

CLOSING ITEM NO.: A-3

TOWN OF AMHERST
DEVELOPMENT CORPORATION

AND

DAEMEN COLLEGE

LOAN AGREEMENT

DATED AS OF JUNE 1, 2018

CERTAIN RIGHTS TOWN OF AMHERST DEVELOPMENT CORPORATION (THE "ISSUER") UNDER THIS LOAN AGREEMENT, AND CERTAIN MONEYS DUE AND TO BECOME DUE TO THE ISSUER HEREUNDER, HAVE BEEN ASSIGNED TO THE BANK OF NEW YORK MELLON, AS TRUSTEE (THE "TRUSTEE") PURSUANT TO A PLEDGE AND ASSIGNMENT DATED AS OF JUNE 1, 2018 FROM THE ISSUER TO THE TRUSTEE.

TABLE OF CONTENTS

(This Table of Contents is not part of the
Loan Agreement and is for convenience of reference only.)

| | <u>PAGE</u> |
|---------------|-------------|
| PARTIES..... | 1 |
| RECITALS..... | 1 |

ARTICLE I

DEFINITIONS

| | |
|----------------------------------|---|
| Section 1.1. Definitions..... | 6 |
| Section 1.2. Interpretation..... | 6 |

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

| | |
|---|----|
| Section 2.1. Representations, Warranties and Covenants of the Issuer | 7 |
| Section 2.2. Representations, Warranties and Covenants of the Borrower..... | 8 |
| Section 2.3. Covenant with the Trustee and the Bondholders..... | 10 |

ARTICLE III

UNDERTAKING OF THE PROJECT; ISSUANCE OF THE INITIAL
BONDS; USE OF BOND PROCEEDS

| | |
|---|----|
| Section 3.1. Undertaking of the Project | 11 |
| Section 3.2. Issuance of the Initial Bonds; Loan of the Proceeds Thereof..... | 11 |
| Section 3.3. Application of Proceeds of the Initial Bonds | 12 |
| Section 3.4. Completion of the 2018 Project Facility | 14 |
| Section 3.5. Completion by the Borrower..... | 15 |
| Section 3.6. Remedies to be Pursued against Contractors, Subcontractors, Materialmen and their Sureties..... | 15 |
| Section 3.7. Investment of Fund Moneys..... | 15 |
| Section 3.8. Rebate Fund | 16 |

ARTICLE IV

SECURITY FOR THE INITIAL BONDS

| | |
|--|----|
| Section 4.1. Execution of Security Documents..... | 17 |
| Section 4.2. Warranty as to Title; Encumbrances; Title Insurance | 17 |

Section 4.3. Parity Indebtedness 17
 Section 4.4. Recordation of Security Documents; UCC Filings 17
 Section 4.5. Pledge and Assignment of Issuer’s Interests to Trustee 18

ARTICLE V

LOAN BY THE ISSUER; REPAYMENT OF THE LOAN; LOAN
 PAYMENTS AND OTHER AMOUNTS PAYABLE

Section 5.1. Loan Payments and Other Amounts Payable 19
 Section 5.2. Nature of Obligations of the Borrower Hereunder 20
 Section 5.3. Prepayment of Loan Payments 21

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1. Maintenance of and Modifications to the Project Facility 22
 Section 6.2. Taxes, Assessments and Utility Charges 22
 Section 6.3. Insurance Required 22
 Section 6.4. Additional Provisions Respecting Insurance 23
 Section 6.5. Application of Net Proceeds of Insurance 24

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1. Damage or Destruction 25
 Section 7.2. Condemnation 26
 Section 7.3. Additions to the Project Facility 28

ARTICLE VIII

SPECIAL COVENANTS

Section 8.1. No Warranty of Condition or Suitability by Issuer; Acceptance “As Is” 29
 Section 8.2. Hold Harmless Provisions 29
 Section 8.3. Right of Access to the Project Facility 30
 Section 8.4. Borrower not to Terminate Existence or Dispose of Assets; Conditions
 under which Exceptions Are Permitted 30
 Section 8.5. Agreement to Provide Information 31
 Section 8.6. Books of Record and Account; Compliance Certificates 31
 Section 8.7. Compliance with Applicable Laws 31
 Section 8.8. Discharge of Liens and Encumbrances; Lease, Sale or Grant of Use by the Borrower 31
 Section 8.9. Performance of the Borrower’s Obligations 32
 Section 8.10. Depreciation Deductions, Tax Credits and Code Elections 32
 Section 8.11. Covenant Against Arbitrage Bonds 32

| | | |
|---------------|--------------------------------------|----|
| Section 8.12. | Identification of Equipment | 33 |
| Section 8.13. | Indemnification of the Trustee | 33 |
| Section 8.14. | Employment Opportunities | 33 |
| Section 8.15. | Sales and Use Tax Exemption..... | 33 |
| Section 8.16. | Restriction on Religious Use..... | 33 |
| Section 8.17. | Termination | 34 |
| Section 8.18. | Use of the Project Facility..... | 34 |

