
LOAN AGREEMENT

by and between

**BUFFALO AND ERIE COUNTY INDUSTRIAL
LAND DEVELOPMENT CORPORATION**

and

THE CANISIUS COLLEGE OF BUFFALO, NEW YORK

Dated as of December 1, 2010

relating to

**\$16,000,000
BUFFALO AND ERIE COUNTY INDUSTRIAL LAND
DEVELOPMENT CORPORATION
TAX-EXEMPT REVENUE BONDS
(THE CANISIUS COLLEGE OF BUFFALO, NEW YORK PROJECT),
SERIES 2010**

Table of Contents

	Page
Article I. Definitions.....	1
Section 1.01 Definitions of Terms.....	1
Article II. Representations and Warranties.....	8
Section 2.01 Representations and Warranties by the Issuer.....	8
Section 2.02 Representations and Warranties by the Institution.....	8
Article III. The Loan.....	10
Section 3.01 Loan of Bond Proceeds.....	10
Section 3.02 Institution's Financial Obligations.....	10
Section 3.03 Disbursements from Project Fund.....	10
Section 3.04 Compliance with Governmental Requirements.....	11
Article IV. Payments Under Loan Agreement.....	12
Section 4.01 Payments Under the Agreement.....	12
Section 4.02 Purchase Payments.....	13
Section 4.03 No Set-Off.....	13
Section 4.04 Prepayments.....	13
Section 4.05 Other Payments by Institution.....	13
Section 4.06 Assignment of Agreement.....	13
Section 4.07 Excess Funds.....	14
Section 4.08 Letter of Credit.....	14
Section 4.09 Institution Obligations Unconditional.....	14
Article V. Additional Indebtedness.....	15
Section 5.01 Limitations on Incurrence of Additional Indebtedness.....	15
Section 5.02 Additional Provisions Concerning Calculation of Debt Service.....	16
Section 5.03 Restrictions on Guaranties.....	16
Article VI. The Project.....	17
Section 6.01 Construction Contracts.....	17
Section 6.02 Completion of the Project.....	17
Section 6.03 Institution's Obligation to Pay Excess Costs.....	18
Section 6.04 Changes in the Project.....	18
Article VII. Further Agreements.....	18
Section 7.01 Reserved.....	18
Section 7.02 Debt Service Coverage Ratio.....	18
Section 7.03 Sale, Lease or other Disposition of Property.....	19
Section 7.04 Corporate Existence.....	20
Section 7.05 Reserved.....	22
Section 7.06 Tax-Exempt Status of Bonds and Institution.....	22
Section 7.07 Compliance With Laws.....	22
Section 7.08 Taxes, Charges and Assessments.....	22
Section 7.09 Permitted Contests.....	23
Section 7.10 Repairs, Maintenance and Alterations.....	23
Section 7.11 Right of Issuer or Trustee to Perform Institution's Covenants; Advances.....	24

Section 7.12	Investments.	24
Section 7.13	Insurance.	24
Section 7.14	Insurance Proceeds and Condemnation Awards.	26
Section 7.15	Institution to Perform Certain Covenants Under Indenture.	27
Section 7.16	No Personal Recourse Against Issuer; Indemnification.....	27
Section 7.17	Financial Statements.	31
Section 7.18	Restrictions on Religious Use.	32
Section 7.19	Arbitrage Rebate.	32
Section 7.20	Bonds Not to Become Arbitrage Bonds.....	33
Section 7.21	ERISA.	33
Article VIII.	Events of Default and Remedies	33
Section 8.01	Events of Default.....	33
Section 8.02	Notice of Defaults; Opportunity to Cure Such Defaults.	34
Section 8.03	Remedies.....	34
Section 8.04	No Remedy Exclusive.....	34
Section 8.05	No Additional Waiver Implied by One Waiver.	34
Article IX.	Miscellaneous.....	35
Section 9.01	Notices.	35
Section 9.02	Severability.	36
Section 9.03	Redemption of Bonds.....	36
Section 9.04	Counterparts.....	36
Section 9.05	Benefit of Agreement.....	36
Section 9.06	Electronic Communications.	36
Section 9.07	Termination.....	37
Section 9.08	Governing Law.....	37
Section 9.09	Entire Agreement.	37
Section 9.10	Amendments.	37
Exhibit A	Nondiscrimination Clause	
Exhibit B	Form of Disbursement Request	

LOAN AGREEMENT

This Loan Agreement (this "*Agreement*") dated as of December 1, 2010, by and between the **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit corporation constituting a local development corporation duly incorporated and existing under the laws of the State of New York (the "*Issuer*"), and **THE CANISIUS COLLEGE OF BUFFALO, NEW YORK** an education corporation organized and existing under a charter approved by the Board of Regents of the University of the State of New York (the "*Institution*").

WITNESSETH:

WHEREAS, at the request of the Institution, the Issuer has determined to issue up to \$16,000,000 in aggregate principal amount of its Tax-Exempt Revenue Bonds (The Canisius College of Buffalo, New York Project), Series 2010 (the "*Bonds*") pursuant to a Trust Indenture dated as of December 1, 2010 (the "*Indenture*") between the Issuer and Manufacturers and Traders Trust Company, as trustee (the "*Trustee*") and to lend the proceeds of the Bonds to the Institution for the purpose of: (i) the demolition, construction and/or renovation, expansion, upgrading and equipping of the existing improvements on two parcels of real property owned by the Institution and located at 1901 Main Street and 48 E. Delavan Avenue in the City of Buffalo, County of Erie (collectively, the "*Land*") related to a parking ramp and a +/- 128,000 square foot Science Hall building including classrooms, labs, offices and support spaces for use as an interdisciplinary science center (collectively, the "*Facility*"); (ii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings (the "*Equipment*" and collectively with the Land and the Facility, the "*Project*"); and (iii) paying the costs associated with the issuance of the Bonds; and

WHEREAS, the loan will be made to and repaid by the Institution under the terms of this Agreement, which, except for the Issuer's Unassigned Rights, will be assigned by the Issuer to the Trustee to secure the Bonds; and

NOW, THEREFORE, in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

Article I. Definitions

Section 1.01 Definitions of Terms.

Unless otherwise defined herein, all words and terms used herein and defined in the recitals hereto or in Article I of the Indenture shall have the meanings set forth therein. All references herein to the "Project Fund" the "Bond Fund" and the "Rebate Fund" shall mean the Funds so designated which are established pursuant to Article V of the Indenture. In addition, the following terms shall have the following meanings unless the context otherwise requires:

"*Accounts Receivable*" means any and all right to payment for services rendered or for goods sold or leased which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

“Additional Indebtedness” means any Indebtedness incurred by the Institution subsequent to the issuance of the Bonds.

“Annual Debt Service” means the Debt Service Requirement for the Fiscal Year in question.

“Architect” means an architect, engineer or construction manager or firm thereof or other Person who is Independent and qualified to pass on questions relating to the design and construction of the Project, has a favorable reputation for skill and experience in performing similar services in respect of facilities of a comparable size and nature, and who has been appointed as such by the Institution.

“Balloon Indebtedness” means (i) Long-Term Indebtedness, or Short-Term Indebtedness which is intended to be refinanced upon or prior to its maturity (and which Short-Term Indebtedness is subject to a commercially reasonable binding commitment for such refinancing) so that such Short-Term Indebtedness will be outstanding, in the aggregate, for more than one year as certified in an Institution Certificate, twenty-five percent or more of the initial principal amount of which matures (or is payable at the option of the holder) during any twelve month period, if such twenty-five percent or more is not to be amortized to below twenty-five percent by mandatory redemption prior to the beginning of such twelve month period, or (ii) any balloon maturity or maturity payable prior to maturity at the option of the holder, constituting a portion of an issue of Long-Term Indebtedness which portion, if treated as a separate issue of Indebtedness, would meet the test set forth in clause (i) of this definition and which portion of Indebtedness is designated as Balloon Indebtedness in an Institution Certificate stating that such portion shall be deemed to constitute a separate issue of Balloon Indebtedness.

“Bond Index” means the index or interest rate as may be submitted in writing to the Trustee by a firm of investment bankers or a financial advisory firm selected by the Institution, as the index or interest rate reasonably reflecting the terms and provisions of the Indebtedness in question.

“Bondholder,” “holder” or *“owner”* shall mean, when used with respect to Bonds, the Person in whose name any Bond is registered in the registration books kept pursuant to Article II of the Indenture.

“Capital Additions” shall mean any and all additions, improvements or extraordinary repairs to or replacements of all or any part of the Property, Plant and Equipment of the Institution, the cost of which is properly chargeable to a plant or property account under generally accepted accounting principles.

“Capital Campaign Pledges” shall mean the written pledges to the Institution to pay Project Costs or to pay debt service incurred for the Project.

“Capitalized Interest” means that portion of the proceeds of any Indebtedness or any other funds (other than the Bond Fund) that are held in trust and are restricted to be used to pay interest due or to become due on Indebtedness, including funds held in connection with an advance refunding or a cross-over refunding.

“*Certificate*” shall mean a certificate or report, in form and substance satisfactory to the Trustee, executed: (a) in the case of an Issuer Certificate, by an Issuer Representative; (b) in the case of a Institution Certificate, by a Institution Representative; and (c) in the case of a Certificate of any other Person, by such Person, if an individual, and otherwise by an officer, partner or other authorized representative of such Person.

“*Completion Indebtedness*” means any Indebtedness incurred by the Institution for the purpose of financing the completion of the constructing or equipping of the Project, to the extent necessary to provide a completed and equipped facility of the type and scope contemplated at the time of the initial financing of the Project.

“*Consultant*” means an Independent, nationally or regionally recognized consulting firm which is appointed by the Institution for the purpose of passing on questions relating to its financial affairs, management or operations, and has a favorable reputation for skill and experience in performing similar services in respect of entities of a comparable size and nature.

“*Debt Service Coverage Ratio*” means, for any Fiscal Year, the ratio of Income Available for Debt Service for such Fiscal Year to Annual Debt Service.

“*Debt Service Requirement*” means, for any period of time, the aggregate of the scheduled payments to be made (other than from amounts irrevocably deposited with the Trustee or otherwise held for the benefit of a lender for purposes of such payments, including funds held in connection with an advance refunding or a cross-over refunding) in respect of principal of and interest on Long-Term Indebtedness of the Institution during such period, also taking into account (i) with respect to Balloon Indebtedness, the provisions hereof pertaining to debt service on Balloon Indebtedness, (ii) with respect to Variable Rate Indebtedness, the provisions hereof pertaining to debt service on Variable Rate Indebtedness, (iii) with respect to Capitalized Interest, the provisions hereof pertaining to credit for Capitalized Interest, and (iv) with respect to Indebtedness represented by a Guaranty of obligations of a Person, the provisions hereof pertaining to restrictions on Guaranties.

“*Event of Default*” means any of the events described as an event of default in Section 8.01 hereof.

“*Fiscal Year*” means the annual accounting year of the Institution, which currently begins on June 1 in each calendar year.

