee and the Institution or any delay or omission on the part of the Issuer and/or the Trustee in exercising any rights hereunder or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Institution hereby waives the benefit and advantage of, and covenants not to assert against the Issuer or the Trustee, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist.

Section 9.6. Effect on Discontinuance of Proceedings. In case any proceeding taken by the Issuer or the Trustee under the Indenture or this Agreement or under any other Security Document on account of any Event of Default hereunder or thereunder shall have been



discontinued or abandoned for any reason or shall have been determined adversely to the Issuer or the Trustee, then, and in every such case, the Issuer, the Trustee and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Issuer and the Trustee shall continue as in effect prior to the commencement of such proceedings.

Section 9.7. Agreement to Pay Fees and Expenses of Attorneys and Other Consultants. In the event the Institution should default under any of the provisions of this Agreement, and the Issuer, the Initial Bonds Purchaser or the Trustee should employ outside attorneys or other consultants or incur other expenses for the collection of loan payments or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Institution herein contained or contained in any other Security Document, the Institution agrees that it will on demand therefor pay to the Issuer, the Initial Bonds Purchaser 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).

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 8.26 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,

then the Issuer may, and the Trustee may exercise all rights and remedies set forth in this Agreement or the Indenture, as applicable.

(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 and/or a Fixed Date Deliverable, and such payment or document shall not be delivered to the Issuer within ten (10) Business Days following delivery by the Issuer to the Institution of the

Notification of Failure to Deliver, then, commencing from and including the eleventh (11<sup>th</sup>) Business Day following the delivery by the Issuer to the Institution of the Notification of Failure to Deliver, the Issuer may exercise all rights and remedies set forth in this Agreement or the Indenture, as applicable.

## ARTICLE X

### TERMINATION OF THIS AGREEMENT

#### Section 10.1. Termination of this Agreement.

(a) The Institution shall have the option to cause the redemption or defeasance in whole of all Outstanding Bonds in accordance with the terms set forth in the Indenture.

(b) After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Article X of the Indenture, but not later than the receipt by the Institution of ten (10) days prior written notice from the Issuer directing termination of this Agreement, the Institution shall terminate this Agreement by giving the Issuer notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to (x) the delivery of those documents referred to in Section 10.2, and (y) the survival of those obligations of the Institution set forth in Section 10.3.

Section 10.2. Actions on Termination. (a) As a condition precedent to the termination of this Agreement, the Institution shall:

(i) pay to the Trustee

(A) the expenses of redemption, the fees and expenses of the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents, and

(B) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement; and

(ii) pay to the Issuer

(A) the fees and expenses of the Issuer, 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 Exempt Mortgage, 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.

(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 Facility.

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 5.3, 8.2, 8.25, 9.2, 9.3, 9.7, 9.9, 12.4, 12.5, 12.6, 12.11, 12.13 and 12.14 shall survive such termination.

## ARTICLE XI

### CERTAIN PROVISIONS RELATING TO THE BONDS

Section 11.1. Issuance of Additional Bonds. If a Series of Additional Bonds is to be issued pursuant to the Indenture, the Issuer and the Institution shall enter into an amendment to this Agreement, and the Institution shall execute and deliver a new Promissory Note, in each case providing, among other things, for the payment by the Institution of such additional loan payments as are necessary in order to amortize in full the principal of and interest on such Series of Additional Bonds and any other costs in connection therewith. No Additional Bonds shall be issued without the consent of the Initial Bonds Purchaser.

Any such 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. [Reserved]

Section 11.3. Mandatory Redemption of Bonds as Directed by the Issuer.  
(a) Upon the determination by the Issuer 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 Facility 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), (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 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), (y) 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 (z) 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 is to consider such resolution to the Institution, the Initial Bonds Purchaser 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 (x) proceeds of the Bonds have been expended on such component of the Project more than eighteen (18) months prior to the receipt of such gift or grant, or (y) (1) proceeds of the Bonds 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 (2) the aggregate amount of Project Costs not otherwise provided for is less than the amount of Bond proceeds expended on such component of the Project, the Institution shall cause the Trustee to effect a redemption of Bonds in a principal amount equal to such excess only to the extent to which proceeds of the Bonds were expended for such component.

(b) If, after completion of the construction of a component of the Project, the Institution receives any gift or grant which prior to such completion it reasonably expected to

receive and which is required by the terms thereof to be used to pay any item which is a cost of such component of the Project, and if (x) proceeds of the Bonds 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 (y) (1) proceeds of the Bonds 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 (2) 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, 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. Neither the Institution nor any related person thereto shall purchase any Bonds for its own account during the term of this Agreement, whether by direct negotiation through a broker or dealer, or by making a tender offer to the Holders thereof, or otherwise.

Section 11.7. Investment of Funds. Any moneys held as part of the Rebate Fund, the Earnings Fund, the Project Fund, the Bond Fund 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 Sections 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 similar or different cause 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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser 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, the Initial Bonds Purchaser or the Trustee, and the Issuer, the Initial Bonds Purchaser 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 (x) the Mortgage, the Institution will mortgage its fee interest in the Mortgaged Property to the Issuer and the Trustee as security for the Bonds and the obligations of the Institution under the Security Documents, (y) the Assignment of Mortgage, the Issuer will assign all of its right, title and interest in the Mortgage to the Trustee, and (z) 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.

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 Chief Financial Officer of the Institution 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. All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including bank wire, telecopy or similar writing) and shall be given to such party or other Person, addressed to it, at its address or telecopy number set forth below or such other address or telecopy number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as follows:

Party

Address

To the Institution

Congregation Pe'er Bais Yaakov  
133 Route 59  
Monsey, New York 10952  
Attention: President  
Telephone: (212) 809-9889  
  
E-mail: zakheimandco@aol.com

with a copy to the General Counsel at

Law Offices of David M. Ascher, Esq.  
8499 Route 304  
New City, NY 10956  
Attention: David Ascher, Esq.  
Telephone: (845) 352-4080  
E-mail: dascher@barrlegal.com

To the Issuer

Rockland County Economic Assistance Corporation  
254 South Main Street, Suite 410  
New City, New York 10956  
Attention: President  
Telephone: (845) 977-3900  
E-mail: sporath@rocklandida.com

To the Trustee

Zions Bancorporation, National Association  
233 Peachtree Street  
Suite 2525  
Atlanta GA 30303  
Attention:  
Telephone:  
E-mail:

To the Initial Bonds Purchaser

Eastern Savings Bank fsb  
11350 McCormick Road  
Suite 200  
Hunt Valley, Maryland 21031  
Attention: Joseph Slovick, III  
Telephone: 410-568-6137  
E-mail: jslovick@easternsavingsbank.com



Any party hereunder may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted for overnight delivery by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder.

Section 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 Rockland County, 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 (w) to move to dismiss on grounds of forum non conveniens, (x) to remove to any Federal court other than the United States District Court for the Southern District of New York, and (y) to move for a change of venue to a New York State Court outside New York County.

If the Institution commences any action against the Issuer or the Trustee in a court located other than the courts of record of the State in New York County or the United States District Court for the Southern District of New York, the Institution shall, upon request from the Issuer or the Trustee, either consent to a transfer of the action or proceeding to a court of record of the State in New York County or the United States District Court for the Southern District of New York, or, if the court where the action or proceeding is initially brought will not or cannot transfer the action, the Institution shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of record of the State in New York County or the United States District Court for the Southern District of New York.

Section 12.7. Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Issuer and the Institution relating to the Facility, other than any other Project Document.

Section 12.8. Severability. If any one or more of the provisions of this Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this 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 (including the Initial Bonds Purchaser), 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 (including the Initial Bonds Purchaser) 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 (including the Initial Bonds Purchaser).

Section 12.12. Law Governing. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard or giving effect to the principles of conflicts of laws thereof.

Section 12.13. Waiver of Trial by Jury. The Institution does hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected with this Agreement, the Institution's obligations hereunder, the Facility, the Project, the relationship between the Issuer and the Institution, the Institution's ownership, use or occupancy of the Facility and/or any claim for injury or damages.

The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 12.14. Recourse Under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer, and not of any member, director, officer, employee or agent of the Issuer or any natural person executing this Agreement on behalf of the Issuer in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Issuer or any natural person executing this Agreement on behalf of the Issuer. No recourse shall be had for the payment of the principal of, redemption premium, if any, Sinking Fund Installments for, or interest on the Bonds or for any claim based thereon or hereunder

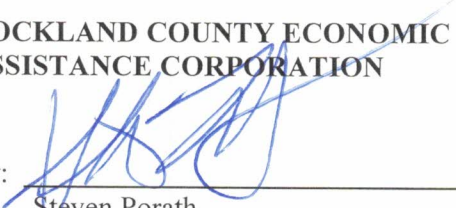
against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. In addition, in the performance of the agreements of the Issuer herein contained, any obligation the Issuer may incur for the payment of money shall not subject the Issuer to any pecuniary or other liability or create a debt of the State or the County, and neither the State nor the County 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.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the Issuer has caused its corporate name to be subscribed unto this Loan Agreement by its duly authorized President 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.

**ROCKLAND COUNTY ECONOMIC  
ASSISTANCE CORPORATION**

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

  
Steven Porath  
President

**CONGREGATION PE'ER BAIS YAAKOV**

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

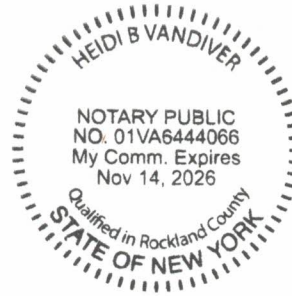
Morris Zakheim  
President

[Signature Page to Loan Agreement]

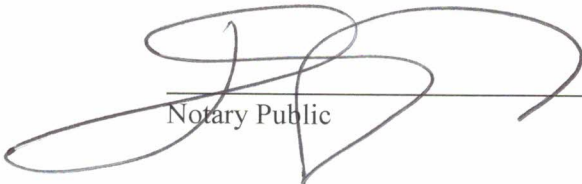
STATE OF NEW YORK )

: ss.:

COUNTY OF ROCKLAND )



On the 11 day of October, in the year two thousand twenty-three, before me, the undersigned, personally appeared **STEVEN PORATH**, 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

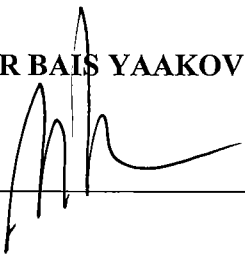
**IN WITNESS WHEREOF**, the Issuer has caused its corporate name to be subscribed unto this Loan Agreement by its duly authorized President and the Institution has caused its name to be hereunto subscribed by its duly Authorized Representative, all being done as of the year and day first above written.