ARTICLE IX

ASSIGNMENT BY BORROWER; MERGER OF THE ISSUER

| | | |
|--------------|---------------------------------|----|
| Section 9.1. | Assignment by the Borrower..... | 35 |
| Section 9.2. | Merger of the Issuer | 35 |

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

| | | |
|---------------|--|----|
| Section 10.1. | Events of Default Defined..... | 36 |
| Section 10.2. | Remedies on Default | 38 |
| Section 10.3. | Remedies Cumulative | 38 |
| Section 10.4. | Agreement to Pay Attorneys' Fees and Expenses..... | 38 |
| Section 10.5. | No Additional Waiver Implied by One Waiver | 39 |

ARTICLE XI

MISCELLANEOUS

| | | |
|----------------|---|----|
| Section 11.1. | Notices | 40 |
| Section 11.2. | Binding Effect..... | 41 |
| Section 11.3. | Severability | 41 |
| Section 11.4. | Amendments | 41 |
| Section 11.5. | Execution of Counterparts | 41 |
| Section 11.6. | Applicable Law..... | 41 |
| Section 11.7. | Amounts Remaining in Funds | 41 |
| Section 11.8. | Survival of Obligations..... | 42 |
| Section 11.9. | Table of Contents and Section Headings Not Controlling..... | 42 |
| Section 11.10. | No Recourse; Special Obligation..... | 42 |

| | |
|------------------|----|
| TESTIMONIUM..... | 44 |
|------------------|----|

| | |
|------------------|----|
| SIGNATURES | 44 |
|------------------|----|

| | |
|------------------------|----|
| ACKNOWLEDGEMENTS | 45 |
|------------------------|----|

| | |
|--|--------|
| APPENDIX A – Schedule of Definitions | AppA-1 |
|--|--------|

EXHIBIT A – Description of the Initial Land.....A-1
EXHIBIT B – Description of the Initial EquipmentB-1
EXHIBIT C – Termination of Loan AgreementC-1

LOAN AGREEMENT

THIS LOAN AGREEMENT dated as of June 1, 2018 (the "Loan Agreement") by and between TOWN OF AMHERST DEVELOPMENT CORPORATION (the "Issuer"), a not-for-profit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4287 Main Street, Amherst, New York, and DAEMEN COLLEGE (the "Borrower"), not-for-profit education corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4380 Main Street, Amherst, New York.

WITNESSETH:

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the "Enabling Act") (A) authorizes any county to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, pursuant to the provisions of the Enabling Act and Revenue Ruling 57-187 and Private Letter Ruling 200936012, the Town Board of the Town of Amherst, New York (the "Town Board") adopted a resolution on October 5, 2009 (the "Sponsor Resolution") (A) authorizing the reincorporation of the Town of Amherst Development Corporation (the "Issuer") under the Enabling Act and (B) appointing the initial members of the board of directors of the Issuer, who serve at the pleasure of the Town Board of the Town of Amherst, New York; and

WHEREAS, on February 3, 2010, a certificate of reincorporation was filed with the New York Secretary of State's Office (the "Certificate of Reincorporation") creating the Issuer pursuant to the Enabling Act as a public instrumentality of the Town of Amherst, New York; and

WHEREAS, in April, 2018, Daemen College (the "Borrower"), a New York not-for-profit education corporation, presented an application (the "Application") to the Issuer, which Application requested that the Issuer consider undertaking a project (the "Initial Project") for the benefit of the Borrower, said Initial Project to consist of the following: (A) the refinancing, in whole or in part, of the Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006A issued on June 30, 2006 in the original aggregate principal amount of \$20,925,000 (the "Series 2006A Bonds"), which Series 2006A Bonds financed the following project: (1) the refinancing of the Town of Amherst Industrial Development Agency Civic Facility Revenue Bonds (Daemen College Project), Series 2001A (the "Series 2001A Bonds") used to finance (a) the acquisition by the Town of Amherst Industrial Development Agency (the "Prior Issuer") of a leasehold interest in an approximately 5.7 acre parcel of land (the "Student Housing Land") located on the campus of the Borrower at 4380 Main Street in the Town of Amherst, Erie County, New York (the "Campus") on which is located Rosary Hall and the Business & Commerce Building (the "Other Land" and, together with the Student Housing Land, the "Land"), (b) the acquisition by the Prior Issuer of an interest in the existing buildings located on the Student Housing Land containing 23 existing student housing units (the