“*Guaranty*” means all obligations of the Institution directly guaranteeing any obligation of any other Person which would, if such other Person were the Institution, constitute Indebtedness, unless the obligation of such other Person is other than for the payment of a sum certain. Nothing in this definition or otherwise shall be construed to count a Guaranty more than once.

“*Historic Test Period*” means, at any particular time, the most recent Fiscal Year of the Institution.

“Income Available for Debt Service” means, for the period of determination, the sum, as included in the Institution’s audited financial statements, of (i) unrestricted revenues, gains and other support, less unrestricted expenses, exclusive of unrealized and realized gains and losses on investments, (ii) all interest expense of the Institution for such period with respect to Long-Term Indebtedness, (iii) all depreciation expense for such period, and (iv) all other funds of the Institution which are legally available to be used for the payment of debt service; provided that no determination of Income Available for Debt Service shall take into account any disposition of capital assets not in the ordinary course of business to the extent otherwise included in the foregoing calculations of revenue and expenses, any other gains or losses resulting from changes in accounting principles not involving the receipt or expenditure of cash, or any other non-operating, non-cash expenses.

“Indebtedness” means all obligations for payment of principal and interest with respect to money borrowed, incurred or assumed by the Institution, and all purchase money mortgages, financing or capital leases, installment purchase contracts, or other similar instruments in the nature of a borrowing by which the Institution will be unconditionally obligated to pay. Nothing in this definition or otherwise shall be construed to count Indebtedness more than once, and Indebtedness incurred pursuant to Section 5.01(g) shall be counted only to the extent the reimbursement obligation on amounts drawn or, in the reasonable judgment of the Institution, likely to be drawn on the Letter of Credit exceeds the obligation on the Indebtedness for which liquidity or credit support is provided.

“Independent” shall mean (a) in the case of an individual, one who is not a member of the governing body of the Issuer or the Institution or an officer or employee of the Issuer or the Institution, and (b) in the case of a partnership, corporation or association, one which does not have a partner, director, officer, member or substantial stockholder who is a member of the governing body of the Issuer or the Institution or an officer or employee of the Issuer or the Institution; provided, however, that the fact that a Person is retained regularly by or transacts business with the Issuer or the Institution shall not make such Person an employee within the meaning of this definition.

“Independent Public Accountant” means any Independent accounting firm which is appointed by the Institution for the purpose of examining and reporting on or passing on questions relating to its financial statements, has all certifications necessary for the performance of such services, and has a favorable reputation for skill and experience in performing similar services in respect of entities of a comparable size and nature.

“Institution Representative” means an Authorized Representative of the Institution.

“Insurance Consultant” means an Independent firm of insurance agents, brokers or consultants which is appointed by the Institution for the purpose of reviewing and recommending insurance coverages for the facilities and operations of the Institution, and has a favorable reputation for skill and experience in performing such services in respect of facilities and operations of a comparable size and nature.

“Issuer Representative” means an Authorized Representative of the Issuer.

“*Lien*” means any mortgage, pledge, security interest, lien, judgment lien, easement, or other encumbrance on title, including, but not limited to, any mortgage or pledge of, security interest in or lien or encumbrance on any Property of the Institution which secures any Indebtedness or any other obligation of the Institution, or which secures any obligation of any Person other than an obligation to the Institution, excluding liens applicable to Property in which the Institution has only a leasehold interest unless the lien secures Indebtedness of the Institution or an obligation of any Person other than an obligation to the Institution.

“*Long-Term Indebtedness*” means all Indebtedness, other than Short-Term Indebtedness, including the following:

(a) Indebtedness with respect to money borrowed for an original term, or renewable at the option of the borrower for a period from the date originally incurred, longer than one year;

(b) Indebtedness with respect to leases which are capitalized in accordance with generally accepted accounting principles having an original term, or renewable at the option of the lessee for a period from the date originally incurred, longer than one year; and

(c) Indebtedness with respect to installment purchase contracts having an original term in excess of one year.

“*Non-Recourse Indebtedness*” means any Indebtedness secured by a Lien on any real property, fixtures or tangible property or the rents, issues and profits therefrom, which Indebtedness is not a general obligation of the Institution, and the liability for which Indebtedness is effectively limited to the property subject to such Lien with no recourse, directly or indirectly, to any other property of the Institution.

“*Other Assets*” means all Property of the Institution other than Property, Plant and Equipment.

“*Outstanding*” shall mean with respect to Indebtedness (other than the Bonds), all such Indebtedness incurred as of the time in question except (i) Indebtedness theretofore cancelled or required to be cancelled in accordance with the applicable financing documents, (ii) Indebtedness for the payment or redemption of which provision has been made in accordance with the applicable financing documents if, upon the making of such provision, all material payment obligations, covenants and agreements of the Institution under the applicable financing documents shall cease to be binding upon the Institution and all Liens securing the Indebtedness (other than Liens upon moneys and securities deposited in escrow to provide for the payment or redemption of the Indebtedness) shall be discharged, and (iii) Indebtedness evidenced by any bond, note or other similar instrument in substitution for which a replacement bond, note or other instrument has been issued in accordance with the applicable financing documents.

“*Project Costs*” shall mean costs incurred by or on behalf of the Issuer or the Institution, whether before or after issuance of the Bonds, and reimbursed or paid as permitted in the Tax Compliance Agreement, with respect to the acquisition, construction and installation of the Project, including but not limited to, the following items:

- 1) Obligations incurred or assumed for labor, materials and equipment (including obligations payable to the Institution for expenditures made or costs incurred by the Institution);
- 2) Costs of any bonds and insurance deemed necessary or appropriate by the Institution;
- 3) Costs of engineering and other services, including the costs incurred or assumed for preliminary design and development, surveys, estimates and plans and specifications, and for supervising construction and performing all other duties required by or consequent upon proper construction;
- 4) Costs which the Institution shall be required to pay under the terms of any contract or contracts in connection with the construction, acquisition and installation of the Project;
- 5) Amounts which are required to be paid for taxes, assessments and other similar charges payable during the period of construction;
- 6) Expenses incurred in seeking to enforce any remedy against any contractor, subcontractors or other provider of labor, materials, equipment or services, in respect of any default, breach or dispute relating to the Project;
- 7) Sums required to reimburse the Institution for advances made for any of the above items, and for other costs incurred for work done or caused to be done by the Institution which are properly chargeable to the Project;
- 8) Interest on the Bonds actually paid during or attributable to the period of construction of the Project;
- 9) All costs of issuance.

“Project Gifts” shall mean the Capital Campaign Pledges and the proceeds of the Capital Campaign Pledges.

“Property” shall mean any and all rights, titles and interests in and to any and all property whether real or personal, tangible or intangible and wherever situated.

“Property, Plant and Equipment” shall mean all Property of the Institution which is plant, property and equipment under generally accepted accounting principles.

“Redemption Price” means the principal amount of any Bond to be redeemed pursuant to the Indenture, plus the applicable premium, if any, payable upon redemption.

“Short-Term Indebtedness” means all Indebtedness, other than Long-Term Indebtedness, which meets one or more of the following criteria:

- (a) Indebtedness with respect to money borrowed payable on demand or for an original term, or renewable at the option of the borrower for a period from the date originally incurred, of one year or less;
- (b) Indebtedness with respect to leases which are capitalized in accordance with generally accepted accounting principles having an original term, or renewable at the option of the lessee for a period from the date originally incurred, of one year or less; and
- (c) Indebtedness with respect to installment purchase contracts having an original term of one year or less (other than contracts entered into in the ordinary course of business).

“*Subordinated Indebtedness*” means any Indebtedness incurred or assumed by the Institution, the payment of which is by its terms specifically subordinated to payments on the Bonds and any Additional Parity Indebtedness, or the principal of and interest on which would not be paid (whether by the terms of such obligation or agreement of the obligee) when the Bonds or Additional Parity Indebtedness are in default or while bankruptcy, insolvency, receivership or other similar proceedings are instituted and implemented by or against the Institution.

“*Total Operating Revenues*” means the gross operating revenues of the Institution less applicable deductions from operating revenues as determined in accordance with generally accepted accounting principles consistently applied.

“*Unassigned Rights*” means

- (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 Loan Agreement;
- (ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under this Loan Agreement;
- (iii) the right of the Issuer to enforce in its own behalf the obligation of the Institution to complete the Project;
- (iv) the right of the Issuer to enforce or otherwise exercise in its own behalf all agreements of the Institution with respect to ensuring that the Project shall always constitute a qualified “project” as contemplated by the Act;
- (v) the right of the Issuer to require any indemnity from any Person;
- (vi) the right of the Issuer in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, give or withhold consent, or approval, receive amounts payable under or otherwise exercise its rights under Sections 4.05, 4.06, 7.03, 7.04, 7.06, 7.07 and 7.16 hereof.

“*Value*” means when used in connection with Property, Plant and Equipment, Property, Other Assets or Accounts Receivable of the Institution the cost basis of such property, net of accumulated depreciation, as it is carried on the books of the Institution and in conformity with generally accepted accounting principles consistently applied.

“*Variable Rate Indebtedness*” means Indebtedness that bears interest at a variable, adjustable or floating rate.

All accounting terms not otherwise defined herein have the respective meanings assigned to them in accordance with generally accepted accounting principles consistently applied.

Article II. Representations and Warranties

Section 2.01 Representations and Warranties by the Issuer.

The Issuer represents that:

- (a) it is a not-for-profit corporation constituting a local development corporation duly incorporated and existing under the laws of the State, and has full power and authority to execute, deliver and perform its obligations under this Agreement, to enter into and carry out the transactions contemplated under this Agreement, the Bonds and the Indenture; and
- (b) the issuance and sale of the Bonds, the execution and delivery of this Agreement and the Indenture and the performance of all covenants and agreements of the Issuer contained in this Agreement and of all other acts and things required under the Constitution and laws of the State to make this Agreement a valid and binding obligation of the Issuer in accordance with its terms, are authorized by the Act and have been duly authorized by proceedings of the Issuer adopted or passed at meetings thereof duly called and held.

Section 2.02 Representations and Warranties by the Institution. The Institution represents that:

- (a) the Institution is an education corporation duly organized and validly existing under the laws of the State, and has full power and authority to execute, deliver and perform its obligations under this Agreement and the other Bond Documents to which it is a party (collectively, the “*Institution Documents*”), to enter into and carry out the transactions contemplated under the Institution Documents and to make the Institution Documents valid and binding obligations of the Institution in accordance with their terms.
- (b) neither the execution and delivery of this Agreement or the other Institution Documents, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement or the other Institution Documents, conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Institution is now a party or by which it is bound, or constitute a default under any of the foregoing (except to the extent such conflict, breach or default has been waived or consented to by the parties thereto), or result in the creation or imposition of any

prohibited lien, charge or encumbrance of any nature whatsoever upon any of the Property of the Institution under the terms of any instrument or agreement other than as contemplated by this Agreement or the Indenture.