**ROCKLAND COUNTY ECONOMIC  
ASSISTANCE CORPORATION**

By: \_\_\_\_\_  
Steven Porath  
President


**CONGREGATION PE'ER BAIS YAAKOV**

By: \_\_\_\_\_  
Morris Zakheim  
President



STATE OF NEW YORK )  
 : ss.:  
COUNTY OF ~~ROCKLAND~~ )  
 NY

On the 11 day of October, in the year two thousand twenty-three, before me, the undersigned, personally appeared **MORRIS ZAKHEIM**, 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



[Notary Page to Building Loan Agreement]

**SCHEDULE A**

**Form of Requisition from the Project Fund**

**[Letterhead of Institution]**

Eastern Savings Bank fsb  
11350 McCormick Road  
Suite 209  
Hunt Valley MD 21031  
Attention:

Consultant [To Come]

Zions Bancorporation, National Association,  
in its capacity as Trustee in the Indenture  
referred to below,  
233 Peachtree Street  
Suite 2525  
Atlanta GA 30303  
Attention:

Hawkins Delafield & Wood LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Attn: Daniel Birmingham

Re: Building Loan Agreement (“**Building Loan Agreement**”) between Congregation Pe’er Bais Yaakov (the “Institution”) and Rockland County Economic Assistance Corporation “Issuer”) dated as of October 1, 2023.

Requisition # \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Ladies and Gentlemen:

As Trustee under an Indenture of Trust dated as of October 1, 2023 (the “Indenture”) between the Issuer and Zions Bancorporation, National Association, you are requested to draw from the Bond Account of the Project Fund, established by Section 5.01 of the Indenture, a check or checks 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 the Institution;



- (ii) the number of this Requisition is \_\_\_\_;
- (iii) all conditions to the Advance requested by pursuant to the Current Requisition have been met in accordance with the terms of the Agreement (including, without limitation, Section 2.2 and 2.3 thereof);
- (iv) the Project Work is progressing in such manner so as to insure completion thereof in accordance with the Project Cost Budget on or before the Scheduled Completion Date. The estimated aggregate cost of completing the Project Work, including Hard Costs and Soft Costs does not exceed \$\_\_\_\_\_;
- (v) 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;
- (vi) all items to be funded by the Issuer under the Loan Agreement and payable from the 2023 Series Bonds Account comprise hard Construction Costs properly payable from the 2023 Series Bonds Account pursuant to the Security Documents, including the Tax Regulatory Agreement;
- (vii) none of the items for which this Requisition is made has formed the basis for any disbursement heretofore made from the Project Fund unless as a reimbursement from the Series 2023 Bonds Account for a reimbursement to the Borrower approved by the Bank as evidenced by its approval hereto;
- (viii) 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;
- (ix) each such item stated in Schedule A attached hereto is a proper charge against the Project Fund and the corresponding account thereof;
- (x) 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;
- (xi) each item of cost set forth in Schedule A attached hereto that is payable from the 2023 Series Bonds Account is consistent in all material respects with the Tax Regulatory Agreement. The Institution is in full compliance with the terms and requirements of the Tax Regulatory Agreement;
- (xii) 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;

(xiii) no Event of Default exists and is continuing under the Security Documents, including the Tax Regulatory Agreement, nor any condition, event or act which, with notice or lapse of time or both, would constitute such an Event of Default. There are no defenses or offsets in connection with the Loan or the Security Documents,;

(xiv) the Improvements have not been damaged by fire or other casualty, and no part of the Property has been taken by eminent domain and no proceedings or negotiations therefor are pending or threatened;

(xv) nothing has occurred subsequent to the date of the Agreement that has or may result in the creation of any lien, charge or encumbrance upon the Property or the Improvements or any part thereof, or anything affixed to or used in connection therewith or which has or may substantially and adversely impair the ability of the Institution to make all payments of principal and interest on the Building Loan Note or any other note from Institution to Initial Bonds Purchaser, the ability of the Institution to meet its obligations under the Building Loan Agreement or the ability of the Guarantor to meet its obligations under the Guaranty;

(xvi) 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;

(xvii) attached hereto (if not previously furnished to the Trustee) are waivers of liens and receipts of payment for all work performed to the date of submission hereof and waivers of liens as to each subcontractor and each supplier for materials included in the last previous requisition within 30 days from the date of funding of the last previous requisition, or prior to the next requisition, whichever shall first occur;

(xviii) each item which payment under this requisition is to be made from the 2023 Series Bonds Account, when added to all other payments previously made from the 2023 Series Bonds Account, 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;

(xix) such item of cost for which payment is herein requested is chargeable to the capital account of the Facility for Federal income tax purposes, or would be so chargeable either with an election by the Institution or but for the election of the Institution to deduct the amount of such item; and

(xx) the representations and warranties made by the Institution in the Security Documents, including the Tax Regulatory Agreement, 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.

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

**CONGREGATION PE'ER BAIS YAAKOV**

By: \_\_\_\_\_  
Authorized Representative

**APPROVED BY EASTERN SAVINGS BANK, FSB, AS INITIAL BONDS PURCHASER:**

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

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

SCHEDULE A TO REQUISITION NO. \_\_\_\_

<u>Amount</u>	<u>Payee (with address)</u>	<u>Purpose</u>	<u>Pay from 2023 Series Bond Account</u>	<u>Pay from Equity Account</u>
---------------	-----------------------------	----------------	--	------------------------------------

(If reimbursement is requested, include the following.)

Receipt is hereby acknowledged of a payment in the amount of \$\_\_\_\_\_ in connection with the submission of the attached Requisition.

**CONGREGATION PE'ER BAIS YAAKOV**

By: \_\_\_\_\_  
Authorized Representative

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

Approved by Eastern Savings Bank, National Association

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

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

**SCHEDULE B**

AFFIDAVIT PURSUANT TO SECTION 22  
OF THE LIEN LAW OF THE STATE OF NEW YORK

STATE OF NEW YORK     )

: ss.:

COUNTY OF ROCKLAND )

Morris Zakheim, being duly sworn, deposes and says:

- (1) I have an address at \_\_\_\_\_, and I am the Authorized Signatory of \_\_\_\_\_ (collectively, the "**Institution**"), the Institution mentioned in the Building Loan Agreement.
- (2) The amount of the Building Loan is: up to \$9,500,000.00.
- (3) The consideration for the Building Loan to be paid and the other expenses heretofore incurred or to be incurred in connection with and paid out of the Loan are (or are estimated to be) as follows:

TOTAL

- (4) The amount, if any, to be advanced from the Building Loan to repay amounts previously advanced by Institution for Hard Costs (as hereinafter defined) is: \$\_\_\_\_\_
- (5) The net sum available to Institution from the Building Loan to pay Hard Costs (less such amounts as may become due and payable for insurance premiums, interest on Building Loan mortgages, ground rent, taxes, assessments and water rents accruing during the making of the improvement after the date hereof) is: \$\_\_\_\_\_
- (6) The sum allocated from the Building Loan towards Interest Reserve is:     \$0.00

- (7) This affidavit is made pursuant to and in compliance with Section 22 of the Lien Law of the State of New York.
- (8) If Institution is a corporation or partnership, this statement is verified by deponent and not by Institution because Institution is a corporation or partnership, of which the deponent is an officer or general partner.
- (9) The facts stated above and any costs itemized on this statement are true, to the knowledge of the undersigned.

For the purposes of this Section 22 Affidavit the term “Hard Costs” shall mean the “costs of an improvement” (as such term is defined in Section 2(5) of the New York Lien Law).

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

Attached hereto are lien waivers for all Hard Costs included in any prior Advances and invoices for all Hard Costs to be included in this Advance. Additionally, attached hereto are completed AIA Forms G702 and G703 or such forms as reasonably required by Initial Bonds Purchaser signed and certified by the Architect and Construction Manager. All capitalized terms used herein shall have the meaning given thereto in the Building Loan Agreement.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**



This statement is made pursuant to Section 22 of the Lien Law of the State of New York.

The facts herein stated are true to the knowledge of the deponent.

---

Morris Zakheim

Sworn to before me this

\_\_\_ day of \_\_\_\_\_, 202\_

---

Notary Public

**EXHIBIT A**

**DESCRIPTION OF THE LAND**

All that certain plot, piece or parcel of land, situate, lying and being in the Town of Ramapo, County of Rockland, State of New York, bounded and described as follows:

BEGINNING at an old iron pipe at the intersection of the westerly side of New York State Highway Route No. 306 as widened, and the southerly line of lands now or formerly of Valeda Ficarotta and the northeast corner of premises herein;

RUNNING THENCE westerly along the southerly line of said lands of Ficarotta north  $79^{\circ} 10'$  west, 464.98 feet, deed (actual 489.15) to a point;

THENCE southerly along the easterly line of lands now or formerly of Wemer and Maria Lutz south  $9^{\circ} 49' 50''$  west, 179.30 feet, deed (actual 179.78) to a point;

THENCE along the northerly line of lands now or formerly of Stanley J. Gottlieb south  $79^{\circ} 10'$  east, 464.18 feet, deed (actual 485.95) to a point in the westerly side of New York State Highway Route 306;

THENCE northerly along the westerly side of New York State Highway Route 306 and opposite the intersection of the easterly side of said highway with Boar Court North  $10^{\circ} 05'$  east, 179.30 feet, deed (actual 178.24) to the point and place of BEGINNING.

Note: Address, Block & Lot shown for informational purposes only

Designated as Section 32.15, Block 2, Lot 15, Rockland County and also known as 607 Route 306, Ramapo, NY 10901.

## **EXHIBIT B**

### **DESCRIPTION OF THE FACILITY PERSONALTY**

The Mortgaged Facility Personalty as such term is defined in the Mortgage and all fixtures, equipment, machinery, apparatus, appliances, fittings, chattels and articles of personal property of every kind and nature useable in connection with the operation of the improvements now or hereafter located at the Mortgaged Facility Realty, and all building materials and building supplies of any nature whatsoever whether now owned or hereafter acquired, now or hereafter attached to, or used or usable in connection with any present or future operation or occupancy of the Mortgaged Facility and owned by the Institution or in which the Institution and/or the Issuer has or shall have an interest and all renewals and replacements thereof and additions and accessions thereto, including without limitation all partitions, elevators, lifts, steam and hot water boilers, heating and air conditioning equipment, lighting and power plants, engines, motors, compressors, ducts, coal, oil and gas burning apparatus, pipes, pumps, plumbing, radiators, sinks, bath tubs, water closets, refrigerators, gas and electrical fixtures, communications apparatus, stoves, ranges, shades, screens, awnings, vacuum cleaning system, and sprinkler system or other fire prevention or extinguishing apparatus and materials, all of which shall be deemed to be, remain and form a part of the Mortgaged Facility and are covered by the lien of this Mortgage; excluding, however, the Institution's Property released from the lien of the Mortgage.