“Existing Student Housing”) and of an interest in Rosary Hall and an interest in the Business & Commerce Building, both of which are located on the Other Land (the Existing Student Housing, Rosary Hall and the Business & Commerce Building being collectively referred to as the “Existing Facility”), (c) the demolition of the Existing Student Housing, (d) the construction on the Student Housing Land of 7 new apartment style housing units with a total of approximately 384 beds (the “New Housing Facility”) and (e) the acquisition and installation by the Prior Issuer of an interest in certain existing furniture and fixtures located in Rosary Hall (the “Rosary Hall Equipment”) and in the Business and Commerce Building (together with the Rosary Hall Equipment, the “Existing Equipment”) (the Land, the Existing Facility, the New Housing Facility and the Existing Equipment being collectively referred to as the “2001 Project Facility”); and (2) paying a portion of the costs incidental to the issuance of the Series 2006A Bonds, including issuance costs of the Series 2006A Bonds and a debt service reserve fund to secure the Series 2006A Bonds; (B) the refinancing, in whole or in part, of the Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006B issued on June 30, 2006 in the original aggregate principal amount of \$17,075,000 (the “Series 2006B Bonds” and, together with the Series 2006A Bonds, the “Prior Bonds”), which Series 2006B Bonds financed the following project: (1) the acquisition of an interest or interests in portions of the Land; (2) the construction of a new library and information center on the Land to contain approximately 47,200 gross square feet of space (the “Library Facility” and together with the Existing Facility, the “Facility”); (3) the acquisition of an interest in and installation of equipment and fixtures to be located in or attached to the Library Facility (the “Library Equipment” and, together with the Existing Equipment, the “Equipment”) (the Library Facility and the Library Equipment being collectively referred to as the “2006 Project Facility”); and (4) paying a portion of the costs incidental to the issuance of the Series 2006B Bonds, including issuance costs of the Series 2006B Bonds and a debt service reserve fund to secure the Series 2006B Bonds; (C) (1) the renovation of and improvements to the science facilities in Duns Scotus Hall, all on the Land, and (2) the undertaking of various deferred maintenance improvements to Campus facilities, all on the Land (collectively, the “2018 Project Facility” and, together with the Facility, the “Project Facility”); (D) the financing of all or a portion of the costs of the foregoing by the issuance of revenue bonds of the Issuer in one or more issues or Series in an aggregate principal amount sufficient to pay the cost of undertaking the Initial Project, together with necessary incidental costs in connection therewith, in an amount then estimated to be approximately \$35,000,000 and in any event not to exceed \$37,000,000 (the “Obligations”); and (E) paying a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations, any hedge termination fees and any reserve funds as may be necessary to secure the Obligations; and

WHEREAS, the Chief Executive Officer of the Issuer (A) caused notice of a public hearing of the Issuer (the “Public Hearing”) pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”) and, as provided in the Certificate of Reincorporation, pursuant to the applicable provisions of Section 859-a and Section 859-b of the General Municipal Law of the State of New York (the “GML”), to hear all persons interested in the Initial Project and the financial assistance being contemplated by the Issuer with respect to the Initial Project, to be published on April 18, 2018 in The Amherst Bee, a newspaper of general circulation available to the residents of the Town of Amherst, New York, (B) caused notice of the Public Hearing to be posted on April 17, 2018 at the Town Clerk’s Office located at 5583 Main Street, Amherst, New York, (C) caused notice of the Public Hearing to be mailed on April 13, 2018 to the chief executive officers of the county and of each city, town, village and school district in which the Initial Project Facility is (or will be) located, (D) conducted the Public Hearing on May 4, 2018 at 8:30 a.m., local time at 4287 Main Street, Amherst, New York, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) which fairly summarized the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the board of directors of the Issuer and to the Town Board of the Town of Amherst, New York (the “Town Board”); and

WHEREAS, by a resolution adopted by the Town Board on May 16, 2018 (the “Public Approval”), the Town Board approved the issuance of the Obligations for purposes of Section 147(f) of the Code; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the board of directors of the Issuer on May 18, 2018 (the “SEQR Resolution”), the Issuer determined that the Initial Project constituted a “Type II action” (as such quoted term is defined under SEQRA), and therefor that no further action with respect to the Project was required under SEQRA; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on May 18, 2018 (the “Inducement Resolution”), the board of directors of the Issuer determined, following a review of the Public Hearing Report, to proceed with the Initial Project and to enter into a preliminary agreement with the Borrower (the “Preliminary Agreement”) relating to the Initial Project; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on May 18, 2018 (the “Initial Bond Resolution”), the board of directors of the Issuer (A) authorized the issuance of the Issuer’s Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 (the “Initial Bonds”) for the purpose of financing a portion of the costs of the Initial Project, (B) authorized the circulation of a preliminary official statement (the “Initial Preliminary Official Statement”) in connection with the marketing of the Initial Bonds and (C) delegated to the Chairman, Vice Chairman and Chief Executive Officer of the Issuer authority to determine the final details of the Initial Bonds (the “Bond Details”) once the marketing of the Initial Bonds is completed and the Borrower has agreed to the Bond Details; and