- (c) it has the requisite power and authority to incur the indebtedness contemplated hereby and thereby;
- (d) (each of this Agreement and the other Institution Documents constitutes the valid and binding obligation of the Institution enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting or relating to the rights of creditors generally and general principles of equity;
- (e) the execution and delivery of, consummation of the transaction contemplated by and performance of the Institution's obligations under this Agreement and the other Institution Documents, do not violate, conflict with or constitute a default under the certificate of incorporation or by-laws of the Institution or any existing law, rule, regulation, judgment, order, writ, injunction or decree of any governmental authority, body, agency or other instrumentality or court having jurisdiction over the Institution or any of its properties;
- (f) it is an organization described in Section 501(c)(3) of the Code, or corresponding provisions of prior law, and is not a "private foundation," as such term is defined under Section 509(a) of the Code; (ii) it has received a letter or other notification from the Internal Revenue Service to that effect; (iii) such letter or other notification has not been modified, limited or revoked; (iv) it is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification; (v) the facts and circumstances which form the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist; and (vi) it is exempt from federal income taxes under Section 501(a) of the Code, except for payment of unrelated business income tax. The Institution agrees that (a) it shall not perform any act or enter into any agreement which shall adversely affect such federal income tax status and shall conduct its operations in the manner which will conform to the standards necessary to qualify the Institution as an educational organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law; and (b) it shall not perform any act, enter into any agreement or use or permit the Project to be used in a manner, or for any trade or business unrelated to the educational purposes of the Institution, which could adversely affect the exclusion of interest on the Tax-Exempt Bonds from federal gross income pursuant to Section 103 of the Code;
- (g) it is an organization organized and operated (A) exclusively for educational or charitable purposes, and (B) not for pecuniary profit; and (ii) no part of the net earnings of which inures to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. The Institution agrees that it shall not perform any act or enter into any agreement which shall adversely affect such status as set forth in this Section.

Article III.
The Loan

Section 3.01 Loan of Bond Proceeds. This Agreement is executed in connection with the issuance of the Bonds and execution and delivery of the Indenture by the Issuer. Except as otherwise expressly provided herein, nothing herein, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Issuer and the Institution, any right, remedy or claim, legal or equitable, hereunder or by reason hereof or of any provision hereof, this Agreement and all the provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Institution. The Issuer and the Institution agree that this Agreement is executed in part to induce the purchase by others of the Bonds. Accordingly, all covenants and agreements on the part of the Issuer and the Institution set forth in this Agreement are hereby declared to be for the benefit of the Trustee and the Owners from time to time of the Bonds. The Institution covenants and agrees that it will comply with the provisions of the Indenture with respect to the Institution and that the Trustee shall have the power, authority, rights and protections provided in the Indenture. The Institution further covenants to use its best efforts to cause there to be obtained for the Issuer any documents or opinions required of the Issuer under the Indenture.

Upon the issuance of the Bonds, the Issuer shall lend the proceeds thereof to the Institution for application toward the costs of the Project. The Issuer and the Institution hereby agree that the aforesaid loan of the Bond proceeds shall be made and applied by depositing the same with the Trustee from time to time in the manner and for the purposes set forth in Section 5.01 of the Indenture.

Section 3.02 Institution's Financial Obligations. The Institution hereby agrees that, from time to time, if moneys in the Project Fund are insufficient for the purpose of paying any remaining Project Costs, the Institution shall either pay such costs directly or shall make additional deposits into the Project Fund for the payment thereof.

Section 3.03 Disbursements from Project Fund.

- (a) Subject to the provisions below, disbursements from the Project Fund shall be made to reimburse or pay the Institution, or any Person designated by the Institution, for Project Costs. The Institution agrees that the sums so disbursed from the Project Fund will be used only for the payment of Project Costs, and will not be used for any other purpose. Delivery of a disbursement request shall constitute a representation by the Institution that it has complied with the provisions hereof and of the Indenture and the Tax Compliance Agreement.
- (b) During the Initial Libor Rate Period, the Institution shall deliver to the Purchaser for its approval, a disbursement request substantially in the form attached hereto as Exhibit B and shall be accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. Upon the consent of the Purchaser to the disbursement request, the Purchaser shall deposit funds to satisfy the amount requested into the Project Fund and the Trustee shall apply such amounts in accordance with the disbursement request. Disbursements made on the date the Bonds are issued and

reimbursement of prepaid Project Costs may be made by the Trustee upon delivery to the Trustee of a Closing Statement.

- (c) Prior to completion of the Project, any disbursements from the Project Fund for the payment of Project Costs shall be made by the Trustee only upon the written order of a Institution Representative delivered to the Trustee. Each such written order shall be substantially in the form of the disbursement request attached hereto as Exhibit B.
- (d) In case any contract provides for the retention by the Institution of a portion of the contract price, there shall be requisitioned by the Institution from the Project Fund only the net amount remaining after deduction of any such portion, and only when that retained amount is due and payable, may it be paid from the Project Fund.
- (e) Any moneys in the Project Fund (including the earnings from investments therein) remaining after the date of completion of the Project Facilities and payment, or provision for payment, in full of the Project Costs shall, at the written direction of a Institution Representative, be transferred to the Bond Fund and applied redemption of the Bonds.
- (f) If, prior to completion of construction of the Project, the Institution receives any Project Gifts therefor, the Institution shall, to the extent not inconsistent with the terms of such Project Gifts, either (i) to the extent necessary to complete the Project, apply such amount in a manner acceptable to the Issuer, or (ii) to the extent such moneys will exceed the amount necessary to complete the Project, pay such amount to the Trustee for deposit to the Bond Fund. If, after completion of the construction of the Project, the Institution receives any Project Gifts, the Institution shall deliver a like amount to the Trustee for deposit to the Bond Fund.
- (g) The Institution represents, warrants and covenants that it has expended or will expend on the Project, from sources other than the proceeds of the issuance of Bonds, an amount equal to the amount of Project Gifts received and reasonably expected to be received by it in the future from pledges or otherwise, and no such moneys will be pledged as collateral for the Bonds or is otherwise expected to be used to pay the principal of or interest on Bonds, except as otherwise provided in paragraph (f) above. For purposes of this paragraph, it is understood that all or any part of the Project may be named in honor of a donor or donors in recognition of pledges, contributions or services of the donor or donors that are unrelated to the Costs of such Project, and amounts pledged or contributed by the donor or donors for purposes unrelated to the Costs of such Project will not be considered to have been raised for purposes of constructing or equipping such Project.

Section 3.04 Compliance with Governmental Requirements.

The Contract Documents shall conform to all Governmental Requirements in effect on their respective dates of execution. The Institution shall comply with (i) all Governmental Requirements which, if not complied with, could adversely affect the Institution, its operation or financial condition or title to its properties in any material respect, and (ii) any requirement of an insurance company writing insurance thereon irrespective of the nature of the work required to be done. Anything contained in this Section to the contrary notwithstanding, the Institution shall have the right to contest the validity of any Governmental Requirement or

the application thereof at the Institution's sole cost and expense. During such contest, compliance with any such contested Governmental Requirement may be deferred by the Institution, provided that prior to commencing any action or proceeding, administrative or judicial, contesting such Governmental Requirement the Institution shall notify the Issuer and the Purchaser or the Bank of the Institution's intention to contest such Governmental Requirement and, if the Issuer, the Purchaser or the Bank reasonably requests, shall furnish to the Issuer and the Purchaser or the Bank a surety bond, moneys or other security, satisfactory to the Issuer and the Purchaser or the Bank, securing compliance with the contested Governmental Requirement and payment of all interest, penalties, fines, fees and expenses resulting from or in connection with such contest or the failure of the Institution to comply with the contested Governmental Requirement. Any such action or proceeding instituted by the Institution shall be commenced as soon as is reasonably possible after the assertion of the applicability to the Project or any part thereof of the contested Governmental Requirement by a governmental authority, and shall be prosecuted to final adjudication or other final disposition with reasonable dispatch. Notwithstanding the furnishing of any bond, deposit or other security, the Institution promptly shall comply with any such Governmental Requirement and compliance shall not be deferred if at any time the Project or any part thereof to which such contested Governmental Requirement relates would, in the reasonable judgment of the Issuer, the Purchaser, or the Bank, be in substantial danger by reason of the Institution's noncompliance with such Governmental Requirement of being sold, attached, forfeited, foreclosed, transferred, conveyed, assigned or otherwise subjected to any proceeding, equitable remedy, lien, charge, fee or penalty that would impair (i) the interests or security of the Issuer or the Trustee hereunder or under the Indenture, (ii) the ability of the Issuer to enforce its rights thereunder, (iii) the ability of the Issuer to fulfill the terms of any covenants or perform any of its obligations hereunder or under the Indenture, (iv) the ability of the Institution to fulfill the terms of any covenants or perform any of its obligations hereunder; or (v) the interests or security of the Purchaser under the Bond Purchase Agreement or its ability to enforce its rights thereunder.

Article IV.

Payments Under Loan Agreement

Section 4.01 Payments Under the Agreement. The Institution agrees to pay to the Trustee, as the assignee of the Issuer, the following sums at the following times:

- (a) an amount sufficient to provide funds to pay the principal or redemption price of, and interest on, the Bonds as and when due as specified above, and an amount sufficient to make the loan payments no later than 10:00 a.m. at least ten days before the corresponding dates for payment of the principal or redemption price of, and interest on, the Bonds, in the case of Bonds in a Term Mode, and at least one Business Day before such corresponding payment date, in the case of Bonds in the Weekly Mode or the Libor Mode.
- (b) At the times required under the Indenture, such additional amounts as are required to make up any deficiency which may occur in any of the funds established under the Indenture, including the Rebate Fund.

In lieu of the portion of the payments due under subsection (a) above, the Institution or, at its direction, the Trustee, may purchase for cancellation Bonds of the term next becoming due at maturity or upon mandatory redemption, subject to the applicable requirements set forth in Article III of the Indenture.

Amounts received upon a drawing by the Trustee under a Letter of Credit, if any, for the payment of debt service shall be credited against the Loan Payments otherwise payable by the Institution corresponding to such Debt Service; provided that the Bank has been fully reimbursed for such drawing by the Institution. The Institution shall also be entitled to credits against the loan payments as and to the extent provided in the Indenture.

Section 4.02 Purchase Payments. To the extent that moneys on deposit in the Remarketing Proceeds Purchase Account or, if a Letter of Credit is in effect, the Letter of Credit Purchase Account established under the Indenture are insufficient to pay the full purchase price of Bonds payable pursuant to Sections 4.01 and 4.02 of the Indenture on the applicable Purchase Date, the Institution shall also pay to the Trustee as purchase payments for deposit in the Institution Purchase Account established under the Indenture amounts sufficient to cover the shortfalls.

Section 4.03 No Set-Off. The obligation of the Institution to make the payments required by Section 4.01 and Section 4.02 hereof shall be absolute and unconditional. The Institution will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, which may now exist or may hereafter arise, including without limitation, any defense, set-off, recoupment or counterclaim which the Institution may have or assert against the Issuer, the Trustee, any Bondholder or any other Person.

Section 4.04 Prepayments. The Institution shall be permitted, at any time and from time to time, to prepay all or any part of the amounts payable under Section 4.01 hereof together with such other amounts as shall be sufficient to redeem all or a portion of the Bonds in accordance with the provisions of the Indenture.