**AUTHORIZED REPRESENTATIVE**

Name

Title

Signature

Morris Zakheim

President

\_\_\_\_\_

**EXHIBIT D**

**[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 Rockland County Economic Assistance Corporation (the “Issuer”) pursuant to [Section 8.20] [Section 8.9] of that certain Loan Agreement, dated as of October 1, 2023, between the Issuer and Congregation Pe’er Bais Yaakov, a not-for-profit corporate institution of secondary education 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 or the County, unless such default or breach has been waived in writing by the Issuer or the County, as the case may be;

(2) has been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years;

(3) has received written notice of default in the payment of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or

(4) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by in rem tax foreclosure, other than a property which has been released or is in the process of being released to such Person pursuant to applicable law.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

“County” shall mean the County of Rockland.

“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.

“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:

## **EXHIBIT E**

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.

\$9,500,000.00

October \_\_\_\_, 2023

### **PROMISSORY NOTE**

FOR VALUE RECEIVED, CONGREGATION PE'ER BAIS YAAKOV, a not-for-profit corporation organized and existing under the Article 10 of the Religious Corporation Law of the State of New York (the "Institution"), by this promissory note evidences indebtedness of the Institution pursuant to a Building Loan Agreement (the "Agreement"), dated as of October 1, 2023, between the Institution and ROCKLAND COUNTY ECONOMIC ASSISTANCE CORPORATION (the "Issuer"), and the Institution hereby promises to pay to the order of the Issuer the principal sum of Nine Million Five Hundred Thousand Dollars (\$9,500,000.00), together with interest on the unpaid principal amount hereof, from the date of the issuance and delivery of the Issuer's Educational Facilities Revenue Bonds (Congregation Pe'er Bais Yaakov High School Project) 2023 Series (the "Bonds") until paid in full, at a rate per annum equal to the respective rates of interest borne from time to time by the Bonds more fully described below, together with all redemption price payments and purchase price payments as and when due. All capitalized terms used but not defined in this Promissory Note shall have the respective meanings assigned such terms by the Indenture of Trust dated as of October 1, 2023 between the Issuer and ZIONS BANCORPORATION, NATIONAL ASSOCIATION, pursuant to which the Bonds are issued (the "Indenture") or by the Building Loan Agreement, dated as of October 1, 2023, between the Issuer and the Institution (the "Agreement"). 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 ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as trustee under the Indenture and, together with any successor under the Indenture the "Trustee". This Promissory Note is being assigned by the Issuer to the Trustee as security for the payment of the principal of, interest on, redemption price of (including applicable premium) of the Bonds, and the purchase price of Bonds tendered for purchase in accordance with the Indenture.

This Note shall mature in 300 substantially equal monthly installments of principal and interest, such amortization beginning on the first day of the month that follows the completion of 24 full calendar months following the date of original issuance of this Promissory Note. Notwithstanding the foregoing, upon satisfying conditions set forth in the Indenture, the Institution may defer the commencement of amortization for an additional 12 months such that amortization begins on the first day of the month that follows the completion of 36 full calendar months following the date of original issuance of this Promissory Note, and this Promissory Note shall amortize in 288 substantially equal monthly installments of principal and interest. The amortization schedule shall be subject to adjustment at the beginning of each New Fixed Rate

Period to reflect changes required by changing interest rates needed to re-establish substantially equal monthly payments of principal and interest going forward. The initial amortization schedule reflecting amortization over 300 monthly periods is attached to this Promissory Note as Schedule A. Such amortization schedule shall be substituted from time to time to reflect the adjustments required by this paragraph. All amounts of principal of and interest on this Promissory Note shall be payable as set forth herein on the twenty fifth day of the month preceding the due date set forth in Schedule A.

The final maturity date of this Promissory Notes shall be November 1, 2050.

This Promissory Note has been designated in the Agreement as a Drawdown Promissory Note. Interest shall accrue only on amounts that have been drawn down by the Institution.

Application of a Default Rate or a Special Default Rate shall not affect the amortization schedule.

Interest Rate. The Interest Rate on this Promissory Note shall be fixed interest rate for each Fixed Rate Period described below, which may be either the Initial Fixed Rate Period or any One-Year Fixed Rate Period, and shall be determined separately for each Fixed Rate Period as set forth below.

(1) Initial Fixed Rate Period: The Initial Fixed Rate Period shall begin on the issue date of this Promissory Note and end on November 30, 2027. During the Initial Fixed Rate Period, the Interest Rate on this Promissory Note shall be the fixed rate of 7.00% per annum. During this period interest will accrue and be payable only on the Funded Amounts using the actual number of days in each interest period based upon a 360 day year.

(2) Interest Rate Adjustment for Subsequent Fixed Rate Periods: Beginning on the first day of the month following the end of the Initial Fixed Rate Period, each successive Fixed Rate Period shall be a one-year period (of twelve calendar months) beginning of the first day of the month following the end of the prior Fixed Rate Period (a “**One-Year Fixed Rate Period**”). The Interest Rate on this Promissory Note during each One-Year Fixed Rate Period shall be determined as follows:

Interest Rate = the greater of: (i) 5.50% per annum and (ii) the sum of 4.00% plus the weekly average yield of the 1-year Constant Maturity Treasury Rate (“**Index**”), based upon the index rate in effect on the date that is 45 days before the applicable Rate Adjustment Date (or the next date that the index is available) based on the Federal Reserve Publication “H.15 Selected Interest Rates” or another available source if the Federal Reserve discontinues the publication “H.15 Selected Interest Rates”

The Interest Rate so determined shall continue to be subject to further adjustment to reflect any Default Rate or Special Default Rate that may be applicable.



Notwithstanding the foregoing, upon an Optional Tender Date, the interest rate on this Promissory Note shall be adjusted in the same manner as the Bonds are adjusted pursuant to the Indenture.

(3) Default Rate. With respect to the 2023 Series Bonds, if there shall occur an Event of Default (other than an Event of Default described in clause (4) below), the rate of interest on this Promissory Note shall be the Default Rate, which shall be 400 basis points in excess of the otherwise applicable Interest Rate, which incremental increase shall apply beginning on the occurrence of the Event of Default and ending on the day on which such Event of Default has been cured. 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.

(4) Special Default Rate. If there shall occur an Event of Default described in Section 9.1(1) of the Loan Agreement, there shall be a Special Default Rate equal to 0.50 (fifty) basis points in excess of the otherwise applicable Interest Rate, which incremental increase shall apply beginning on the occurrence of the Special Event of Default and ending on the day on which such Special Event of Default has been cured. 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 Special Event of Default.

(a) The interest rate computations set forth above shall be computed by the Bondholder and delivered to the Trustee and the Institution at least three Business days preceding the applicable Loan Payment Date. The Trustee shall be entitled to rely upon such computation absent manifest error.

Interest Payment Dates. Interest on this Promissory Note is payable on the twenty fifth day of each month beginning November 25, 2023 (each an “**Interest Payment Date**”) and on each such payment date payment shall cover all interest that will accrue through the first day of the following month. Interest on this Promissory Note is calculated on the basis of a 360-day year based on the actual number of days elapsed.

Interest Payable During the Funding Period. As a Drawdown Loan, proceeds of the Loan will be advanced incrementally to the Institution by the Trustee. Until such time as the Funded Amount equals the aggregate principal amount of the Loan (\$9,500,000), interest on the Loan shall accrue and be payable only on the Funded Amount.

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 would be contrary to the provisions of law applicable to the Holder of the Bonds.

Upon the following occurrences with respect to the Bonds, the following provisions shall apply to this Note in the same manner as it applies to the Bonds.

Redemption of and Optional Tender of Bond.

(a) General Optional Redemption. If the Bonds are subject to redemption prior to maturity, at the option of the Issuer (which option shall be exercised upon the giving of 30 days' notice by the Institution of its intention to prepay amounts due under the Loan Agreement with respect to the Bonds), in whole or in part at any time at a Redemption Price equal to one hundred percent (100%) of the principal amount of this Bond to be redeemed, plus interest accrued thereon to the redemption date, plus the applicable Prepayment Premium, if any, as described below.

*Prepayment Premiums shall be as follows:*

(i) 4.0% of the principal amount prepaid, if redemption occurs during the first full twelve calendar month period (such period calculated disregarding any initial partial month during which prepayment is made) following issuance of this Bond;

(ii) 3.0% of the principal amount prepaid, if redemption occurs during the second full twelve calendar month period (such period calculated disregarding any initial partial month during which prepayment is made) following issuance of this Bond;

(iii) 2.0% of the principal amount prepaid, if redemption occurs during the third full twelve calendar month period (such period calculated disregarding any initial partial month during which prepayment is made) following issuance of this Bond;

(iv) 1.0% of the principal amount prepaid, if redemption occurs during the fourth full twelve calendar month period (such period calculated disregarding any initial partial month during which prepayment is made) following issuance of this Bond;

(v) No redemption premium is due with respect to redemption of this Bond during any One-Year Fixed Rate Period;

(vi) The foregoing redemption premium amounts shall be increased by an additional 100 basis points with respect to any redemption that is made during the Construction Phase;

(vii) Notwithstanding the foregoing, no redemption premium shall be due upon any redemption that is made during the 90-day period immediately preceding the end of the Initial Fixed Rate Period.

(viii) Notwithstanding the foregoing, no redemption premium shall be due upon any redemption that is made during each of the third and fourth twelve calendar month periods of up to an aggregate of Five Hundred Thousand Dollars (\$500,000) for each such period. For purposes of clarity, this provision may be used to satisfy any redemption premium coming due as a result of subparagraph (ix) below.

(ix) If at the time amortization begins, as provided for in Section 2.02(a)(ii) of the Indenture, whether on the first day of the month that follows the completion of 24 full calendar months or 36 full calendar months, as applicable, following the date of original issuance of the 2023 Series Bonds, the 2023 Series Bonds have not been fully drawn, any such amount not drawn shall be subject to the redemption premium described in Section 2.03(a)(iii) or 2.03(a)(iv) of the Indenture, as applicable.