WHEREAS, the Issuer will now issue the Initial Bonds under the Initial Bond Resolution, a certificate of determination dated June 14, 2018 (the “Certificate of Determination”) executed by the Chairman, Vice Chairman or Chief Executive Officer of the Issuer and a trust indenture dated as of June 1, 2018 (the “Indenture”) by and between the Issuer and The Bank of New York Mellon, as trustee (the “Trustee”) for the holders of the Initial Bonds and any additional bonds issued by the Issuer under the Indenture (the “Additional Bonds”, and collectively with the Initial Bonds, the “Bonds”); and

WHEREAS, prior to or simultaneously with the issuance of the Initial Bonds, the Issuer and the Borrower will execute and deliver this Loan Agreement, pursuant to the terms of which Loan Agreement (A) the Issuer will agree (1) to issue the Initial Bonds, and (2) to make a loan to the Borrower of the proceeds of the Initial Bonds (the “Loan”) for the purpose of assisting in financing the Initial Project, and (B) in consideration of the Loan, the Borrower will agree (1) to cause the Initial Project to be undertaken and completed, (2) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the Borrower for the payment of) the costs of the Initial Project, and (3) to make payments in amounts sufficient to pay when due all amounts due with respect to the Initial Bonds (the “Loan Payments”) to or upon the order of the Issuer in repayment of the Loan, which Loan Payments shall include amounts equal to the Debt Service Payments (as defined in the Indenture) due on the Initial Bonds; and

WHEREAS, pursuant to the terms of the Indenture, the net proceeds of the sale of the Initial Bonds (the “Bond Proceeds”) will be deposited into various trust funds held by the Trustee under the Indenture and will be disbursed by the Trustee from time to time to pay the costs of the Initial Project, but only upon satisfaction of the requirements for making such disbursements set forth in the Indenture and in the Loan Agreement; and

WHEREAS, as security for the Initial Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment dated as of June 1, 2018 (the “Pledge and Assignment”) from the Issuer to the Trustee, and acknowledged by the Borrower, which Pledge and Assignment will assign to the Trustee certain of the Issuer’s rights under the Loan Agreement; and

WHEREAS, pursuant to the Pledge and Assignment, basic Loan Payments made by the Borrower under the Loan Agreement are to be paid directly to the Trustee; and

WHEREAS, as additional security for the Initial Bonds, (A) the Borrower will execute and deliver to the Issuer a mortgage and security agreement dated as of June 1, 2018 (the “Mortgage”) from the Borrower to the Issuer, which Mortgage among other things, (1) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Initial Project Facility, excluding the Excluded Facility (as defined in the Indenture), and (2) assigns to the Issuer the rents, issues and profits of the Initial Project Facility, excluding the Excluded Facility, and (B) the Issuer will execute and deliver to the Trustee an assignment of mortgage dated as of June 1, 2018 (the “Mortgage Assignment”) from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee; and

WHEREAS, the (A) Borrower’s obligation (1) to make all Loan Payments under the Loan Agreement and (2) to perform all obligations related thereto and (B) Issuer’s obligation to pay the Initial Bonds will be further secured by a guaranty dated as of June 1, 2018 (the “Guaranty”) from Borrower to the Trustee; and

WHEREAS, (A) the Initial Bonds will be initially purchased by Janney Montgomery Scott LLC, acting as underwriter for the Initial Bonds (the “Underwriter”) pursuant to a bond purchase agreement dated as of June 7, 2018 (the “Initial Bond Purchase Agreement”) by and among the Underwriter, the Issuer and the Borrower, (B) the Underwriter will utilize the Initial Preliminary Official Statement and a final official statement (the “Initial Official Statement”) in connection with the initial offering of the Initial Bonds, and (C) the Underwriter also intends to obtain a rating of the Initial Bonds from one or more securities rating agencies (each such rating agency that provides a rating of the Initial Bonds, a “Rating Agency”); and

WHEREAS, to assure compliance with the continuing disclosure requirements imposed by the United States Securities and Exchange Commission, the Borrower will execute and deliver to the Underwriter and the Trustee a continuing disclosure agreement dated as of June 14, 2018 (the “Initial Continuing Disclosure Agreement”) relating to the Initial Bonds; and