Section 4.05 Other Payments by Institution. The Institution will pay the following additional amounts, when due:

- (a) upon submission of invoices therefor, all Administrative Expenses of the Issuer and all other expenses of the Issuer incurred in connection with the Bonds, the Bond Documents or this Agreement and all sums due with respect to the Unassigned Rights; and
- (b) upon submission of invoices therefor, all Administrative Expenses of the Trustee and the Remarketing Agent.

Section 4.06 Assignment of Agreement. The Issuer hereby notifies the Institution and the Institution acknowledges that all the Issuer's right, title and interest in this Agreement including the above payments (except for the Issuer's Unassigned Rights) granted hereunder shall be irrevocably pledged by the Issuer as security for the Bonds as provided in the Indenture, and in furtherance of said pledge the Issuer hereby unconditionally assigns all payments by the Institution hereunder (except payments derived from the Unassigned Rights) to the Trustee for deposit or application in accordance with this Agreement and the Indenture. The Issuer consents

to the payment by the Institution of, and directs the Institution to pay, all such amounts (except payments derived from Unassigned Rights) directly to the Trustee.

Section 4.07 Excess Funds. After all of the Bonds have been retired and all interest and applicable premiums, if any, due thereon have been paid or provision for such retirement and payment has been made in accordance with the Indenture and all Administrative Expenses have been paid, excess moneys in the Funds and Accounts established under the Indenture from whatever source derived will, subject to Article V of the Indenture, be paid to the Institution as an adjustment of the amounts payable hereunder. This paragraph shall survive the termination of this Agreement.

Section 4.08 Letter of Credit. The Institution may, at its election, cause a Letter of Credit to be issued to the Trustee at any time, which Letter of Credit shall authorize the Trustee to draw on the Bank, subject to the terms and conditions thereof, up to (a) an amount equal to the principal amount of the Bonds (i) to enable the Trustee to pay the principal amount of the Bonds when due at maturity or upon redemption or acceleration and (ii) to enable the Trustee to pay the portion of the purchase price of Bonds tendered to it for purchase and not remarketed corresponding to the principal amount of such Bonds, plus (b) (i) if the Bonds are in a Weekly Mode or a Libor Mode, an amount equal to 55 days interest on the Bonds at the Maximum Rate with respect to the Weekly Rate or the Libor Rate, and (ii) if the Bonds are in a Term Mode, an amount equal to 210 days interest at a rate not less than the applicable Term Rate based on a 360-day year (A) to enable the Trustee to pay interest on the Bonds when due and (B) to enable the Trustee to pay the portion of the purchase price of Bonds tendered to it for purchase and not remarketed corresponding to the accrued interest on such Bonds. Any such Letter of Credit may be extended, amended or replaced by an Alternate Letter of Credit complying with the provisions of Sections 2.05 and 5.09 of the Indenture.

Section 4.09 Institution Obligations Unconditional. The obligations of the Institution to make payments or cause the same to be made hereunder shall be absolute and unconditional and the amount, manner and time of making such payments shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening or non-happening of any event, irrespective of any defense or any right of set-off, recoupment or counterclaim which the Institution may otherwise have against the Issuer, the Trustee, or any Holder of Bonds for any cause whatsoever including, without limiting the generality of the foregoing, failure of the Institution to complete the Project or the completion thereof with defects, failure of the Institution to occupy or use the Project, any declaration or finding that the Bonds are or the Indenture is invalid or unenforceable or any other failure or default by the Issuer or the Trustee; *provided, however,* that nothing herein shall be construed to release the Issuer from the performance of any agreements on its part herein contained or any of its other duties or obligations, and in the event the Issuer shall fail to perform any such agreement, duty or obligation, the Institution may institute, subject to Sections 7.15 and 7.16 hereof, such action as it may deem necessary to compel performance or recover damages for non-performance. Notwithstanding the foregoing, the Issuer shall have no obligation to perform its obligations hereunder to cause advances to be made to reimburse the Institution for, or to pay, the Costs of the Project beyond the extent of moneys in the Project Fund established for such Project available therefor.

Article V.
Additional Indebtedness

Section 5.01 Limitations on Incurrence of Additional Indebtedness. The Institution agrees that it will not incur any Additional Indebtedness other than Additional Indebtedness consisting of one or more of the following:

- (a) Long-Term Indebtedness, including Additional Indebtedness and Guaranties, if:
 - (i) prior to incurrence of the Long-Term Indebtedness, there is delivered to the Trustee an Institution Certificate certifying that the Debt Service Coverage Ratio for the Historic Test Period, taking into account the current aggregate Outstanding principal amount of all Long-Term Indebtedness, and the proposed additional Long-Term Indebtedness, as if it had been incurred at the beginning of such Period, is not less than 1.0 (provided that such Certificate shall in all instances be based upon the most recent audited financial statements of the Institution);
 - (ii) prior to incurrence of the Long-Term Indebtedness, there is delivered to the Trustee (1) an Institution Certificate certifying that the ratio of Income Available for Debt Service to the maximum annual Debt Service Requirement for the Historic Test Period, not taking the proposed additional Long-Term Indebtedness into account, is not less than 1.10 and (2) an Institution Certificate (A) certifying that the projected ratio of Income Available for Debt Service to the maximum annual Debt Service Requirement for each of the next two full Fiscal Years following the incurrence of such Long-Term Indebtedness or, in the case of the incurrence of such Long-Term Indebtedness for capital improvements, following the completion of the facilities being financed, taking the proposed additional Long-Term Indebtedness into account, is not less than 1.10, and (B) indicating that sufficient revenues and cash flow would be generated to meet the projected operating expenses (including debt service on the proposed Indebtedness) of the Institution during such two full Fiscal Years.
- (b) Completion Indebtedness, without limitation, provided there is delivered to the Trustee an Institution Certificate (i) specifying the estimated cost of completing the construction or equipping of the facilities to be completed and (ii) demonstrating that the proceeds of such Completion Indebtedness and other available moneys will be sufficient to finance the cost of completion.
- (c) Long-Term Indebtedness incurred for the purpose of refunding or refinancing, including advance refunding or cross-over refunding, any Outstanding Long-Term Indebtedness.
- (d) Short-Term Indebtedness may be incurred provided the Company shall have a Debt Service Coverage Ratio of not less than 1.0.
- (e) Non-Recourse Indebtedness or Subordinated Indebtedness, without limitation; provided that there is filed with the Trustee an Institution Certificate projecting that the provisions of Section 7.02 hereof will be complied with for the then current and the next following Fiscal Year, taking into consideration projected revenues and the proposed Indebtedness.

- (f) Indebtedness in the form of installment purchase contracts, capitalized leases, purchase money mortgages, loans, sales agreements or other typical borrowing instruments; provided that it could have been incurred under Section 5.01(a) assuming it were Long-Term Indebtedness.
- (g) Any Indebtedness represented by a letter of credit reimbursement agreement or other similar reimbursement agreement entered into by the Institution and an institution providing a Letter of Credit with respect to any other Indebtedness incurred in accordance with any other provision of this Section 5.01.
- (h) Indebtedness incurred or deemed incurred by virtue of any recourse obligation associated with any sale or assignment of Accounts Receivable, but in no event in any amount in excess of the monetary consideration received from any sale or assignment.

Section 5.02 Additional Provisions Concerning Calculation of Debt Service.

- (a) Debt Service on Balloon Indebtedness. For purposes of the computation of the Debt Service Requirement or Annual Debt Service, whether historic or projected, Balloon Indebtedness shall, at the election of the Institution, be deemed to be Indebtedness which, at the later of the date of its original incurrence or the date of calculation, is payable over a 25 year term from such applicable date, with level annual debt service, at a rate of interest equal to that set forth in writing by a nationally recognized firm of investment bankers or a financial advisory firm selected by the Institution.
- (b) Debt Service on Variable Rate Indebtedness. For purposes of the computation of the projected (but not historic) Debt Service Requirement or Annual Debt Service at any time, Variable Rate Indebtedness shall be deemed Indebtedness which bears interest at a rate equal to that derived from the Bond Index.
- (c) Credit for Capitalized Interest. For purposes of the computation of the Debt Service Requirement or Annual Debt Service at any time, whether historic or projected, the Institution may, at its election, subtract from interest due on Indebtedness any Capitalized Interest which is or was available and is to be applied or was applied to make such interest payment in the year such interest comes or came due, at the time of such computation for the period in question, for the payment of such interest on such Indebtedness.

Section 5.03 Restrictions on Guaranties.

- (a) The Institution agrees that it will not enter into, or become liable after the date of this Agreement in respect of, any Guaranty unless such Guaranty could then be incurred as Indebtedness under this Agreement.
- (b) For purposes of any covenants or computations provided for herein, the aggregate annual principal and interest payments on, and the principal amount of, any indebtedness which is the subject of a Guaranty hereunder and which would, if such obligation were incurred by the Institution, constitute Long-Term Indebtedness, shall be deemed equivalent to twenty percent (20%) of the actual Annual Debt Service on, and principal amount of, such indebtedness, for so long as such Guaranty constitutes a contingent liability under

generally accepted accounting principles; provided, however, that if the primary obligor on such indebtedness can demonstrate a Debt Service Coverage Ratio equal to at least 1.0 for at least three full consecutive years, none of the actual Annual Debt Service on, and principal amount of, such indebtedness shall be included for so long as such Debt Service Coverage Ratio is maintained at 1.0 or higher; and, provided, further, that the Annual Debt Service on, and principal amount of, any Long-Term Indebtedness represented by a Guaranty shall be deemed equivalent to all of the actual Annual Debt Service on, and principal amount of, such indebtedness, for so long as payments have been and continue to be required to be made by the Institution on such Guaranty and for a period of twelve months thereafter.

Article VI. The Project

Section 6.01 Construction Contracts. In order to effectuate the purposes of this Agreement, the Institution will make, execute, acknowledge and deliver, or cause to be made, executed, acknowledged and delivered, all such contracts, orders, receipts, writings and instructions, in the name of the Institution or otherwise, with or to other Persons, and in general do or cause to be done all such other things, as may be requisite or proper, in the judgment of the Institution, for completing the Project and fulfilling the obligations of the Institution under this Agreement.

In the event of any material default of any contractor or subcontractor or supplier under any contract made by the Institution in connection with the Project, or in the event of a breach of warranty with respect to any materials, workmanship or performance guaranty, the Institution will notify the Issuer and the Trustee and, to the extent deemed appropriate by the Institution, will proceed, either separately or in conjunction with others, to pursue such remedies against any surety for the performance of such contract as are necessary or take such other reasonable actions to complete the Project. The Institution agrees to advise the Issuer and the Trustee of the steps it intends to take in connection with any such default.

Section 6.02 Completion of the Project. The Institution will proceed to complete the construction, installation and acquisition of the Project requiring construction, installation or acquisition with all reasonable dispatch and in conformity with plans and/or specifications prepared therefor.

The completion date of the Project shall be evidenced by delivery to the Issuer and the Trustee of a Certificate of the Institution stating that, except for any costs of the Project not then due and payable, or the liability for which the Institution is disputing or contesting, (i) the Project has been substantially completed and, where applicable, such completion is in accordance with the plans and specifications; (ii) the Project is satisfactory to the Institution and is suitable for use as an educational facility; and (iii) the Institution has obtained and is maintaining insurance complying with Section 7.13 hereof. Notwithstanding the foregoing, any such Certificate may state that it is given without prejudice to any rights against third parties which exist at the date of such Certificate or which may subsequently come into being.