(b) Extraordinary Redemption. If the Bonds are subject to redemption prior to maturity, at the option of the Issuer exercised at the direction of the Institution (which option

shall be exercised only upon the giving of notice by the Institution of its intention to prepay loan payments due under the Loan Agreement), as a whole on any date, upon notice or waiver of notice as provided in the Indenture, at a Redemption Price of one hundred percent (100%) of the unpaid principal amount thereof plus accrued interest to the date of redemption plus a redemption premium computed as set forth in subsection (a) above, 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, the 2023 Series Bonds Purchaser 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, the Registered Owner 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, the Registered Owner 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 Redemption from Excess Proceeds and Certain Other Amounts. If the Bonds are to be redeemed at any time in whole or in part by lot prior to maturity in the event and to the extent:

(i) excess title insurance or property insurance proceeds or condemnation awards shall remain after the application thereof pursuant to the Loan Agreement and the Indenture,

(ii) excess proceeds shall remain after the release or substitution of Facility Realty or Facility Personalty, or

(iii) 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 to be redeemed, together with interest accrued thereon to the date of redemption plus a redemption premium computed as set forth in subsection (a) above. If less than all of the proceeds of the Bonds have not been drawn upon, such unfunded amounts shall not be considered excess proceeds but shall be subject to the premium payments set forth in Section 4.3(a)(iv) of the Loan Agreement.

(D) Mandatory Redemption Upon Failure to Operate the Facility for the Approved Facility Operations, Material Violation of Material Legal Requirements, False Representation or Failure to Maintain Liability Insurance. If the Bonds are 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 Facility Operations, or (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, 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 2023 Series Bonds, together with interest accrued thereon to the date of redemption plus a redemption premium computed as set forth in subsection (a) above.

(a) Redemption Procedures. If any portion of this Bond is 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 this Bond to be redeemed at the address shown on the registration books. Principal 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 principal amount of the Bond called for redemption shall become due and payable on the redemption date, provided, however, that with respect to any optional redemption of this Bond 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 principal amount of this Bond 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 principal amount of this Bond. 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 this Bond so called for redemption at the place or places of payment, such Bond shall be redeemed.

(b) Optional Tender of Bonds. If the Bonds are subject to Optional Tender by the Holder hereof to be purchased by the Institution pursuant to the Loan Agreement on each Optional Tender Date at a purchase price of 100% of the principal amount of the Bonds subject to Optional Tender, plus accrued interest to the Optional Tender Date. The Optional Tender Dates are the first day of each Fixed Rate Period following the Initial Fixed Rate Period. This promissory note is the “Promissory Note” referred to in the Loan Agreement, dated as of October 1, 2023 (as the same may be amended or supplemented, the “Loan Agreement”), between the Institution and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

Determination of Taxability. (a) Any provisions hereof notwithstanding, upon the occurrence of a Determination of Taxability (as defined in the Indenture) with respect to any Bond, then, from and after the corresponding Date of Taxability (as defined in the Indenture), the interest rate on this Note shall be the Taxable Equivalent Rate (as defined in the Indenture). The determination of the Taxable Equivalent Rate for this Note by the Bondholder shall, absent manifest error, be conclusive and binding on the Issuer, the Institution and the Trustee.

(b) In addition to the supplemental interest set forth in subsection (a) above, the Institution agrees to pay to the Bondholder (including any previous Bondholder) an amount equal to any penalties or other charges assessed against such Holder for failure to include interest on the Bonds in the gross income of such Bondholder, together with any and all reasonable attorneys’ fees, court costs, or other out-of-pocket costs incurred by the Bondholder in connection therewith.

Change in Tax Rate. If at any time after the Closing Date, there should be an increase in the maximum marginal rate of federal income tax applicable to the taxable income of the Holder of the Bonds, its successors or assigns (the “**2023 Series Bonds Purchaser Tax Rate**”), then the Interest Rate in effect hereunder from time to time as herein provided, shall be adjusted upward, effective as of the effective date of any such change in the 2023 Series Bonds Purchaser Tax Rate, by multiplying the Interest Rate by a fraction, the denominator of which is one hundred percent (100%) minus the 2023 Series Bonds Purchaser Tax Rate in effect on the Closing Date, and the numerator of which is one hundred percent (100%) minus the 2023 Series Bonds Purchaser Tax Rate after giving effect to such change.

This Promissory Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture. Such assignment is made as security for the payment of the Issuer’s Bonds. All the terms, conditions and provisions of the Indenture, the Agreement and the Bonds are hereby incorporated as a part of this Promissory Note.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Institution.

The Institution hereby promises to pay costs of collection and attorneys' fees in case of default on this Promissory Note.

This Promissory Note shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflicts of law principles thereof.

**CONGREGATION PE'ER BAIS YAAKOV**

By: \_\_\_\_\_  
Morris Zakheim  
President

**SCHEDULE A**

**DEBT AMORTIZATION SCHEDULE<sup>1</sup>**

**ROCKLAND COUNTY ECONOMIC ASSISTANCE CORPORATION  
EDUCATIONAL FACILITIES REVENUE BONDS**

(Congregation Pe'er Bais Yaakov High School Project)  
2023 Series

**PRINCIPAL PAYMENT SCHEDULE <sup>1,2</sup>**

<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Total P+I</b>
11/01/2023	-	-	35,097.22	35,097.22
11/01/2024	-	-	676,083.35	676,083.35
11/01/2025	10,416.39	7.000%	674,236.13	684,652.52
11/01/2026	143,370.19	7.000%	668,793.18	812,163.37
11/01/2027	153,883.06	7.000%	658,280.30	812,163.36
11/01/2028	163,300.40	7.000%	648,862.97	812,163.37
11/01/2029	177,141.11	7.000%	635,022.25	812,163.36
11/01/2030	190,130.30	7.000%	622,033.06	812,163.36
11/01/2031	204,071.97	7.000%	608,091.39	812,163.36
11/01/2032	217,321.99	7.000%	594,841.40	812,163.39
11/01/2033	234,971.45	7.000%	577,191.91	812,163.36
11/01/2034	252,201.14	7.000%	559,962.24	812,163.38
11/01/2035	270,694.28	7.000%	541,469.09	812,163.37
11/01/2036	289,031.90	7.000%	523,131.46	812,163.36
11/01/2037	311,737.19	7.000%	500,426.17	812,163.36
11/01/2038	334,595.91	7.000%	477,567.46	812,163.37
11/01/2039	359,130.75	7.000%	453,032.61	812,163.36
11/01/2040	384,221.85	7.000%	427,941.51	812,163.36
11/01/2041	413,638.45	7.000%	398,524.91	812,163.36
11/01/2042	443,969.24	7.000%	368,194.12	812,163.36
11/01/2043	476,524.08	7.000%	335,639.29	812,163.37
11/01/2044	510,579.96	7.000%	301,583.41	812,163.37
11/01/2045	548,905.29	7.000%	263,258.08	812,163.37
11/01/2046	589,154.76	7.000%	223,008.61	812,163.37
11/01/2047	632,355.60	7.000%	179,807.77	812,163.37
11/01/2048	678,311.58	7.000%	133,851.79	812,163.37
11/01/2049	728,462.64	7.000%	83,700.72	812,163.36
11/01/2050	781,878.52	7.000%	30,284.85	812,163.37
<b>Total</b>	<b>\$9,500,000.00</b>	<b>-</b>	<b>\$12,199,917.25</b>	<b>\$21,699,917.25</b>

<sup>1</sup> This schedule assumes the Institution has not exercised its option to extend the start date of amortization of principal, a constant interest rate of 7.0% per annum, and level annual debt service. If either of the first two assumptions change, this Bond may be re-amortized to return to a level annual debt service structure.

<sup>2</sup> Loan payments are due on the 25<sup>th</sup> day of the Month preceding the date set forth on the Table above.



**ENDORSEMENT**

Pay to the order of Zions Bancorporation, National Association, without recourse, as Trustee under the Indenture referred to in the within mentioned Loan Agreement, as security for the Initial Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Promissory Note.

**ROCKLAND COUNTY ECONOMIC  
ASSISTANCE CORPORATION**

By: \_\_\_\_\_  
Steven Porath  
Executive Director

Dated: October \_\_\_\_, 2023

**PROJECT COST BUDGET**

CONTINUATION SHEET		FORM: G703	Yeshiva Pe'er Bais Yaakov		APPLICATION NUMBER		1
Easigate Management Service			607 Route 306		APPLICATION DATE		10/11/2023
POB 392			Suffern NY 10901		PERIOD TO		10/11/2023
Chester NY 10918					PROJECT NO		PBY-607
A	B	C	F	G	H	I	J
			Work Completed				
Item	Description	Scheduled Value	From Prev Application (D+E)	This Period	Total Comp To Date (D+E)	Percent Completed (G/C)	Balance To Finish (C-G)
1	<b>Site Work</b>						
2	Site Work & Details Per SP	\$ 1,000,000.00	\$ -	\$ -	\$ -	0.00%	\$ 1,000,000.00
3							
4	<b>Core &amp; Shell</b>						
5	Footing,Walls,Slab, stair, elevator Shafts	\$ 750,000.00	\$ -	\$ -	\$ -	0.00%	\$ 750,000.00
6	Structural Steel	\$ 1,100,000.00	\$ -	\$ -	\$ -	0.00%	\$ 1,100,000.00
7	Waterproofing	\$ 20,000.00	\$ -	\$ -	\$ -	0.00%	\$ 20,000.00
8	Exterior Tile work	\$ 25,000.00	\$ -	\$ -	\$ -	0.00%	\$ 25,000.00
9	Carpentry Interior/Exterior	\$ 450,000.00	\$ -	\$ -	\$ -	0.00%	\$ 450,000.00
10	Windows & Doors	\$ 145,000.00	\$ -	\$ -	\$ -	0.00%	\$ 145,000.00
11	Kawneer 451 UT Curtain Front Wall	\$ 225,000.00	\$ -	\$ -	\$ -	0.00%	\$ 225,000.00
12	EIFS	\$ 100,000.00	\$ -	\$ -	\$ -	0.00%	\$ 100,000.00
13	Roofing Flat & Regular	\$ 400,000.00	\$ -	\$ -	\$ -	0.00%	\$ 400,000.00
14	Brick veneer	\$ 225,000.00	\$ -	\$ -	\$ -	0.00%	\$ 225,000.00
15	Kawneer 1600 sloped	\$ 175,000.00	\$ -	\$ -	\$ -	0.00%	\$ 175,000.00
16	ACM Panels	\$ 100,000.00	\$ -	\$ -	\$ -	0.00%	\$ 100,000.00
17	<b>MEP</b>						
18	HVAC	\$ 1,300,000.00	\$ -	\$ -	\$ -	0.00%	\$ 1,300,000.00
19	Plumbing	\$ 500,000.00	\$ -	\$ -	\$ -	0.00%	\$ 500,000.00
20	Electric	\$ 700,000.00	\$ -	\$ -	\$ -	0.00%	\$ 700,000.00
21	Lighting Package	\$ 50,000.00	\$ -	\$ -	\$ -	0.00%	\$ 50,000.00
22	Fire Suppression	\$ 200,000.00	\$ -	\$ -	\$ -	0.00%	\$ 200,000.00
23	Security,Cameras,Fire Alarm	\$ 180,000.00	\$ -	\$ -	\$ -	0.00%	\$ 180,000.00
24	<b>Masonry Elevator Shaf</b>						
25	Elevator Systeem	\$ 210,000.00	\$ -	\$ -	\$ -	0.00%	\$ 210,000.00
26	<b>Finishes</b>						
27	Sheetrock	\$ 220,000.00	\$ -	\$ -	\$ -	0.00%	\$ 220,000.00
28	Sound Insulation and Spray Foam	\$ 75,000.00	\$ -	\$ -	\$ -	0.00%	\$ 75,000.00
29	Interior Doors & Kickplate	\$ 80,000.00	\$ -	\$ -	\$ -	0.00%	\$ 80,000.00
30	ACT	\$ 120,000.00	\$ -	\$ -	\$ -	0.00%	\$ 120,000.00
31	Glass Railings	\$ 70,000.00	\$ -	\$ -	\$ -	0.00%	\$ 70,000.00
32	Flooring	\$ 150,000.00	\$ -	\$ -	\$ -	0.00%	\$ 150,000.00
33	Bathroom Tiles	\$ 25,000.00	\$ -	\$ -	\$ -	0.00%	\$ 25,000.00
34	Painting	\$ 90,000.00	\$ -	\$ -	\$ -	0.00%	\$ 90,000.00
35	Millwork	\$ 60,000.00	\$ -	\$ -	\$ -	0.00%	\$ 60,000.00
36	Specialties	\$ 30,000.00	\$ -	\$ -	\$ -	0.00%	\$ 30,000.00
37	Overhead & Profit	\$ 658,800.00	\$ -	\$ -	\$ -	0.00%	\$ 658,800.00
38							
39	General Conditions 5%	\$ 471,700.00	\$ -	\$ -	\$ -	0.00%	\$ 471,700.00
40	Site Survey & 3rd Party Testing 1%	\$ 94,500.00	\$ -	\$ -	\$ -	0.00%	\$ 94,500.00
41							
42	<b>Total</b>	<b>\$ 10,000,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.00%</b>	<b>\$ 10,000,000.00</b>