WHEREAS, the Initial Bonds will be issued as “book-entry-only” obligations to be held by The Depository Trust Company, as depository (the “Depository”) for the Initial Bonds, and, to comply with the requirements of the Depository, the Issuer and the Trustee will execute and deliver to the Depository a letter of representations (the “Initial Depository Letter”) relating to the Initial Bonds; and

WHEREAS, to demonstrate compliance with the provisions of the Code relating to the issuance of tax-exempt obligations, (A) the Issuer will (1) execute an arbitrage certificate dated the date of delivery of the Initial Bonds (the “Initial Arbitrage Certificate”) relating to certain requirements set forth in Section 148 of the Code relating to the Initial Bonds, (2) execute a completed Internal Revenue Service Form 8038 (Information Return for Private Activity Bonds) relating to the Initial Bonds (the “Information Return”) pursuant to Section 149(e) of the Code, and (3) file the Information Return with the Internal Revenue Service, (B) the Borrower will execute a tax regulatory agreement dated the date of delivery of the Initial Bonds (the “Initial Tax Regulatory Agreement”) relating to the requirements in Sections 145 through 150 of the Code relating to the Initial Bonds and (C) the Underwriter will execute a letter (the

“Issue Price Letter”) confirming the issue price of the Initial Bonds for purposes of Section 148 of the Code; and

WHEREAS, simultaneously with the issuance of the Initial Bonds, the Prior Issuer, Manufacturers and Traders Trust Company, as trustee for the Prior Bonds (the “Prior Trustee”) and the Borrower will execute and deliver a letter of instructions, as acknowledged by the Issuer and the Trustee (the “Letter of Instructions”), pursuant to which (A) a deposit will be made with the Prior Trustee in an amount sufficient to enable the Prior Trustee to redeem the Prior Bonds in full on June 14, 2018 and (B) the Prior Trustee will deliver to the Issuer and the Borrower various termination documents terminating and discharging the Prior Trustee’s interest in the Prior Project (collectively, the “Termination Documents”); and

WHEREAS, the Issuer proposes to make a loan to the Borrower (the “Loan”) for the purpose of financing a portion of the costs of the Initial Project, and the Borrower desires to induce the Issuer to make the Loan and to agree to repay the Loan, all pursuant to the terms and conditions hereinafter set forth in this Loan Agreement; and

WHEREAS, the financing of the Initial Project Facility through the making of the loan pursuant to this Loan Agreement is for a proper purpose, to wit, relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest pursuant to the provisions of the Enabling Act; and

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

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

ARTICLE I

DEFINITIONS

SECTION 1.1. DEFINITIONS. Unless the context or use indicates another or different meaning or intent, capitalized terms used in this Loan Agreement and the preambles hereto not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Appendix A and made a part hereof.

SECTION 1.2. INTERPRETATION. In this Loan Agreement, unless the context otherwise requires:

(A) The terms “hereby”, “hereof”, “herein”, “hereunder”, and any similar terms as used in this Loan Agreement, refer to this Loan Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Loan Agreement.

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders.

(C) Words importing the singular number shall mean and include the plural number, and vice versa.

(D) Any headings preceding the texts of the several Articles and Sections of this Loan Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Loan Agreement nor affect its meaning, construction or effect.

(E) Any certificates, letters or opinions required to be given pursuant to this Loan Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Loan Agreement.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE ISSUER. The Issuer makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Issuer is duly established under the provisions of the Enabling Act and has the power to enter into this Loan Agreement and to carry out its obligations hereunder. By proper official action, the Issuer has been duly authorized to execute, deliver and perform this Loan Agreement and the other Financing Documents to which the Issuer is a party.

(B) Neither the execution and delivery of this Loan Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of the other Financing Documents by the Issuer will conflict with or result in a breach by the Issuer of any of the terms, conditions or provisions of the Enabling Act, the Certificate of Reincorporation or by-laws of the Issuer or any order, judgment, restriction, agreement or instrument to which the Issuer is a party or by which the Issuer is bound, or will constitute a default by the Issuer under any of the foregoing.

(C) To assist in financing a portion of the Cost of the Project related to the Initial Project, the Issuer will issue and sell the Initial Bonds. In no event will the Issuer issue and sell additional obligations to pay the Cost of the Project if the issuance and sale of such further obligations would cause interest on the Initial Bonds to be or become subject to federal income taxation under the Code.