The Institution will maintain such records in connection with the completion of the Project as will permit ready identification of the Project and of the amounts expended for the various parts thereof.

Section 6.03 Institution's Obligation to Pay Excess Costs. The Institution shall be obligated to complete the Project at its own expense regardless of the adequacy of the moneys allocated to the Institution in the applicable Project Fund or other moneys made available to the Institution by the Issuer. The Issuer does not make any warranty, either express or implied, that the amounts to be deposited pursuant to the Indenture in the Project Fund will be sufficient to complete payment of the Costs of the Project. The Institution agrees that if, after exhaustion of the moneys in the applicable Project Fund and any other moneys made available by the Issuer, the Institution should pay any portion of the costs of the Project, it shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the owners of any of the Bonds, nor shall it be entitled to any diminution in or postponement of the amounts payable under this Agreement.

Section 6.04 Changes in the Project. The Institution, with the prior written consent of the Issuer, which consent will not be unreasonably withheld, and the Purchaser, may amend the Project to decrease, increase or otherwise modify the scope or nature of the Project. Such consent of the Issuer and the Purchaser shall only be required for modifications to the Project which consist of modifications which in the aggregate, total \$100,000 or more. The Institution shall provide such moneys as in the reasonable judgment of the Purchaser may be required for the cost of completing the Project in excess of the moneys in the Project Fund established for such Project, whether such moneys are required as a result of an increase in the scope of the Project or otherwise. Such moneys shall be paid to the Trustee for deposit in the Project Fund within fifteen (15) days after receipt by the Institution of written notice from the Purchaser that such moneys are required.

Article VII. Further Agreements

Section 7.01 Reserved.

Section 7.02 Debt Service Coverage Ratio. The Institution shall maintain for each Fiscal Year a Debt Service Coverage Ratio of at least 1.00. If such ratio, as calculated at the end of any Fiscal Year, is below 1.00, the Institution covenants to retain a Consultant, within 60 days after the receipt of all audits for such Fiscal Year, to make recommendations to increase such ratio for subsequent Fiscal Years of the Institution at least to the level required or, if in the opinion of the Consultant the attainment of such level is impracticable, to the highest practicable level. The Institution shall notify the Trustee and the Trustee shall notify all Bondholders of the retention of any Consultant pursuant to this Section 7.02. The Institution agrees that it will, to the extent permitted by law, follow the recommendations of the Consultant. So long as the Institution shall retain a Consultant and shall follow such Consultant's recommendations to the extent permitted by law, this Section 7.02 shall be deemed to have been complied with even if such ratio for any subsequent Fiscal Year of the Institution is below 1.00, provided, however, that in no event shall the Debt Service Coverage Ratio for any Fiscal Year be less than 1.00.

Section 7.03 Sale, Lease or other Disposition of Property. The Institution agrees that it will not, in the aggregate in any Fiscal Year, sell, lease or otherwise dispose of Property, the Value of which would cause the aggregate Value of Property so transferred in such Fiscal Year to exceed 5% of the Property of the Institution as shown on the audited financial statements for the Historic Test Period, except for the following transfers, sales or leases of Property; provided that transfers, sales or leases pursuant to this Section 7.03 shall not be permitted without the prior written consent of the Trustee in any period during which an Event of Default has occurred and is continuing:

- (i) to any Person if, in the judgment of the Institution, such Property has, or within the next succeeding twenty-four (24) calendar months is reasonably expected to, become inadequate, obsolete, worn out, unsuitable, unprofitable, undesirable or unnecessary and the sale, lease, removal or other disposition thereof will not impair the structural soundness, efficiency or economic value of the remaining Property; or
- (ii) in the ordinary course of business; or
- (iii) if the Institution receives fair market value therefor and the proceeds of such disposition are applied to the purchase of additional capital assets or applied to the defeasance, discharge, redemption or retirement of Indebtedness or applied by the Institution for its general corporate purposes; or
- (iv) with respect to Property to any Person provided that either (A)(1) for the Historic Test Period prior to the sale, lease or other disposition, a Institution Certificate delivered to the Trustee shall demonstrate that the Debt Service Coverage Ratio was equal to at least 1.0 and (2) for the two full Fiscal Years immediately following such sale, lease or disposition, a Consultant's report delivered to the Trustee shall demonstrate that the projected Debt Service Coverage Ratio, taking into consideration the proposed sale, lease or disposition will be equal to at least 1.00 and would not be reduced by more than 25% of what it would have been if the proposed sale, lease or disposition did not occur or (B) for the two Fiscal Years immediately prior to the sale, lease or other disposition a Institution Certificate delivered to the Trustee shall demonstrate that the Debt Service Coverage Ratio, taking into consideration the proposed sale, lease or disposition, was at least 1.0 and would not be reduced by more than 25% of what it had been prior to the proposed sale, lease or disposition; or
- (v) to any Person if the transfer consists of Accounts Receivable and the Institution receives fair market value therefor; or
- (vi) to any Person if the transfer consists of Other Assets in an aggregate amount not greater than 25% of the excess of revenues over expenses of the Institution as shown on the financial statements of the Institution for the Historic Test Period; or
- (vii) to any Person if the transfer consists of Other Assets in an aggregate amount greater than 25% of the excess of revenues over expenses of the Institution for the Historic Test Period if a Institution Certificate is delivered to the Trustee demonstrating that the Debt Service Coverage Ratio for the Historic Test Period, calculated after deducting the

amount of such transfer from Income Available for Debt Service, would have been at least 1.0.

Notwithstanding anything in this Section 7.03 to the contrary, the Institution shall not transfer, sell or convey the Project or any part thereof or interest therein, including development rights, without the prior approval of the Issuer, *provided that* the Issuer shall not approve such transfer, sale or conveyance unless (a) in the opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any Tax-Exempt Bond from gross income for federal income tax purposes, and (b) the Institution pays to the Trustee either for deposit into the Bond Fund, or to purchase defeasance securities in accordance with the Indenture, an amount equal to the greater of:

- (i) the amount, if any, which is sufficient to redeem or provide for payment in accordance with the Indenture of the Bonds required to be redeemed or deemed paid in order to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes; and
- (ii) the lesser of (A) the net proceeds of such transfer, sale or conveyance or (B) a percentage of the Bonds determined by dividing (1) the principal amount of the Bonds issued to finance the portion of such Project being transferred, sold or conveyed (which principal amount shall be reasonably determined by the Issuer) by (2) the aggregate principal amount of the Bonds issued.

Notwithstanding the foregoing, the Institution may remove equipment, furniture or fixtures that is part of the Project and was financed with the proceeds of Bonds, *provided that* the Institution substitutes for such equipment, furniture or fixtures additional equipment, furniture or fixtures having a value and utility at least equal to the equipment, furniture or fixtures removed or replaced.

Section 7.04 Corporate Existence. The Institution covenants that it will preserve and maintain its existence as an education corporation under the laws of the State and preserve and maintain such governmental approvals, consents, licenses, permits and accreditation as may be necessary to continue to so operate.

The Institution covenants that it will not merge or consolidate with any other corporation or sell or convey all or substantially all of its assets to any Person unless with the prior written consent of the Issuer and the Bank:

- (a) either it will be the continuing corporation or the successor corporation shall be a corporation organized and existing under the laws of the United States of America or a state thereof and such corporation shall, prior to such merger or consolidation, expressly assume in writing the due and punctual payment of the principal of and premium, if any, and interest on all Outstanding Bonds according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Agreement, which document shall be executed and delivered to the Trustee by such corporation; and

- (b) there shall have been delivered to the Trustee and the Issuer an opinion of Bond Counsel that such merger, consolidation, sale or conveyance does not adversely affect the tax-exempt status of the Bonds;
- (c) there is delivered to the Trustee an Institution Certificate demonstrating that immediately after such consolidation, merger, sale or conveyance, such corporation could incur one dollar or more of Long-Term Indebtedness under Section 5.01(a), taking into account such consolidation, merger, sale or conveyance and will not otherwise be in default hereunder; and
- (d) delivered to the Trustee and the Issuer such other certificates and documents as either of them may reasonably request.

Section 7.04A. Environmental Quality Review and Historic Preservation. For the purpose of assisting the Issuer in making any findings or determinations which might be required by (i) Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereunder (collectively, “SEQR”), or (ii) the New York State Historic Preservation Act of 1980 and the regulations promulgated thereunder (collectively the “*Preservation Act*”), the Institution agrees as follows:

(a) It has prepared and will prepare such documents, if any, as the Issuer or other governmental body having primary responsibility under SEQR or the Preservation Act determines are required by SEQR or the Preservation Act, in such form and containing such information in such detail as the Issuer or such other governmental body determines is required by SEQR or the Preservation Act, which documents are or shall be accurate in all material respects; and

(b) It has reviewed either:

(1) the determination of the Issuer or other governmental body having primary responsibility under SEQR relative to the Project to the effect that the Project will not have a significant adverse impact on the environment; or

(2) the written findings by the Issuer or other governmental body having primary responsibility under SEQR relative to the Project that:

(i) consistent with social, economic and other considerations of State policy, all practicable means have been and will be taken with respect to the Project to minimize or avoid adverse environmental effects; and

(ii) all practicable means will be taken with respect to the Project to minimize or avoid adverse environmental effects;

(c) It will in all respects undertake the Project in a manner consistent with the findings or determination of the Issuer or other governmental body having primary responsibility under SEQR relative to the Project; and

(d) If the Issuer determines that any action is required to be taken in connection with any component of the Project pursuant to the Preservation Act, then prior to the expenditure of Bond proceeds for that component, the provisions of the Preservation Act shall have been complied with.

Section 7.05 Reserved.

Section 7.06 Tax-Exempt Status of Bonds and Institution. The Institution agrees that throughout the term hereof:

- (a) **Tax-Exempt Status of Bonds.** The Institution will not take any action or permit any action to be taken on its behalf, or cause or permit any circumstances within its control to arise or continue, if such action or circumstances would cause the interest paid by the Issuer on the Bonds to be includable in the gross income of the holders thereof for Federal income tax purposes.
- (b) **Purchase of Bonds.** The Institution will not purchase, nor will it permit any Person related to it (a related party) within the meaning of Treas. Reg. § 1.150-1(b) to purchase, bonds of the Issuer pursuant to any formal or informal arrangement in an amount related to the total amount payable under and secured by this Agreement.
- (c) **Maintenance of Status as Tax-Exempt Organization.** The Institution agrees that (i) it will take whatever actions are necessary to continue to be organized and operated in a manner which will preserve and maintain its status as an organization which is (x) described in Section 501(c)(3) of the Code, (y) exempt from federal income taxes under Section 501(a) of the Code, and (z) not a private foundation under Section 509(a) of the Code (or corresponding provisions of prior law); and (ii) it shall not perform any acts or enter into any agreements which shall cause any revocation or adverse modification of such federal income tax status.