**APPLICATION AND CERTIFICATION FOR PAYMENT**

**TO OWNER:** Yeshiva Pe'er Bais Yaakov  
607 Route 306  
Suffern NY 10901

**PROJECT:** New School Building  
**FORM:** G702

**APPLICATION NO:** 1 Distribution to:  
 OWNER  
 ARCHITECT  
 CONTRACTOR

**PERIOD TO:** 9/27/2023

**FROM CONTRACTOR:** Eastgate Management Service Corp.  
POB 392, Chester NY 10918

**VIA ARCHITECT:** Richard Bienenfeld Architect, PC  
271 North Ave Suite 613  
New Rochelle NY 10801

**PROJECT NOS:** PBY-607  
**CONTRACT DATE:** 6/12/2023

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	\$	9,433,800.00	
2. GENERAL CONDITIONS & TESTING	\$	566,200.00	
3. CONTINGENCY	\$	-	
4. TOTAL ADD/ALT	\$	-	
5. NET CHANGE BY CHANGE ORDERS			\$0.00
6. CONTRACT SUM TO DATE (Line 1, 2, 3 & 4)			<b>\$ 10,000,000.00</b>
7. TOTAL COMPLETED TO			
DATE	\$	-	
8. PREVIOUS PAYMENTS	\$	-	
9. MOBILIZATION DEPOSIT HOLD	\$	-	
10. CURRENT PAYMENT DUE	\$	-	
11. BALANCE TO FINISH			<b>\$ 10,000,000.00</b>

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 State of: \_\_\_\_\_ County of: \_\_\_\_\_  
 Subscribed and sworn to before me this day of: \_\_\_\_\_  
 Notary Public: \_\_\_\_\_  
 My Commission expires: \_\_\_\_\_

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the quality of the Work is in accordance with the Contract Documents, and the Contractor the best of the Architect's knowledge, information and belief the Work has progressed as indicated, is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED . . . . . \$

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous periods by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

**PROJECT COMPLETION CERTIFICATE**

[Date]

Eastern Savings Bank, fsb  
11350 McCormick Road  
Suite 209  
Hunt Valley MD 21031  
Attention:

Consultant [To Come]

Zions Bancorporation, National Association,  
in its capacity as Trustee in the Indenture  
referred to below,  
233 Peachtree Street  
Suite 2525  
Atlanta GA 30303  
Attention:

Re: Building Loan Agreement (“**Building Loan Agreement**”) between Congregation Pe’er Bais Yaakov (the “Institution”) and Rockland County Economic Assistance Corporation “Issuer”) dated as of October 1, 2023.

Ladies and Gentlemen:

This certificate constitutes the Completion Certificate referred to in the Building Loan Agreement 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 below.

I hereby certify that pursuant to Building Loan Agreement made and entered into as of October 1, 2023 (this “Agreement”), by and between Rockland County Economic Assistance Corporation and Congregation Pe’er Bais Yaakov that:

- (i) I am an Authorized Representative of the Institution;
- (ii) All Requisitions submitted and all proceeds of Requisitions expended by us to date have complied in all material respect with the terms of the Security Documents;
- (iii) 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;

(iv) no Event of Default exists and is continuing under the Security Documents, including the Tax Regulatory Agreement, nor any condition, event or act which, with notice or lapse of time or both, would constitute such an Event of Default;

(v) the representations and warranties made by the Institution in the Security Documents, including the Tax Regulatory Agreement, 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;

(vi) the Project Work is complete in all material respects, except for punchlist items that do not impair the use of the Project Work for its intended purposes; and

(vii) attached hereto is a true and correct copy of the temporary certificate of occupancy issued for the Project.

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

**CONGREGATION PE'ER BAIS YAAKOV**

By: \_\_\_\_\_  
Authorized Representative

**APPROVED BY EASTERN SAVINGS BANK, FSB, AS INITIAL BONDS PURCHASER:**

By: \_\_\_\_\_  
Authorized Representative

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

## **Exhibit H-1**

### **Local Construction Labor Policy**

The Agency (the “Agency”) has adopted a Local Construction Labor Policy, effective April 1, 2022, as follows:

Project applicants (the “Company”), as a condition to receiving Financial Assistance (including a sales tax exemption, mortgage recording tax exemption, real property tax abatement, and/or bond proceeds) from the County of Rockland Industrial Development Agency (“Agency”), will be required to utilize qualified Local Labor, as defined below, for all projects involving the construction, expansion, equipping, demolition and/or remediation of new, existing, expanded or renovated facilities (collectively, the “Project Site”).

#### **Local Labor Defined**

Local Labor is defined as individuals residing in the following Counties: Rockland, Orange, Westchester, Putnam, Ulster, Sullivan, and Dutchess (collectively, the “Local Labor Area”).

#### **Local Labor Requirement**

At least 80% of the total number of employees working at the Project Site, excluding construction project management, of the general contractor, subcontractor, or subcontractor to a subcontractor (collectively, the “Workers”) working on the Project Site must reside within the Local Labor Area. Companies do not have to be local companies as defined herein but must employ local Workers residing within the Local Labor Area to qualify under the 80% Local Labor criteria.

It is understood that at certain times, Workers residing within the Local Labor Area may not be available with respect to a Project Site. Under this condition, the Company is required to contact the Agency to request a waiver of the Local Labor Requirement (the “Local Labor Waiver Request”) based on the following circumstances: (i) warranty issues related to installation of specialized equipment or materials whereby the manufacturer requires installation by only approved installers; (ii) specialized construction for which qualified Local Labor Area Workers are not available; (iii) documented lack of Workers meeting the Local Labor Area requirement; or (iv) cost differentials in bids whereby use of Local Labor significantly increases the construction cost of the project. Prior to the granting of said waiver, the lowest bidding contractor which bid said construction project using Local Labor would have the right of first refusal to bid and match the lowest bid as a remedy to ensure compliance with this policy. Comprehensive documentation and justification will be required including documented evidence and verification by Agency staff or agents that the “right of first refusal” remedy has been affected unsuccessfully.

The Agency may require an outside consultant of its choosing be hired by the project to assist in reviewing any waiver requests that may be submitted. The Agency shall evaluate the Local

Labor Waiver Request and make its determination related thereto based upon the supporting documentation received with such waiver request.

### **Local Labor Reporting Requirement**

Companies authorized to receive Financial Assistance from the Agency will be required to file or cause to be filed a Local Labor Utilization Report (the "Report") on such form as made available by the Agency, and as directed by the Agency, which will identify, for each Worker, the city, town, or village and associated zip code that each such Worker is domiciled in. The Report shall be submitted to the Agency, or its designated agents as follows: (i) immediately prior to commencement of construction activities; and (ii) on or by the next following quarterly dates of January 1, April 1, July 1, and October 1 and each quarterly date thereafter through the construction completion date.

The Agency, or its designated agents, shall have the right, during normal business hours, to examine and copy the applicable books and records of the Company and to perform spot checks of all Workers at the Project Site to verify compliance with the Local Labor Requirement throughout the construction period.

### **Enforcement**

If Agency staff determines that: (i) the Local Labor Requirement is not being met; or (ii) upon use of its reasonable discretion, discovers or becomes aware of a compliance issue related to the Local Labor Requirement, then written notice delivered personally or by reliable overnight delivery service (i.e. Federal Express) of said Local Labor Requirement violation (the "Notice of Violation") shall be provided to the Company.

The Company shall have 10 business days thereafter to either:

- (i) provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement; or
- (ii) submit the Local Labor Waiver Request as described above; or
- (iii) confirm in writing its inability to meet the Local Labor Requirement.

If the Company does not respond to the Agency's Notice of Violation within ten (10) business days thereafter, or if the Company confirms its inability to meet the Local Labor Requirement, then the Agency shall immediately terminate any and all Financial Assistance being provided to the project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the project. If a Local Labor Waiver Request is submitted and the Agency declines to issue the requested waiver, then the Company shall have 10 business days after receipt of the notice of the waiver request denial to provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement. If the Agency does not receive such confirmation, the Agency shall then immediately terminate any and all Financial Assistance being provided to the project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the project.



**Escrow**

The Agency, in the review or enforcement of its Labor Policy, may refer such matter to such consultants/professionals as it deems necessary to enable it to review or enforce the Labor Policy. The fees for such services shall be paid for by the Company.

At the time of submission of any application, the Agency may require the establishment of an escrow account from which withdrawals shall be made to reimburse the Agency for the costs of professional review services in connection with the Labor Policy.

The sum deposited shall be held by the Agency in a separate account for the benefit of the Company and will be disbursed by the Agency for payment of consultant/professional fees in accordance with the usual requirements of the Agency for the payment of bills.

If such account is not replenished within 30 days after the Company is notified of the requirement for such additional deposit, the Agency may take appropriate action under applicable law and exercise its remedies under the underlying Agency documents, including but not limited to recapture.