(F) The Issuer shall cooperate with the Borrower in the filing by the Borrower, as agent of the Issuer, of such returns and other information with the Internal Revenue Service as the Trustee or the Borrower requests in writing and which Bond Counsel advises the Issuer in writing is necessary to preserve the tax-exempt status of the interest payable on the Initial Bonds, provided the Borrower shall bear all costs of preparing, gathering and/or filing such returns and other information. In addition, the Issuer, at the request of the Borrower, shall cooperate with the Borrower in the filing by the Borrower, as agent of the Issuer, of such returns and other information with the State and the Town of Amherst, New York.

(G) The Issuer has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Issuer is a bond issuer whose arbitrage certifications may not be relied upon.

(H) Subject to the limitations contained in Section 11.10 hereof, so long as the Bonds shall be Outstanding, the Issuer will not take any action (or omit to take any action required by the Financing Documents or which the Trustee or the Borrower, together with Bond Counsel, advise the Issuer in writing should be taken) or allow any action to be taken, which action (or omission) would in any way cause (1) the proceeds from the sale of the Bonds to be applied in a manner contrary to that provided in the Financing Documents, or (2) adversely affect the exclusion of the interest paid or payable on any Tax-Exempt Bond from gross income for federal income tax purposes. Notwithstanding the foregoing, there shall be no such obligation upon the Issuer with respect to the use or investment of its administrative fee, provided, however, that if the Borrower is required to rebate any amount with respect to such administrative fee, the Issuer shall provide, upon the reasonable request of the Borrower, such information concerning the investment of such administrative fee as shall be requested by the Borrower and as shall be reasonably available to the Issuer.

SECTION 2.2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE BORROWER. The Borrower makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Borrower is a not-for-profit education corporation duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State, has the power to enter into this Loan Agreement and the other Financing Documents to which the Borrower is a party and to carry out its obligations hereunder and thereunder, has been duly authorized to execute this Loan Agreement and the other Financing Documents to which the Borrower is a party, and is qualified to do business in all jurisdictions in which its operations or ownership of Property so requires. This Loan Agreement and the other Financing Documents to which the Borrower is a party, and the transactions contemplated hereby and thereby, have been duly authorized by all necessary action on the part of the Board of Trustees of the Borrower.

(B) Neither the execution and delivery of this Loan Agreement or the other Financing Documents to which the Borrower is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Loan Agreement or the other Financing Documents to which the Borrower is a party will (1) conflict with or result in a breach of or a default under any of the terms, conditions or provisions of the charter or by-laws of the Borrower or any other corporate restriction or any order, judgment, agreement or instrument to which the Borrower is a party or by which the Borrower is bound, or constitute a default under any of the foregoing, or (2) result in the creation or imposition of any Lien of any nature upon any Property of the Borrower other than pursuant to the Financing Documents and the Permitted Encumbrances, or (3) require consent (which has not been heretofore received) under any corporate restriction or any order, judgment, agreement or instrument to which the Borrower is a party or by which the Borrower or any of its Property may be bound or affected, or (4) require consent under (which has not been heretofore received), conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Borrower or any of the Property of the Borrower.

(C) The Financing Documents to which the Borrower is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Borrower, enforceable in accordance with their respective terms.

(D) The Borrower will not take any action (or omit to take any action required by the Financing Documents or which the Trustee or the Issuer, together with Bond Counsel, advise the Borrower in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (1) adversely affect the exclusion of the interest paid or payable on the Tax-Exempt Bonds from gross income for federal income tax purposes, or (2) cause the proceeds of the Bonds to be applied in a manner contrary to that provided in the Financing Documents.

(E) The Project Facility and the operation thereof will comply in all material respects with all Applicable Laws, and the Borrower will defend and save the Issuer and its members, directors, officers, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. The Borrower shall cause all notices required by all Applicable Laws to be given, and shall comply or cause compliance in all material respects with all Applicable Laws, and the Borrower will defend and save the Issuer and its members, directors, officers, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith.

(F) The Project will not have a "significant impact on the environment" (within the meaning of such term as used in SEQRA), and the Borrower hereby covenants to comply with all mitigation

measures, requirements and conditions, if any, enumerated in (1) the SEQR Resolution, pursuant to which the Issuer determined that the Project constituted a "Type II action" (as such quoted term is defined under SEQRA), and therefor that no further action with respect to the Project was required under SEQRA and (2) any other environmental determinations issued under SEQRA by any other Governmental Authority applicable to the Initial Project Facility and/or the Initial Project Facility. No material changes with respect to any aspect of the Initial Project Facility have arisen from the adoption of the SEQR Resolution which would cause the determinations contained in the SEQR Resolution to be untrue.

(G) All of the proceeds of the Initial Bonds shall be used to pay the costs of the Initial Project, and the total cost of the Initial Project is expected to at least equal to \$28,600,000.