The Institution agrees that it shall not perform any act nor enter into any agreement which shall change such status as set forth in this Section 7.06.

Section 7.07 Compliance With Laws. Except as otherwise provided in Section 7.09 hereof, the Institution shall, throughout the term of this Agreement and at no expense to the Issuer, promptly comply in all material respects or cause compliance in all material respects with all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Institution, the Project or to its Property and operations.

Section 7.08 Taxes, Charges and Assessments.

- (a) The Institution covenants and agrees, subject to the provisions of Section 7.09 hereof, to pay or cause to be paid (before the same shall become delinquent):
 - (i) all taxes and charges on account of the use, occupancy or operation of its Property, or the income therefrom, including, but not limited to, all sales, use, occupation, real and personal property taxes, all permit and inspection fees, occupation and license fees and all water, gas, electric light, power or other utility charges assessed or charged on or against its Property or on account of the Institution's use or occupancy thereof or the activities conducted thereon or therein; and

- (ii) all taxes, assessments and impositions, general and special, ordinary and extraordinary, of every name and kind, which shall be taxed, levied, imposed or assessed upon all or any part of its Property, or the interest of the Institution in and to such Property, or upon the Issuer and the Institution's interest, or the interest of either of them, in this Agreement or the loan payments payable hereunder.
- (b) If under applicable law any such tax, charge, fee, rate, imposition or assessment may at the option of the taxpayer be paid in installments, the Institution may exercise such option.
- (c) As between the parties hereto, the Institution shall have the duty of making and filing all statements or reports which may be required under applicable law in connection with any such tax, charge, fee, rate, imposition or assessment, and the Issuer agrees promptly to forward to the Institution any and all notices of or bills in connection with any such charge, fee, rate, imposition or assessment received by the Issuer.

Section 7.09 Permitted Contests. The Institution shall not be required to pay any tax, charge, assessment or imposition referred to in Section 7.08 hereof, nor to comply with any law, ordinance, rule, order, regulation or requirement referred to in Section 7.07 hereof, so long as the Institution shall contest, in good faith and at its cost and expense, in its own name and behalf, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of or other realization upon the tax, assessment, levy, fee, rent or charge so contested, or of the rent or any portion thereof, to satisfy the same. While any such matters are pending, the Issuer shall not pay, remove or cause to be discharged the tax, assessment, levy, fee, rent or charge being contested unless the Institution agrees to settle such contest. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of the Institution to settle any such contest), and in any event the Institution will indemnify and save harmless the Issuer and the Trustee against all losses, judgments, decrees and costs (including attorneys' fees and expenses in connection therewith).

Section 7.10 Repairs, Maintenance and Alterations.

- (a) The Institution will at its own cost and expense keep the Project in good repair and order, reasonable wear and tear excepted, and in as reasonably safe condition as its operation will permit and will make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary as well as extraordinary and foreseen as well as unforeseen, and all necessary replacements or renewals.
- (b) The Institution shall cause all Capital Additions to be undertaken and completed in compliance with all present and future laws, acts, rules, regulations, orders and requirements lawfully made and applicable thereto. In connection with any such Capital Addition, the Institution further agrees that: (i) it shall enter into such construction contracts and other agreements with third parties as it deems necessary or advisable for any acquisition, installation, equipping, constructing, renovations and conversions relating thereto; (ii) it shall cause all Capital Additions to be completed in accordance with the construction contracts, if any, therefor and shall enforce all such construction contracts; and (iii) it shall obtain or cause to be obtained such surety bonds and insurance policies as it deems necessary or appropriate to cover the performance of construction contracts

(including correction of defects), payment for labor and materials, builders' risk coverage, workers' compensation and employers' liability coverage, automobile liability coverage, special hazards coverage, and public liability and property damage coverage.

Section 7.11 Right of Issuer or Trustee to Perform Institution's Covenants; Advances. In the event the Institution shall fail to make any payment or perform any other act required to be performed hereunder, then and in each such case the Issuer or the Trustee may (but shall not be obligated to), upon prior notice to the Institution, remedy such default for the account of the Institution and make advances for that purpose. No such performance or advance shall operate to release the Institution from any such default, and any sums so advanced by the Issuer or the Trustee shall be repayable by the Institution on demand and shall bear interest at the Trustee's interest rate for advances, from the date of the advance until repaid.

Section 7.12 Investments. The Institution agrees that all moneys in any fund established by the Indenture may be invested in such Eligible Investments (as defined in the Indenture) as the Institution may direct in writing; provided, however, that any such directions shall conform to the requirements of the Indenture.

Section 7.13 Insurance.

(a) At all times throughout the term of this Agreement, including, without limitation, during any period of construction 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, except as otherwise specified herein, for such amounts as are customarily insured against by other enterprises of like size and type as that of the Institution, including, without limitation:

(i) (A) during any period of construction, reconstruction, renovation or improvement of the Project, Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form," including coverage therein for "completion and/or premises occupancy," and coverage for property damage insurance, and (B) All Risk Hazard Insurance with respect to the Project, all of which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, fixtures and other property constituting a part of the 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) with policy limits equal at least to the lesser of (x) the value of the Project and all improvements thereon or thereto (exclusive of the fair market value of the land), or (y) the aggregate Outstanding principal amount of the Bonds, and 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;

(ii) 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 7.16

hereof; (B) may, with the consent of the Trustee, be effected under overall blanket or excess coverage policies of the Institution or any Affiliate thereof, *provided, however*, that at least \$1,000,000 is effected by a comprehensive liability insurance policy; and (C) shall not contain any provisions for a deductible amount in excess of \$2,500 or for risk retention in any amount in excess of \$1,000 by the Institution;

(iii) 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 Affiliate thereof, or any contractor or subcontractor performing work with respect to the Project; the Institution shall require that all said contractors and subcontractors maintain all forms or types of insurance with respect to their employees required by laws; and

(iv) boiler and machine property damage insurance with respect to any steam and pressure boilers and similar apparatus located at the Project from risks normally insured against under boiler and machinery policies and in amounts and with deductions customarily obtained for similar business enterprises and in each case approved by the Issuer.

(b) All insurance required by this Section above shall be procured and maintained in financially sound and generally-recognized, responsible insurance companies authorized to write such insurance in the State.

(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 Institution, the Trustee and the Issuer as additional insureds as their respective interests may appear;

(ii) provide that there shall be no recourse against the Issuer or the Trustee 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 and the Trustee 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 and the Trustee 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 or the Trustee to the extent that such other insurance provides the Issuer or the Trustee, as the case may be, 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, respectively, of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

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

(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) Concurrently with the original issuance of the Bonds, the Institution shall deliver or cause to be delivered to the Issuer and the Trustee certificates of insurance, and upon the written request of the Issuer or the Trustee, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section. At least thirty (30) days prior to the expiration of any such policy, the Institution shall furnish the Issuer and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by 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 or the Trustee 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 DOES 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 7.14 Insurance Proceeds and Condemnation Awards. The Institution shall notify the Issuer and the Trustee promptly in writing of the occurrence of any damage to or destruction, condemnation or conveyance in lieu of condemnation of all or any portion of its Property, Plant and Equipment. All insurance proceeds, condemnation award or other similar sums received as a result of any such occurrence shall be applied as follows:

(a) (a) At the election of the Institution, such amounts may be used subject to the applicable provisions of any documents creating a superior Lien upon the affected Property and except as otherwise provided in paragraph (b) below :

(i) to pay the cost of reconstructing, replacing or repairing the affected Property, if the Institution determines that (A) such action is practicable, taking into account the nature of the affected Property, the estimated cost of the proposed reconstruction, replacement or repair and the adequacy of available funds to pay such costs, and (B) the projected Debt Service Coverage Ratio of the Institution will not be less than 1.00 during each Fiscal Year to and including the year in which the reconstruction, replacement or repair is expected to be completed, and such projected Debt Service Coverage Ratio will not be less than 1.10 during the first Fiscal Year following such completion; or

- (ii) to pay the Redemption Price of Bonds upon Extraordinary Redemption Outstanding Bonds are so to be redeemed.

The foregoing determinations shall be set forth in an Institution Certificate delivered to the Issuer and the Trustee as soon as practicable after the occurrence to which it relates. Such Certificate shall be supported by such additional Certificates (including an Architect's Certificate or Consultant's Certificate) as the Issuer or the Trustee may reasonably request.

- (b) If the Institution determines in good faith that the conditions set forth in subsection (a) above cannot be satisfied with respect to any proposed action, it shall deliver an Institution Certificate to such effect to the Trustee, and the insurance proceeds, condemnation award or other similar sum shall be required to be used to pay the Redemption Price of Bonds upon Extraordinary Redemption.
- (c) Moneys to be used for any reconstruction, replacement or repair pursuant to subsection (a) above shall be deposited in the Project Fund for such purpose and shall be disbursed by the Trustee upon requisition of the Institution in substantially the manner set forth in Section 5.02 of the Indenture. The balance of any moneys so deposited after completion of such reconstruction, replacement or repair (as evidenced to the Trustee by a Certificate of the Institution) shall be released to the Institution for its unrestricted use. Moneys to be used to redeem Bonds pursuant to subsection (a) or (b) above shall be deposited in the Bond Fund for such purpose. Moneys to be used for any other purpose pursuant to subsection (a) above shall be released to the Institution for such purpose.

Section 7.15 Institution to Perform Certain Covenants Under Indenture. The Institution acknowledges that it has received an executed copy of the Indenture, and that it is familiar with its provisions, and agrees to be bound to the fullest extent permitted by law to all provisions thereof directly or indirectly relating to it, and that, in consideration of the loan made hereunder, it will take all such actions as are required or contemplated of it under the Indenture to preserve and protect the rights of the Trustee and of the Bondholders thereunder and that it will not take or effect any action which would cause a default thereunder or jeopardize such rights. The Institution hereby assumes and agrees to perform all of the covenants and other obligations of the Issuer under the Indenture, excepting only any approval or consents permitted or required to be given by the Issuer thereunder, and those covenants contained in Article VI of the Indenture which are not within the control of the Institution. However, nothing contained herein shall prevent the Issuer from choosing from time to time, in its discretion, to perform any of the covenants or other obligations hereby assumed by the Institution.

Section 7.16 No Personal Recourse Against Issuer; Indemnification.

(a) All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Agreement, the Bonds and the other documents and instruments connected therewith shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent or employee of the Issuer in his or her individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, and the Bond Documents or any documents supplemental hereto or thereto, or for any of the Bonds or for any claim based thereon or

otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent or employee, as such, of the Issuer, or any successor local development corporation, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, or any Person executing this Agreement and the Bond Documents either directly or through the Issuer or any successor local development corporation, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, it being expressly understood that the Bond Documents shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute limited obligations of the Issuer, payable solely from the revenues of the Issuer derived and to be derived from the lease, sale or other disposition of the Project (except for revenues derived by the Issuer with respect to the Unassigned Rights) and other revenues pledged hereunder, and that no such personal liability whatsoever shall attach to, or is or shall be incurred by, Issuer or any such member, director, officer, agent or employee of the Issuer or of any such successor local development corporation, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, or any Person executing the Bonds because of the creation of the indebtedness authorized thereby, or under or by reason of the obligations, covenants or agreements contained in the Bond Documents or in any of the Bonds or implied therefrom, and that any and all such personal liability of, and any and all such rights and claims against, the Issuer and every such member, director, officer, agent or employee because of the indebtedness authorized hereby, or under or by reason of the obligations, covenants or agreements contained in the Bond Documents or in any of the Bonds or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of and as a consideration for the execution of the Bond Documents and the issuance of the Bonds. The limitations on the obligations of the Issuer contained in this Section by virtue of any lack of assurance required by Section 8.01(b) shall not be deemed to prevent the occurrence and full force and effect of any Event of Default pursuant to Section 8.01 hereof.