After all pertinent charges have been paid, the Agency shall refund to the Company any funds remaining on deposit.

**Miscellaneous**

***This Labor Policy shall not apply if the Project is subject to prevailing wage requirements pursuant to NYS Labor Law section 224-a, as amended.***

**This Labor Policy** may be amended by the Agency from time to time in a manner that is in accordance with applicable laws, rules and regulations, as modified or amended by local, state and/or federal law.

Consented and Agreed to by:

[Name of Applicant]

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

Title:

## Exhibit H-2

### Construction Period Prevailing Wage Policy

On January 1, 2022, amendments to the State Labor Law (the “State Prevailing Wage Act”) requiring certain state agencies, including the County of Rockland Industrial Development Agency (the “Agency”), to require beneficiaries of financial assistance to comply with certain prevailing wage requirements if certain threshold criteria are met (the “State Prevailing Wage Requirements”). The Agency has adopted the State Prevailing Wage Requirements as the Agency’s prevailing wage requirements for Project Work on projects (and future construction modifications) receiving Agency financial assistance and rescinded any prevailing wage requirements that may previously have been in effect. The Agency policy reflected in the state Prevailing Wage Act will remain effective, regardless of whether the State defers enforcement of the applicable provisions. Statutory amendments to the State Prevailing Wage Act, as well as implementation regulations that may be adopted by the State, shall be incorporated in the Agency’s Construction Period Prevailing Wage Policy upon the applicable effective dates specified in such amendments or regulations.

The Agency requires companies receiving financial assistance from the Agency to comply with the provisions of the State Prevailing Wage Act. Following is a brief summary of the State Prevailing Wage Requirements, including thresholds below which the requirements do not apply. The full text of the State Prevailing Wage Act is included following the summary.

#### Prevailing Wage Requirement Applies Only to Covered Projects

The requirements to pay prevailing wages applies only to “Covered Projects”. A project is a Covered Project only if all of the following criteria are met:

- (a) the Project Work being considered must be done under contract;
- (b) such Project Work must be paid for in whole or in part out of public funds;
- (c) the amount of all such public funds, when aggregated, must be at least thirty percent of such total construction costs; and
- (d) total construction project costs must exceed \$5 million.

Certain exclusions from the term “Covered Projects” are identified in the text of the State Prevailing Wage Act attached hereto. Two notable exceptions are (1) certain types of projects, such as brownfields, affordable housing, historic preservation, small renewable energy projects and others and (2) Project Work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization that satisfies certain criteria.

The phrase “paid for in whole or in part out of public funds” means:

- (a) the payment of money, by a public entity, or a third party acting on behalf of and or the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment;
- (b) 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 abatements, 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 public entity;
- (c) money loaned by the public entity that is to be repaid on a contingent basis; or
- (d) credits that are applied by the public entity against repayment of obligations to the public entity.

Certain exclusions from the term “public funds” are identified in the text of the State Prevailing Wage Act attached hereto.

Note that the concept of “paid for in whole or in part out of public funds” is not limited to financial assistance provided by the Agency, but aggregates funds from all public sources.

### **Additional Company Compliance Requirements**

If a Project is a Covered Project, the Company will be required to comply with the New York State Prevailing Wage Law, Labor Law, Article 8, Section 220 et. seq. as if the Project was a “public work” project as defined by the statute. Not less than the current prevailing rate of wages as determined by wage schedules provided by the Bureau of Public Work shall be paid to all laborers, workers and mechanics performing work at the Project. All contractor’s bonds, if required, shall include a provision as will guarantee the faithful performance of such prevailing wage requirement in connection with the Project.

Additional requirements shall include, but not be limited to: (a) the contractor must send a written request to the Labor Department's Bureau of Public Work for an appropriate wage schedule, (b) the contractor must attach the wage schedule to the bid specifications, (c) when awarding a contract, the contractor must attach the wage schedule to the contract, and (d) before work begins, the contractor and subcontractor(s) must post wage schedules at the construction site so that workers know what they are entitled to.

Contractor shall ensure that all agreements with its subcontractors to perform work on or at the Project contain the following provisions:

- (a) Subcontractor shall comply with the New York State Prevailing Wage Law, Labor Law, Article 8, Section 220 et. seq. as if the Project was a “public work”

project as defined by the statute for all construction, alteration, demolition, installation, repair or maintenance work over \$1,000 performed at the Project; and

- (b) Subcontractor's obligations under prevailing wage laws include without limitation: pay at least the applicable prevailing wages as if the project was a "public work" as defined by the statute for activities performed at the Project; comply with overtime and working hour requirements; comply with apprenticeship obligations, comply with payroll recordkeeping requirements; and comply with other obligations as required by law.

Contractor shall ensure that the above requirements are included in all its contracts and any layer of subcontractors for activities for the Project.

**NOTE: The Construction Period Prevailing Wage Policy requires only Covered Projects to comply with prevailing wage requirements for Project Work on the Project. In order to assess whether the Project is a Covered Project, the applicant will be required to assess whether total public funds made available equal or exceed 30% of Project Hard Costs.**

**If the Company reasonably expects that the Project is not a Covered Project, the Company must complete the form titled Availability of Public Funds Worksheet that follows.**

**The Company shall advise the Agency prior to execution of this Agreement as to whether the Company claims that the Project is not a Covered Project, and therefore will not be subject to construction contractors being paid prevailing wages.**

**If the Company proposes to assert that the Project is not a Covered Project and therefore does require payment of prevailing wage to Project Workers, Company shall submit the completed following form to the Agency, together with a narrative and assumptions used in making the calculation. If total public funds are indeterminate at the present time (for example, a PILOT Agreement has not yet been negotiated), supplemental updates to the initial information must be provided by the Company. Should future public funds benefits calculations result in a determination that public funds will equal or exceed 30% of project construction costs, the amount of public funds benefits must either be decreased, or the Company will be required to refund for the benefit of the affected taxing jurisdiction, all amounts of public funds received to avoid Covered Project status, together with such interest, damages and other compensation as may be required by the Agency in its sole discretion.**

**AVAILABILITY OF PUBLIC FUNDS WORKSHEET**

In order to assist the Applicant in determining the whether the Project will be a Covered Project within the meaning of the State Prevailing Wage Act, the following worksheet must be completed as part of this Application.

The projected costs of construction within the meaning of the State Prevailing Wage Act is \$ \_\_\_\_\_.

In the table below, except with respect to the public funds being provided by the Agency, please identify all other “public funds”, within the meaning of the State Prevailing Wage Act, that the Applicant has requested or reasonably expects to obtain to pay for construction costs.

Identity of Governmental Entity	Identify the Nature of the Public Funds (by reference to those categories of public funds identified in the State Prevailing Wage Act)	Projected Amount of Public Funds to be Derived from the Governmental Entity  (gross amount and projected payment date of identified amounts)	Present Value of the Public Funds to be Derived from the Governmental Entity
		<b>Total:</b>	<b>Total:</b>

With respect to Agency financial assistance being requested, the amount of public funds available for construction shall be determined as set forth below:

1. With respect to exemptions from sales or use taxes, the portion of the total sales tax benefits approved by the Agency, that is determined by the Applicant to be allocable to construction costs (i.e. not to costs of equipment). The Applicant estimates that such amount is \_\_\_\_\_.

2. With respect to mortgage recording tax exemptions, the total amount of such exemption. The Applicant estimates that such amount is \_\_\_\_\_.

3. With respect to tax-exempt bonds, if any, the present value of the differential in amount of interest projected to be paid on the tax-exempt bonds over the life of the bonds and the amount of interest projected to be paid on identical bonds if such bonds did not have the benefit of tax-exempt status. Each such cash flow stream shall be adjusted to the present value for purposes of comparison. Such amount is \$ \_\_\_\_\_,

The Applicant should provide worksheets to illustrate the calculation of the foregoing amount.

1. With respect to PILOT Agreements, the difference between the amounts of real property taxes projected to be due during the term of the PILOT Agreement benefits, as if the property did not have the benefit of the PILOT Agreement, and the amounts of PILOT Payments that would be payable during the term of the PILOT Agreement. Each such cash flow stream shall be adjusted to the present value for purposes of comparison. Such amount is \$ \_\_\_\_\_,

The Applicant should complete the following table with respect to “public funds” derived through the Agency:

<b>Total Sales Tax Exemptions</b>	<b>Amount Allocable to Construction</b>	<b>\$ _____</b>
<b>Mortgage Tax Exemptions</b>	<b>Total Amount of Exemptions</b>	<b>\$ _____</b>
<b>Tax Exempt Bond Financing</b>	<b>Net Present Value Savings Compared to a Taxable Financing</b>	<b>\$ _____</b>
<b>PILOT Agreement</b>	<b>Net Present Value Savings Compared to No PILOT Agreement</b>	<b>\$ _____</b>
<b>Total Public Funds Derived Through the Agency</b>		<b>\$ _____</b>
<b>Total Other Public Funds From Table Above</b>		<b>\$ _____</b>
<b>Total of Agency and Other Public Funds</b>		<b>\$ _____</b>
<b>Projected Construction</b>		<b>\$ _____</b>

<b>Costs</b>		
<b>Total Public Funds as a Percentage of Projected Construction Costs</b>		_____ %

**The undersigned, on behalf of the Company, represents that the foregoing projections are based on reasonable estimates made by [the chief financial officer] of the Company. The undersigned agrees to provide updated information based on the best of his or her knowledge as of the date of the execution and delivery of the Project Agreements. The undersigned understands and acknowledges that the Agency assumes no responsibility for the foregoing projections or any consequences that may result from any inaccuracy in such information.**

**[Name of Company]**

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

## Text of State Prevailing Wage Act

**[Note: Below is the original language of the Prevailing Wage Act as initially adopted for applicants' convenience; The Agency does not undertake to report amendments or rules or regulations as they may be proposed or adopted. Please consult your counsel as to future developments.]**

### PART FFF

Section 1. The labor law is amended by adding a new section 224-a to read as follows:

§ 224-a. Prevailing wage requirements applicable to construction projects performed under private contract.