(H) The Borrower will comply with all of the terms, conditions and provisions of the Tax Regulatory Agreement. All of the representations, certifications, statements of reasonable expectation and covenants made by the Borrower in the Tax Regulatory Agreement are hereby declared to be for the benefit of, among others, the Issuer and, by this reference, are incorporated herein by this reference as though set forth in full herein.

(I) All proceeds of the Initial Bonds shall be used to pay the Cost of the Project related to the Initial Project, and the total Cost of the Project, including all costs related to the issuance of the Bonds, shall not be less than the total Bond Proceeds advanced by the Trustee under the Indenture. In no event will "costs of issuance" (within the meaning of Section 147(g) of the Code) paid from the proceeds of the Initial Bonds exceed two percent (2%) of the proceeds of the Initial Bonds.

(J) The Borrower represents that (1) the Borrower is an organization described in Section 501(c)(3) of the Code, or corresponding provisions of prior law; (2) the Borrower has received a letter or other notification from the Internal Revenue Service to that effect; (3) such letter or other notification has not been modified, limited or revoked; (4) the Borrower is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification; (5) 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 (6) it is exempt from federal income taxes under Section 501(a) of the Code. The Borrower agrees that 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 a manner which will conform to the standards necessary to qualify the Borrower as a charitable organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law.

(K) The provision of financial assistance to be made available to the Borrower under this Loan Agreement and the commitments therefor made by the Issuer have induced the Borrower to undertake the transactions contemplated by this Loan Agreement and none of the proceeds of the Tax-Exempt Bonds will be used in any manner that will be inconsistent with the Enabling Act or the Code.

(L) THE BORROWER RECOGNIZES THAT THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE BORROWER'S TITLE THERETO OR OWNERSHIP THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT

THERE TO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OF NEW YORK OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

(M) All property to be purchased from moneys on deposit in the Project Fund will be owned by the Borrower.

(N) All representations and covenants of the Borrower contained in this Section 2.2 shall remain in effect and be binding on the Borrower until all of the Bonds have been paid and retired, notwithstanding any early termination of this Loan Agreement or any provision for payment of principal of and premium, if any, and interest on the outstanding Bonds.

(O) The Borrower has examined the Indenture and approves the form and substance of, and agrees to be bound by, its terms. The Borrower, for the benefit of the Issuer and each Bondholder, shall do and perform all acts and things required or contemplated in the Indenture to be done or performed by the Borrower.

(P) The Borrower agrees to comply with the United States Securities and Exchange Commission Rule 15c2-12, to provide any necessary information to cause all necessary compliance with Rule 15c2-12 and to pay all costs of the Issuer, if any, in respect of such compliance.

SECTION 2.3. COVENANT WITH THE TRUSTEE AND THE BONDHOLDERS. The Issuer and the Borrower agree that this Loan Agreement is executed in part to induce the purchase of the Bonds by the Holders and Beneficial Owners from time to time of the Bonds. Accordingly, all representations, covenants and agreements on the part of the Issuer and the Borrower set forth in this Loan Agreement (other than the Unassigned Rights) are hereby declared to be for the benefit of the Issuer, the Trustee and the Holders and Beneficial Owners from time to time of the Bonds.

ARTICLE III

UNDERTAKING OF THE PROJECT; ISSUANCE OF THE INITIAL BONDS; USE OF BOND PROCEEDS

SECTION 3.1. UNDERTAKING OF THE PROJECT. (A) The Borrower shall promptly acquire, construct, reconstruct and install the 2018 Project Facility, or cause the acquisition, construction, reconstruction and installation of the 2018 Project Facility, all in accordance with the Plans and Specifications.

(B) No material change in the Plans and Specifications shall be made unless the Issuer shall have consented thereto in writing (which consent of the Issuer shall not be unreasonably withheld or delayed).

(C) The Borrower has given or will give or cause to be given all notices and has complied or will comply or cause compliance in all material respects with all Applicable Laws, and the Borrower will defend, indemnify and save the Issuer and the Trustee and their respective members, directors, officers, agents (other than the Borrower), servants and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Borrower.

(D) In compliance with Section 13 of the New York Lien Law to the extent to which that Section may be found to apply by its terms, the Borrower covenants that it (1) will hold the right to receive the Bond Proceeds, which have been deposited by the Issuer in a trust fund for the purpose of paying the Cost of the Project, as a trust fund to be applied first for the purpose of paying the “cost of improvement” (as said term is defined in Section 2(5) of the New York Lien Law), and (2) will apply the same first to the payment of the “cost of improvement” before using any part of the total of the same for any other purpose. The covenant in this subsection is not intended as a representation that this Loan Agreement or the Indenture is a “building loan contract”, as defined in Section 2(13) of the New York Lien Law.