(b) No order or decree of specific performance with respect to any of the obligations of the Issuer hereunder or thereunder shall be sought or enforced against the Issuer unless (i) the party seeking such order or decree shall first have requested the Issuer in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Issuer shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (ii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Issuer an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it or any of its members, directors, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (A) agree to indemnify and hold harmless the Issuer and its members, directors, officers, agents and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Issuer, furnish to the Issuer satisfactory security to protect the Issuer and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request. The provisions

of this Section 7.16 shall survive the termination of this Agreement and the Indenture and the defeasance of the Bonds.

(c) The obligations and agreements of the Issuer contained in this Agreement shall not constitute or give rise to an obligation of the State or any municipality or subdivision thereof (including Erie County, New York) and neither the State nor any municipality or political subdivision thereof (including Erie County, New York) shall be liable thereon.

(d) The Institution shall not be deemed to constitute an employee, agent or servant of the Issuer or a Person under the Issuer's control or supervision.

(e) The Institution releases the Issuer and the Trustee, and their respective members, officers, directors, agents, officials, employees and any person who controls the Issuer or the Trustee within the meaning of the 1933 Act, from, and covenants and agrees to indemnify, hold harmless and defend the Issuer and the Trustee and their respective members, officers, directors, employees, agents, officials, grantors, beneficiaries and any person who controls such party within the meaning of the 1933 Act and employees and each of them (each an "*Indemnified Party*") from and against, any and all losses, claims, damages, demands, liabilities and expenses (including attorneys' fees and expenses, whether incurred in a third party action or an action to enforce this Agreement), taxes, causes of action, suits, claims, demands and judgments of any nature, joint or several, by or on behalf of any person arising out of:

(i) the transactions provided for in the Bond Documents;

(ii) the execution and delivery or amendment of any document entered into in connection with the transactions provided for in the Bond Documents, including any certifications or representations made by any person other than the party seeking indemnification;

(iii) the approval of the financing for the Project;

(iv) any and all claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents or any other documents relating to the Project, the Project or the Bonds or in connection with any other matters relating to the Bonds or the Project, the Project, including, but not limited to, any federal or state tax audit, or any questions or other matters arising under such documents;

(v) any and all claims arising in connection with (A) the issuance or sale of any Bonds or any certifications or representations made by any person other than the party seeking indemnification, including, but not limited to, any (1) statement or information made by the Institution with respect to the Institution or the Project in any offering document or materials regarding the Bonds, the Project or the Institution or in the Tax Compliance Agreement or in any other certificate executed by the Institution which, at the time made, is misleading, untrue or incorrect in any material respect; (2) untrue statement or alleged untrue statement of a material fact relating to the Institution or the Project contained in any offering material relating to the sale of the Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to the Institution or the Project required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading; and (3) failure to properly register or

otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold; and (B) the carrying out by the Institution of any of the transactions provided for in the Bond Documents;

(vi) the Institution's failure to comply with any requirement of any Project Document applicable to the Institution;

(vii) any act or omission of the Institution or any of its agents, servants, employees or licensees in connection with this Agreement or the Project, including violation of any law, ordinance, court order or regulation affecting the Project or any part of it or the ownership, occupancy or use of it;

(viii) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of the Institution, whether or not related to the Project, or resulting from or in any way connected with the acquisition, construction, reconstruction, renovation, equipping or management of the Project, the issuance of the Bonds or otherwise in connection with transactions provided for in the Bond Documents or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating to the Project or the Bonds;

(ix) any failure to comply with the Environmental Compliance and Indemnification Agreement applicable to, or the release of any toxic substance from, the Project; and

(x) any and all claims arising in connection with the operation of the Project, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, acquisition, construction, repair or equipping of, the Project or any part of it.

(f) This indemnification shall extend to and include without limitation all reasonable costs, attorneys' fees (whether incurred in a third party action or an action to enforce this Agreement), expenses or liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except to the extent caused by the gross negligence or willful misconduct of the Indemnified Party.

(g) 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. Such notice shall be given in sufficient time to allow the Institution to defend or participate in such claims 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.

(h) The provisions of this Section and the indemnification provided herein shall survive repayment of the Bonds. Notwithstanding anything to the contrary in this Agreement, the covenants of the Institution contained in this Section shall continue in full force and effect after the expiration or earlier 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 all expenses and charges incurred by the Indemnified Party relating to the enforcement of this Section and the provisions herein specified.

(i) In the event of any claim against the Issuer or its members, directors, officers, agents or employees by any employee or contractor of the Institution or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Institution hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

(j) The Institution and every assignee of the Institution's interest in this Agreement hereby waives any and all of its rights against the Issuer (whether such rights currently exist or arise in the future by statute, common law or otherwise) as a mortgagee of the Project with respect to any and all environmental liabilities, however or whenever accruing.

(k) To effectuate the purposes of this Section, the Institution will provide for and insure, in the liability policies required in Section 7.13 hereof, not only its own liability in respect of the matters therein mentioned, but also the liability pursuant to this Section. Should an insurance carrier provide for the defense of the Issuer in connection with any claim subject to indemnity under this Section, the Institution shall cause such insurance carrier (and the attorneys retained by such insurance carrier) to promptly provide the Issuer with such information regarding the status of such claims as the Issuer may from time to time reasonably request, to immediately advise the Issuer of any monetary verdict against it, and in no event shall the Institution permit a judgment to be entered against the Issuer arising out of such claim without thirty (30) days' prior written notice to the Issuer. Should the Institution provide the defense of any such claim directly, the attorneys selected by the Institution shall be subject to the prior approval of the Issuer, and the Institution shall cause such attorneys to promptly provide the Issuer with such information regarding the status of such claims as the Issuer may from time to time reasonably request, to immediately advise the Issuer of any monetary verdict against it, and in no event shall the Institution permit a judgment to be entered against the Issuer arising out of such claim without thirty (30) days' prior written notice to the Issuer.

(l) Should any lawsuit be commenced against the Issuer which is subject to indemnity pursuant to this Section, and should such lawsuit result in a judgment being entered against the Issuer, the Institution shall not permit any lien resulting from such judgment to encumber any asset of the Issuer (whether now owned or hereafter acquired). Should such judgment result in a lien encumbering any asset of the Issuer, the Institution shall immediately, upon demand by the Issuer, cause such judgment to be released from all assets of the Issuer (whether now owned or hereafter acquired), pursuant to documentation in form and content acceptable to the Issuer. The Institution shall be responsible for all damages suffered by the Issuer (including incidental and consequential damages) resulting from any such judgment lien that may encumber any asset of the Issuer, including, but not limited to, all out-of-pocket expenses (including reasonable attorneys' fees) incurred by the Issuer to obtain releases of any such judgment lien.

Section 7.17 Financial Statements. The Institution shall cause its financial statements for each Fiscal Year to be examined by an Independent Public Accountant. Such financial statements and the Independent Public Accountant's report thereon shall be furnished to the Issuer and the Trustee within 120 days after the end of the Fiscal Year to which they relate. Such financial statements and reports shall be accompanied by an Institution Certificate stating

whether the Institution is in default in the performance of any of its obligations hereunder and, if any such default has occurred, setting forth the actions being taken by the Institution to remedy the same. The Trustee shall have no duty to review any financial statement delivered to it pursuant to this Agreement and does not have a duty to verify the accuracy of such financial statements. In addition, the Trustee shall not be considered to have notice of the contents of such financial statements or of a default or Event of Default hereunder and under the Indenture based on such concerns.

Section 7.18 Restrictions on Religious Use.

The Institution agrees that with respect to the Project or portion thereof, so long as such Project or portion thereof exists and unless and until such Project or portion thereof is sold for the fair market value thereof, such Project or portion thereof shall not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity for any religious denomination; *provided, however,* that the foregoing restriction shall not prohibit the free exercise of any religion; *provided, further, that* if at any time hereafter, in the opinion of Bond Counsel, the then applicable law would permit the Project or portion thereof to be used without regard to the above stated restriction, said restriction shall not apply to such Project and each portion thereof. The Issuer and its agents may conduct such inspections as the Issuer deems necessary to determine whether the Project or any portion or real property thereof financed by Bonds is being used for any purpose proscribed hereby. The Institution hereby further agrees that prior to any disposition of any portion of the Project for less than fair market value, it shall execute and record in the appropriate real property records an instrument subjecting, to the satisfaction of the Issuer, the use of such portion of such Project to the restriction that (i) so long as such portion of such Project (and, if included in the Project, the real property on or in which such portion of such Project is situated) shall exist, and (ii) until such portion of such Project is sold or otherwise transferred to a person who purchases the same for the fair market value thereof at the time of such sale or transfer, such portion of such Project shall not be used for sectarian religious instruction or as a place of religious worship or used in connection with any part of the program of a school or department of divinity of any religious denomination. The instrument containing such restriction shall further provide that such restriction may be enforced at the instance of the Issuer or the Attorney General of the State, by a proceeding in any court of competent jurisdiction, by injunction, mandamus or by other appropriate remedy. The instrument containing such restriction shall also provide that if at any time thereafter, in the opinion of Bond Counsel, the then applicable law would permit such portion of the Project, or, if included in the Project, the real property on or in which such portion is situated, to be used without regard to the above stated restriction, then said restriction shall be without any force or effect. For the purposes of this Section an involuntary transfer or disposition of the Project or a portion thereof, upon foreclosure or otherwise, shall be considered a sale for the fair market value thereof.

Section 7.19 Arbitrage Rebate. Within 30 days after the end of each fifth Bond Year and upon retirement of the Bonds, the Institution shall determine the Rebate Amount and deliver moneys to the Trustee for deposit into the Rebate Fund (or instruct the Trustee to transfer to such Fund moneys representing available arbitrage earnings in any Project Fund) in an aggregate amount equal to the Rebate Amount, if any. The Institution shall instruct the Trustee to withdraw from the Rebate Fund and pay over to the United States. Notwithstanding anything in

this Section 7.19 to the contrary, the requirements of this Section 7.19 need not be met to the extent the Trustee receives an opinion of bond counsel such action will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 7.20 Bonds Not to Become Arbitrage Bonds. As provided in the Indenture, the Trustee will invest moneys held by the Trustee as directed in writing by the Institution. The Issuer and the Institution hereby covenant with each other and with the holders of the Bonds that, notwithstanding any other provision of this Agreement or any other instrument, they will neither make nor instruct the Trustee to make any investment or other use of the proceeds of the Bonds, or take or omit to take any other action which would cause the Bonds to be arbitrage bonds under Section 148 of the Code and the regulations thereunder, and that they will comply with the requirements of the Code and regulations throughout the terms of the Bonds.