1. Subject to the provisions of this section, each "covered project" as defined in this section shall be subject to prevailing wage requirements in accordance with section two hundred twenty and two hundred twenty-b of this article. A "covered project" shall mean construction work done under contract which is paid for in whole or in part out of public funds as such term is defined in this section where the amount of all such public funds, when aggregated, is at least thirty percent of the total construction project costs and where such project costs are over five million dollars except as provided for by section two hundred twenty-four-c of this article.
2. For purposes of this section, "paid for in whole or in part out of public funds" shall mean any of the following:
  - a. The payment of money, by a public entity, or a third party acting on behalf of and for the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment;
  - b. 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 abatements, 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 public entity;
  - c. Money loaned by the public entity that is to be repaid on a contingent basis; or
  - d. Credits that are applied by the public entity against repayment of obligations to the public entity.
3. For purposes of this section, "paid for in whole or in part out of public funds" shall not include:



- a. Benefits under section four hundred twenty-one-a of the real property tax law;
  - b. Funds that are not provided primarily to promote, incentivize, or ensure that construction work is performed, which would otherwise be captured in subdivision two of this section;
  - c. Funds used to incentivize or ensure the development of a comprehensive sewage system, including connection to existing sewer lines or creation of new sewage lines or sewer capacity, provided, however, that such work shall be deemed to be a public work covered under the provisions of this article;
  - d. tax benefits provided for projects the length or value of which are not able to be calculated at the time the work is to be performed;
  - e. tax benefits related to brownfield remediation or brownfield redevelopment pursuant to section twenty-one, twenty-two, one hundred eighty-seven-g or one hundred eighty-seven-h of the tax law, subdivision seventeen or eighteen of section two hundred ten-B of the tax law, subsection (dd) or (ee) of section six hundred six of the tax law, or subdivision (u) or (v) of section fifteen hundred eleven of the tax law;
  - f. funds provided pursuant to subdivision three of section twenty- eight hundred fifty-three of the education law; and
  - g. any other public monies, credits, savings or loans, determined by the public subsidy board created in section two hundred twenty-four-c of this article as exempt from this definition.
4. For purposes of this section "covered project" shall not include any of the following:
- a. Construction work on one or two family dwellings where the property is the owner's primary residence, or construction work performed on property where the owner of the property owns no more than four dwelling units;
  - b. Construction work performed under a contract with a not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law, other than a not-for-profit corporation formed exclusively for the purpose of holding title to property and collecting income thereof or any public entity as defined in this section where the not-for-profit corporation has gross annual revenue and support less than five million dollars;
  - c. Construction work performed on a multiple residence and/or ancillary amenities or installations that is wholly privately owned in any of the following circumstances except as provided for by section two hundred twenty-four-c of this article:
    - (i) where no less than twenty-five percent of the residential units are affordable and shall be retained subject to an anticipated regulatory agreement with a local, state, or federal governmental entity, or a not-

for-profit entity with an anticipated formal agreement with a local, state, or federal governmental entity for purposes of providing affordable housing in a given locality or region provided that the period of affordability for a residential unit deemed affordable under the provisions of this paragraph shall be for no less than fifteen years from the date of construction; or

(ii) where no less than thirty-five percent of the residential units involves the provision of supportive housing services for vulnerable populations provided that such units are subject to an anticipated regulatory agreement with a local, state, or federal governmental entity; or

(iii) any newly created programs for affordable or subsidized housing as determined by the public subsidy board established by section two hundred twenty-four-c of this article.

- d. Construction work performed on a manufactured home park as defined in paragraph three of subdivision a of section two hundred thirty-three of the real property law where the manufactured home park is subject to a regulatory agreement with a local, state, or federal governmental entity for no less than fifteen years;
- e. Construction work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization which has established itself as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project, or construction work performed under a labor peace agreement, project labor agreement, or any other construction work performed under an enforceable agreement between an owner or contractor and a bona fide building and construction trade labor organization;
- f. Construction work performed on projects funded by section sixteen-n of the urban development corporation act or the downtown revitalization initiative;
- g. Construction work and engineering and consulting services performed in connection with the installation of a renewable energy system, renew able heating or cooling system, or energy storage system, with a capacity equal to or under five megawatts alternating current;
- h. Construction work performed on supermarket retail space built or renovated with tax incentives provided under the food retail expansion to support health (FRESH) program through the New York city industrial development agency;
- i. Construction work performed for interior fit-outs and improvements under ten thousand square feet through small business incubation programs operated by the New York city economic development corporation;

- j. Construction work on space to be used as a school under sixty thousand square feet, pursuant to a lease from a private owner to the New York city department of education and the school construction authority; or
  - k. Construction work performed on projects that received tax benefits related to historic rehabilitation pursuant to subdivision twenty-six of section two hundred ten-B of the tax law, subsection (oo) or (pp) of section six hundred six of the tax law, or subdivision (y) of section fifteen hundred eleven of the tax law.
5. For purposes of this section, "public entity" shall include, but shall not be limited to, the state, a local development corporation as defined in subdivision eight of section eighteen hundred one of the public authorities law or section fourteen hundred eleven of the not-for-profit corporation law, a municipal corporation as defined in section one hundred nineteen-n of the general municipal law, an industrial development agency formed pursuant to article eighteen-A of the general municipal law or industrial development authorities formed pursuant to article eight of the public authorities law, and any state, local or interstate or international authorities as defined in section two of the public authorities law; and shall include any trust created by any such entities.
6. For purposes of this section, "construction" means work which shall be as defined by the public subsidy board to require payment of prevailing wage, and which may involve the employment of laborers, workers, or mechanics.
7. For purposes of this section and section two hundred twenty-four-b of this article, the "fiscal officer" shall be deemed to be the commissioner.
8. The enforcement of any construction work deemed to be a covered project pursuant to this section, and any additional requirements, shall be subject, in addition to this section, only to the requirements of sections two hundred twenty, two hundred twenty-four-b, two hundred twenty-four-c, and two hundred twenty-b of this article and within the jurisdiction of the fiscal officer; provided, however, nothing contained in this section shall be deemed to construe any covered project as otherwise being considered public work pursuant to this article; and further provided:
- a. The owner or developer of such covered project shall certify under penalty of perjury within five days of commencement of construction work whether the project at issue is subject to the provisions of this section through the use of a standard form developed by the fiscal officer.
  - b. The owners or developers of a property who are undertaking a project under private contract, may seek guidance from the public subsidy board contained in section two hundred twenty-four-c of this article, and such board may render an opinion as to whether or not the project is a covered project within the meaning of this article. Any such determination shall not be reviewable by the fiscal officer, nor shall it be reviewable by the department pursuant to section two hundred twenty of this article.

- c. The owner or developer of a covered project shall be responsible for retaining original payroll records in accordance with section two hundred twenty of this article for a period of six years from the conclusion of such work. All payroll records maintained by an owner or developer pursuant to this section shall be subject to inspection on request of the fiscal officer. Such owner or developer may authorize the prime contractor of the construction project to take responsibility for retaining and maintaining payroll records, but will be held jointly and severally liable for any violations of such contractor. All records obtained by the fiscal officer shall be subject to the Freedom of Information Law.
  - d. Each public entity providing any of the public funds listed in subdivision two of this section to an owner, developer, contractor or subcontractor of a project shall identify the nature and dollar value of such funds and whether any such funds are excluded under subdivision three of this section and shall so notify the recipient of such funds of such determination and of their obligations under paragraph a of this subdivision.
  - e. The fiscal officer may issue rules and regulations governing the provisions of this section. Violations of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b of this article.
9. Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and service-disabled veteran-owned businesses pursuant to article seventeen-B of the executive law. The department in consultation with the directors of the division of minority and women's business development and of the division of service-disabled veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises on covered projects achieve and maintain compliance with prevailing wage requirements. The department shall make such training and resources available online and shall afford minority and women-owned business enterprises and service-disabled veteran-owned business enterprises an opportunity to submit comments on such training.
- 10.
- a. The fiscal officer shall report to the governor, the temporary president of the senate, and the speaker of the assembly by July first, two thousand twenty-two, and annually thereafter, on the participation of minority and women-owned business enterprises in relation to covered projects and contracts for public work subject to the provisions of this 2 section and section two hundred twenty of this article respectively as 3 well as the diversity practices of contractors and subcontractors employing laborers, workers, and mechanics on such projects.
  - b. Such reports shall include aggregated data on the utilization and participation of minority and women-owned business enterprises, the employment of

minorities and women in construction-related jobs on such projects, and the commitment of contractors and subcontractors on such projects to adopting practices and policies that promote diversity within the workforce. The reports shall also examine the compliance of contractors and subcontractors with other equal employment opportunity requirements and anti-discrimination laws, in addition to any other employment practices deemed pertinent by the commissioner.

- c. The fiscal officer may require any owner or developer to disclose information on the participation of minority and women-owned business enterprises and the diversity practices of contractors and subcontractors involved in the performance of any covered project. It shall be the duty of the fiscal officer to consult and to share such information in order to effectuate the requirements of this section.

11. If construction work is not deemed to be a covered project, whether by virtue of an exclusion of such project under subdivision four of this section, or by virtue or not receiving sufficient public money to be deemed "paid for in whole or in part out of public funds", such project shall not be subject to the requirements of sections two hundred twenty and two hundred twenty-b of this article.

Section 2. The labor law is amended by adding a new section 224-b to read as follows:

§ 224-b. Stop-work orders.

Where a complaint is received pursuant to this article, or where the fiscal officer upon his or her own investigation, finds cause to believe that any person, in connection with the performance of any contract for public work pursuant to section two hundred twenty of this article or any covered project pursuant to section two hundred twenty-four-a of this article, has substantially and materially failed to comply with or intentionally evaded the provisions of this article, the fiscal officer may notify such person in writing of his or her intention to issue a stop-work order. Such notice shall (i) be served in a manner consistent with section three hundred eight of the civil practice law and rules; (ii) notify such person of his or her right to a hearing; and (iii) state the factual basis upon which the fiscal officer has based his or her decision to issue a stop-work order. Any documents, reports, or information that form a basis for such decision shall be provided to such person within a reasonable time before the hearing. Such hearing shall be expeditiously conducted. Following the hearing, if the fiscal officer issues a stop-work order, it shall be served by regular mail, and a second copy may be served by telefacsimile or by electronic mail, with service effective upon receipt of any such order. Such stop-work order shall also be served with regard to a worksite by posting a copy of such order in a conspicuous location at the worksite. The order shall remain in effect until the fiscal officer directs that the stop-work order be removed, upon a final determination on the complaint or where such failure to comply or evade has been deemed corrected. If the person against whom such order is issued shall within thirty days after issuance of the stop-work order makes an application in affidavit form for a redetermination review of such order the fiscal officer shall make a decision in writing on the issues raised in such application. The fiscal officer may direct a conditional release from a stop-work order upon a finding that such person has taken meaningful and good faith steps to comply with the provisions of this article.

Section 3. The labor law is amended by adding a new section 224-c to read as follows:

§ 224-c. Public subsidy board.

1. A board on public subsidies, hereinafter "the board", is hereby created, to consist of thirteen members. The thirteen members shall be appointed by the governor as follows: one member upon the recommendation of the temporary president of the senate, one member upon the recommendation of the speaker of the assembly, the commissioner, the president of the empire state development corporation, the director of the division of the budget, two members representing employees in the construction industry, of whom one shall be a representative of the largest statewide trade labor association representing building and construction workers, and one shall be a representative of the largest trade labor association representing building and construction workers with membership in New York City, and two members representing employers in the construction industry, of whom one shall be a representative of the largest statewide organization representing building owners and developers, either for-profit or not-for-profit, and one shall be a representative of a statewide organization representing building owners and developers, either for-profit or not-for-profit, representing a region different than the region primarily represented by the initial employer representative. The commissioner shall act as the chair. The members shall serve at the pleasure of the authority recommending, designating, or otherwise appointing such member and shall serve without salary or compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

2. The board shall meet on an as needed basis and shall have the power to conduct public hearings. The board may also consult with employers and employees, and their respective representatives, in the construction industry and with such other persons, including the commissioner, as it shall determine. No public officer or employee appointed to the board shall forfeit any position or office by virtue of appointment to such board. Any proceedings of the board which relate to a particular individual or project shall be confidential.

3. The board may examine and make recommendations regarding the following:

(a) the minimum threshold percentage of public funds set forth in subdivision one of section two hundred twenty-four-a of this article, but no lower than that which is set forth in such subdivision;

(b) the minimum dollar threshold of projects set forth in subdivision one of section two hundred twenty-four-a of this article, but no lower than that which is set forth in such subdivision;

(c) Construction work excluded as a covered project, as set forth in subparagraphs (i), (ii) and (iii) of paragraph c of subdivision four of section two hundred twenty-four-a of this article;

(d) the definition of construction for purposes of section two hundred twenty-four-a of this article; or

(e) particular instances of benefits, monies or credits as to whether or not they should constitute public funds.

4. Prior to making any recommendation intended to apply to all projects, the board shall hold a public hearing. The board shall announce each public hearing at least fifteen days in advance. The announcement shall contain an agenda of the topics the board will discuss. At each hearing, the board may hear testimony and/or review written documents from any interested stakeholders related to the planned agenda of the meeting. The board shall make any such recommendations in writing. In making its recommendations, the board shall examine the impact of such thresholds and circumstances on private development in light of available public subsidies, existing labor market conditions, prevailing wage and supplement practices, and shall consider the extent to which adjustments to such thresholds and circumstances could ameliorate adverse impacts, if any, or expand opportunities for prevailing wage and supplement standards on publicly subsidized private construction projects in any region or regions of the state.

5. The board shall be empowered to issue binding determinations to any public entity, or any private or not-for-profit owner or developer as to any particular matter related to an existing or potential covered project. In such instances the board shall make a determination based upon documents, or testimony, or both in its sole discretion. Any such proceedings shall be confidential, except that publication of such decisions shall be made available on the department's website, subject to redaction or confidentiality as the board shall deem warranted in accordance with any applicable federal or state statutory or regulatory requirement governing confidentiality and personal privacy.

6. Any recommendation rendered by the board pursuant to this section shall be subject to the provisions of article seventy-eight of the civil practice law and rules.

7. In the event that the board finds that there is or likely would be a significant negative economic impact of implementing the prevailing wage requirements provided for in section two hundred twenty-four-a of this article, the board may temporarily delay the implementation of such requirements beyond January first, two thousand twenty-two. Such a delay may be effective statewide or effective only in a region of the state as defined by the regional economic development councils. In making such a determination to delay, the board shall consult the department, the department's division of research and statistics, the United States department of labor, the federal reserve bank of New York and other economic experts. The board will reference well-established economic indexes and accepted economic factors tied to the construction industry, including but not limited to construction industry employment, wages, and overall construction activity.

Section 4. The labor law is amended by adding a new section 813-a to read as follows:

§ 813-a. Annual reports by apprenticeship programs.

1. On an annual basis, all apprenticeship programs covered under the provisions of this article shall report to the department on the participation of apprentices currently enrolled in such apprenticeship program. The data to be included in such report shall include, at a minimum: (a) the total number of apprentices in such apprenticeship program; (b) the demographic information of such apprentices to the extent such data is available, including, but not limited to, the age, gender, race, ethnicity, and national origin of such apprentices; (c) the rate of advancement and graduation of such apprentices; and (d) the rate of placement of such

apprentices onto job sites as well as the demographic information of such apprentices to the extent such data is available, including, but not limited to the age, gender, race, ethnicity, and national origin of such apprentices.

2. The department shall make such data publicly available on its website by July first, two thousand twenty-two and on an annual basis, but no later than December thirty-first of each following year.
3. The commissioner may promulgate rules and regulations necessary for the implementation of this section.

#### Section 5. Severability clause.

If any clause, sentence, paragraph, subdivision, or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

#### Section 6.

This act shall take effect on January 1, 2022 and shall apply to contracts for construction executed, incentive agreements executed, procurements or solicitations issued, or applications for building permits on or after such date; provided however that section three of this act shall take effect on April 1, 2021, and provided further that this act shall not pre-exempt any existing contracts, nor apply to any appropriations of public funds made prior to the day on which this act shall have become a law, or to re-appropriations of such funds first appropriated prior to the day on which this act shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.



## **Additional Representations, Certification and Indemnification**

### **Additional Representations, Certifications and Indemnification**

- A. Job Listings: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the “DOL”) and with the administrative entity (collectively with the DOL, the “JTPA Entities”) of the service delivery area created by the federal job training partnership act (Public Law 97-300) (“JTPA”) in which the Project is located.
- B. First Consideration for Employment: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the Applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.
- C. Annual Sales Tax Filings: In accordance with Section 874(8) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant. Copies of all filings shall be provided to the Agency.
- D. Employment Reports: The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, at least annually or as otherwise required by the Agency, reports regarding the number of people employed at the project site, salary levels, contractor utilization and such other information (collectively, “Employment Reports”) that may be required from time to time on such appropriate forms as designated by the Agency. Failure to provide Employment Reports within 30 days of an Agency request shall be an Event of Default under the PILOT Agreement between the Agency and Applicant and, if applicable, an Event of Default under the Agent Agreement between the Agency and applicant. In addition, a Notice of Failure to provide the Agency with an Employment Report may be reported to Agency board members, said report being an agenda item subject to the Open Meetings Law.
- E. The Applicant acknowledges that certain environmental representations will be required at closing. The Applicant shall provide with this Representation, Certification and Indemnification Form copies of any known environmental reports, including any existing Phase I Environmental Site Assessment Report(s) and/or Phase II Environmental Investigations. The Agency may require the Company and/or owner of the premises to

prepare and submit an environmental assessment and audit report, including but not necessarily limited to, a Phase I Environmental Site Assessment Report and a Phase II Environmental Investigation, with respect to the Premises at the sole cost and expense of the owner and/or the Applicant. All environmental assessment and audit reports shall be completed in accordance with ASTM Standard Practice E1527-05, and shall be conformed over to the Agency so that the Agency is authorized to use and rely on the reports. The Agency, however, does not adopt, ratify, confirm or assume any representation made within reports required herein.

- F. The Applicant and/or the owner, and their successors and assigns, hereby release, defend and indemnify the Agency from any and all suits, causes of action, litigations, damages, losses, liabilities, obligations, penalties, claims, demands, judgments, costs, disbursements, fees or expenses of any kind or nature whatsoever (including, without limitation, attorneys', consultants' and experts' fees) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency, resulting from or arising out of any inquiries and/or environmental assessments, investigations and audits performed on behalf of the Applicant and/or the owner pursuant hereto, including the scope, level of detail, contents or accuracy of any environmental assessment, audit, inspection or investigation report completed hereunder and/or the selection of the environmental consultant, engineer or other qualified person to perform such assessments, investigations, and audits.
- G. Hold Harmless Provision: The Applicant acknowledges and agrees that the Applicant shall be and is responsible for all costs of the Agency incurred in connection with any actions required to be taken by the Agency in furtherance of the Application including the Agency's costs of general counsel and/or the Agency's bond/transaction counsel whether or not the Application, the proposed Project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend, and hold the Agency harmless from and against any and all liability arising from or expense incurred by: (i) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed Project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency; (ii) the Agency's acquisition, construction and/or installation of the proposed Project described herein; and (iii) any further action taken by the Agency with respect to the proposed Project including, without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law and the policies of the Agency that any New York State and local sales and use tax exemption claimed by the Applicant and approved by the Agency, any mortgage recording tax exemption claimed by the Applicant and approved by the Agency, and/or any real property tax abatement claimed by the Applicant and approved by the Agency, in connection with the Project, may be subject to recapture and/or termination by the Agency under such terms and conditions as will be established by the Agency and set forth in transaction documents to be entered into by and between the Agency and the Applicant. The Applicant further represents and

warrants that the information contained in this Application, including without limitation information regarding the amount of the New York State and local sales and use tax exemption benefit, the amount of the mortgage recording tax exemption benefit, and the amount of the real property tax abatement, if and as applicable, to the best of the Applicant's knowledge, is true, accurate and complete.

- H. This obligation includes an obligation to submit an Agency Fee Payment to the Agency in accordance with the Agency Fee policy and schedule effective as of the date of the Applicant's Application.
- I. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated: (i) All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel and/or the Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's general counsel and the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project, with all such charges to be paid by the Applicant at the closing.
- J. If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, or if the Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback or lease/leaseback transaction, then, upon the presentation of an invoice, Applicant shall pay to the Agency, its agents, or assigns all actual costs incurred by the Agency in furtherance of the Application, up to that date and time, including but not necessarily limited to, fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.
- K. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections H and I are obligations that are not dependent on final documentation of the transaction contemplated by this Application.
- L. The cost incurred by the Agency and paid by the Applicant, the Agency's general counsel and/or bond/transaction counsel fees and the processing fees, may be considered as a cost of the Project and included in the financing of costs of the proposed Project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.
- M. The Applicant acknowledges that the Agency is subject to New York State's Freedom of Information Law (FOIL). Applicant understands that all Project information and records related to this application are potentially subject to disclosure under FOIL subject to limited statutory exclusions.

- N. The Applicant acknowledges that it has been provided with a copy of the Agency's Policy for Termination of Agency Benefits and Recapture of Agency Benefits Previously Granted (the "Termination and Recapture Policy"). The Applicant covenants and agrees that it fully understands that the Termination and Recapture Policy is applicable to the Project that is the subject of this Application, and that the Agency will implement the Termination and Recapture Policy if and when it is so required to do so. The Applicant further covenants and agrees that its Project is potentially subject to termination of Agency financial assistance and/or recapture of Agency financial assistance so provided and/or previously granted.
- O. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if Financial Assistance is provided for the proposed Project: § 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.
- P. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the proposed Project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.
- Q. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.
- R. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.
- S. The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations and covenants made in this Application when acting hereon and hereby represents that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.