Section 7.21 ERISA. The Institution will not (i) voluntarily terminate any employee benefit or other plan maintained for employees of the Institution and covered by Title IV of ERISA (an "ERISA Plan"), so as to result in any material liability of the Institution to the Pension Benefit Guaranty Corporation ("PBGC"); (ii) enter into any Prohibited Transaction (as defined in Section 4975 of the Code and in ERISA) involving an ERISA Plan which results in any material liability of the Institution to PBGC; (iii) cause any occurrence of any Reportable Event (as defined in Title IV of ERISA) which results in any material liability of the Institution to PBGC; or (iv) allow or suffer to exist any other event or condition known to the Institution which results in any material liability of the Institution to PBGC.

Article VIII.

Events of Default and Remedies

Section 8.01 Events of Default. Each of the following shall constitute an Event of Default:

- (a) if the Institution fails to make any payment required by Section 4.02 hereof when due or Section 4.01(a) or (b) hereof within five days after the due date thereof or fails to make any other payment or deposit required pursuant to this Agreement within 30 days after the due date thereof;
- (b) if the Institution fails to perform any other covenant, condition or agreement herein on its part to be performed;
- (c) if the Institution proposes or makes an assignment for the benefit of creditors or a composition agreement with all or a material part of its creditors, or a trustee, receiver, executor, conservator, liquidator, sequestrator or other judicial representative, similar or dissimilar, is appointed for the Institution or any substantial portion of its assets or revenues, or there is commenced any proceeding in liquidation, bankruptcy, reorganization, arrangement of debts, debtor rehabilitation, creditor adjustment or insolvency, local, state or federal, by or against the Institution and if such is not vacated, dismissed or stayed on appeal within 60 days;
- (d) if an Event of Default under the Indenture or any Bond Documents has occurred and is continuing; or

- (e) during the Initial Libor Rate Period, an Event of Default under the Bond Purchase Agreement has occurred and is continuing.

Section 8.02 Notice of Defaults; Opportunity to Cure Such Defaults. No default under Section 8.01(b) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail or by an overnight delivery service shall be given to the Institution by the Issuer or the Trustee and the Institution shall have had 30 days after receipt of such notice to correct the default and shall not have corrected it; provided, however, if the default cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the Institution within the applicable period and diligently pursued until the default is corrected. The Trustee shall promptly give notice to the Institution of any default or Event of Default hereunder of which the Trustee shall (a) have actual notice or (b) be notified specifically in a written instrument or document delivered to it by the Issuer, the Bank or by the Holders of at least 10% of the aggregate principal amount of Bonds outstanding.

Section 8.03 Remedies. If any Event of Default shall occur and be continuing, the Issuer or the Trustee may at its option exercise any one or more of the following remedies:

- (a) by suit, action or proceeding at law or in equity, enforce all rights of the Issuer, and require the Institution to carry out any agreements with or for the benefit of the Issuer, the Trustee or the Bondholders and to perform its duties under the Act or this Agreement; or
- (b) by action or suit in equity require the Institution to account as if it were the trustee of an express trust for the Issuer; or
- (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer; or
- (d) upon the filing of a suit or other commencement of judicial proceeding to enforce the rights of the Trustee and the Bondholders, have appointed a receiver or receivers with respect to the Institution and its Property, with such powers as the court making such appointment shall confer; or
- (e) upon notice to the Institution, accelerate the due dates of all sums due or to become due hereunder.

Section 8.04 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article VIII, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 8.05 No Additional Waiver Implied by One Waiver. In the event the breach of any agreement contained in this Agreement should be waived by either party, such waiver shall

be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Article IX.
Miscellaneous**

Section 9.01 Notices. Except as otherwise permitted herein and in the Indenture, all communications hereunder shall be in writing and, unless otherwise required under this Agreement, shall be sufficiently given or made if delivered personally to the Person who is to receive the same or if mailed to such person by certified mail, return receipt requested, addressed:

(a) To the Issuer:

Buffalo and Erie County Industrial
Land Development Corporation
275 Oak Street
Buffalo, New York 14203
Attention: Chief Operating Officer

With a copy to:

Harris Beach PLLC
Larkin at Exchange
726 Exchange Street
Suite 1000
Buffalo, New York 14210
Attention: Robert Murray, Esq.

(b) if to the Institution:

The Canisius College of Buffalo
2001 Main Street
Buffalo, New York 14208
Attention: Vice President for Business and Finance

(c) if to the Remarketing Agent:

Manufacturers and Traders Trust Company
Education Investment Banking Group
160 Technology Dr, Suite 201
Canonsburg, Pennsylvania 15317

With a copy to:

M&T Bank, Municipal Remarketing Desk
25 South Charles St, 12th Floor
Baltimore, Maryland

A duplicate copy of each communication given by either party to the other shall also be given to the Trustee at the address set forth in Section 11.03(b) of the Indenture.

Section 9.02 Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.03 Redemption of Bonds. If the Institution is not in default in the payment of any sum or sums which it is required to pay hereunder, the Issuer at the request of the Institution, at any time the aggregate moneys in the Funds, with the exception of the Rebate Fund, created under the Indenture are sufficient to effect such redemption in whole or in part, and if the same are then redeemable under the provisions of the Indenture, shall forthwith take all steps that may be necessary under the applicable provisions of the Indenture to effect redemption of all or as many of the then Outstanding Bonds on such redemption date as may be specified by the Institution.

Section 9.04 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

Section 9.05 Benefit of Agreement. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Institution and their respective successors and assigns. In addition, the agreements and representations of the Institution and the Issuer herein contained shall inure to, but only to, the Trustee for the benefit of the holders from time to time of the Bonds and to the Bank.

Section 9.06 Electronic Communications. The Trustee shall have the right to accept and act upon instructions or directions pursuant to this Agreement or the Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that the instructions or directions shall be signed by a person as may be designated and authorized to sign for the Issuer or in the name of the Issuer, as applicable, by an Issuer Representative or a Institution Representative, who shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Issuer or the Institution elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's reasonable understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instructions. The Issuer or the Institution, as applicable, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 9.07 Termination. This Agreement shall terminate on such date as the principal of and premium, if any, and interest on all Bonds and all other expenses payable by the Institution hereunder shall have been paid (or provision for such payment shall have been made

as provided in the Indenture) and all other conditions of this Agreement and the Indenture shall have been fully satisfied. Upon such termination, the obligations of the Institution hereunder shall terminate; provided, however, that the Institution's obligations under Section 7.16, 7.18 and 7.19 hereof shall survive any such termination.

Section 9.08 Governing Law. This Agreement shall be governed by the laws of the State.


Section 9.09 Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the Issuer and the Institution with respect to the subject matter hereof.

Section 9.10 Amendments. This Agreement may be amended by the parties hereto subject to the provisions of Article IX of the Indenture.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

**BUFFALO AND ERIE COUNTY INDUSTRIAL
LAND DEVELOPMENT CORPORATION**

By: _____


David W. Kerchoff
Assistant ~~Vice President~~ Treasurer

**THE CANISIUS COLLEGE OF BUFFALO,
NEW YORK**

By: _____

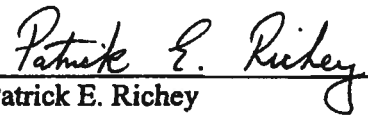

Patrick E. Richey
Vice President for Business and Finance

EXHIBIT A

NONDISCRIMINATION CLAUSE

During the term of this Agreement, Institution agrees as follows:

1. In the hiring of any employee(s) for the performance of work, or any other activity required under this Agreement or any contract for the construction or acquisition of the Project, the Institution, its contractors, or any person acting on behalf of the Institution or its contractors shall not, by reason of gender, race, creed, or color, discriminate against any citizen of the State who is qualified and available to perform the work to which the employment relates.

2. Neither the Institution nor any of its contractors for the Project nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the performance of work or other activity required under this Agreement on account of gender, race, creed, or color.

3. The Institution and its contractors for the Project shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. The Institution shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work relating to the Property to which the contracts relates.

5. The Institution and each of its contractors for the Project shall furnish upon request all necessary employment documents and records to and permit access to their books, records, and accounts by the New York Department of Community and Economic Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the Institution or its contractors for the Project does not possess documents or records reflecting the necessary information requested, the Institution or its contractors for the Project shall furnish such information on reporting forms supplied by the New York Department of Community and Economic Development.

6. The Institution shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every contract for the Project so that such provisions will be binding upon each contractor for the Project.

7. In the event of a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause, the New York Department of Community and Economic Development may proceed with debarment or suspension and may place the Institution in the Contractor Responsibility File.

EXHIBIT B

FORM OF DISBURSEMENT REQUEST

STATEMENT NO. _____ REQUESTING
DISBURSEMENT OF FUNDS FROM PROJECT FUND
PURSUANT TO SECTION 303 OF THE LOAN AGREEMENT
DATED AS OF DECEMBER 1, 2010 (THE "LOAN
AGREEMENT") BETWEEN Issuer (THE "ISSUER") AND THE
CANISIUS COLLEGE OF BUFFALO, NEW YORK (THE
"INSTITUTION").

The terms used herein shall have the meanings specified for such terms in or pursuant to the Loan Agreement. Pursuant to Section 3.03 of the Loan Agreement, the undersigned Institution Representative hereby requests and authorizes the Trustee to pay to the Institution or to the Person(s) listed on the Disbursement Schedule hereto out of the moneys deposited in the Project Fund the aggregate sum of \$_____ to reimburse the Institution or to pay such Person(s), as indicated in the Disbursement Schedule, for the items of Project Cost listed in the Disbursement Schedule.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

- (a) Each item for which disbursement is requested hereunder is due, is an item of incurred Project Cost properly reimbursable or payable out of the Project Fund in accordance with the terms and conditions of the Loan Agreement, the Tax Compliance Agreement and the Indenture and none of those items has formed the basis for any disbursement heretofore made from the Project Fund.
- (b) Each such item is or was necessary or appropriate in connection with the acquisition, construction or equipment of the Project.
- (c) This statement and all exhibits hereto, including the Disbursement Schedule, shall constitute full warrant, protection and Issuer to the Trustee for its actions taken pursuant hereto.

Dated: _____

THE CANISIUS COLLEGE OF
BUFFALO, NEW YORK

By _____
Authorized Representative

During the Initial Libor Rate Period, so long as at the time of this request for an Advance, the total amount of the Bond proceeds previously advanced, together with the Advance requested and the Letter of Credit Amount, does not exceed \$16,000,000, accepted and agreed to by:

MANUFACTURERS AND TRADERS
TRUST COMPANY

By _____
Authorized Representative

DISBURSEMENT SCHEDULE

TO STATEMENT NO. _____ REQUESTING AND AUTHORIZING
DISBURSEMENT OF FUNDS FROM PROJECT FUND DECEMBER 1, 2010
BETWEEN THE ISSUER AND CANISIUS COLLEGE.

PAYEE	AMOUNT	PURPOSE
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