(E) The proceeds of the Prior Bonds have all been expended to fund the costs of the Facility. At least 95% of the net proceeds of the Prior Bonds plus all income derived from the investment of such net proceeds was used to pay, or to reimburse the Borrower for the payment of, or to refund outstanding obligations, to the extent the proceeds of any such obligation were used to pay or reimburse, costs incurred in connection with the acquisition, construction, improvement, installation and equipping of the Facility. The Borrower has entered into the Defeasance Escrow Agreement relating to the defeasance of the Prior Bonds, pursuant to which a portion of the proceeds of the Initial Bonds, together with certain proceeds of the Prior Bonds currently on deposit with the Prior Trustee, including but not limited to the Prior Reserve Fund, will be applied to defease the Prior Bonds and to redeem the Prior Bonds on the earliest possible optional redemption date relating to the Prior Bonds following the date of the issuance of the Initial Bonds.

SECTION 3.2. ISSUANCE OF THE INITIAL BONDS; LOAN OF THE PROCEEDS THEREOF.

(A)(1) In order to make the Loan for the purposes of financing a portion of the Cost of the Project relating to the Initial Project, together with other costs and incidental expenses in connection therewith, the Issuer agrees that it will use its best efforts to (a) issue and deliver the Initial Bonds in the aggregate principal amount of \$28,600,000 and (b) cause the Initial Bonds to be delivered to the Underwriter as original

purchaser of the Initial Bonds, all as provided in the Initial Bond Resolution, the Certificate of Determination, the Initial Bond Purchase Agreement and the Indenture.

(2) As provided in Section 214 of the Indenture, the Issuer, upon a request of the Borrower, may, but shall not be required to, issue Additional Bonds to provide moneys required for the cost of completing the Project in excess of the moneys in the applicable account in the Project Fund. Nothing contained herein or in the Indenture shall be construed as creating any obligation upon the Issuer to issue Bonds for such purpose, it being the intent hereof to reserve to the Issuer full and complete discretion to decline to issue such Additional Bonds. The proceeds of any Additional Bonds shall be deposited and applied as specified in the supplemental indenture authorizing issuance of such Additional Bonds.

(B) As provided in Section 402(A) of the Indenture, the proceeds from the sale of the Initial Bonds shall be loaned by the Issuer to the Borrower and paid as follows: (1) a sum equal to any accrued interest, if any, paid by the Underwriter as original purchaser shall be deposited by the Issuer with the Trustee and deposited by the Trustee into the Bond Fund and (2) the balance of the proceeds from the sale of the Bonds shall be deposited by the Issuer with the Trustee and deposited by the Trustee into the Project Fund. As provided in the Initial Bond Purchase Agreement, the Underwriter will advance the proceeds of the sale of the Initial Bonds to the Trustee in a single advance for deposit in accordance with the provisions of the Indenture. Pending disbursement pursuant to Section 3.4 hereof and the provisions of the Indenture, the proceeds of the Initial Bonds deposited in accordance with the provisions of the Indenture, together with any investment earnings thereon, shall constitute a part of the Trust Estate assigned by the Issuer to the payment of Debt Service Payments as provided in the Indenture.

(C) THE ISSUER MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, THAT THE NET PROCEEDS OF THE INITIAL BONDS WILL BE SUFFICIENT TO COMPLETE THE FINANCING, REFINANCING, ACQUISITION, CONSTRUCTION, RECONSTRUCTION AND INSTALLATION OF THE INITIAL PROJECT FACILITY.

SECTION 3.3. APPLICATION OF PROCEEDS OF THE INITIAL BONDS. (A) The portion of the proceeds of the sale of the Initial Bonds on deposit in the Project Fund shall be deposited by the Issuer with the Trustee as provided in the Indenture and, upon submission to the Trustee of a Request for Disbursement certified by an Authorized Representative of the Borrower and complying with the requirements of Section 404 of the Indenture, shall be applied to pay the following items of cost and expenses incurred on or subsequent to the Inducement Date (except to the extent that the Borrower obtains a letter from Bond Counsel to the effect that payments of amounts incurred prior to such date will not adversely affect the tax-exempt status of the interest paid or payable on the Tax-Exempt Bonds) in connection with the Initial Project, and for no other purpose:

(1) the cost of preparing the Plans and Specifications as they relate to the 2018 Project Facility (including any preliminary study or planning for the Project Facility or any aspect thereof);

(2) all costs incurred in connection with (a) the acquisition, construction, reconstruction and installation of the 2018 Project Facility (including architectural, engineering and supervisory services with respect thereto) and (b) the defeasance and/or refunding of the Prior Bonds;

(3) all fees, taxes, charges and other expenses for recording or filing, as the case may be, the Financing Documents, any other agreement contemplated hereby, any financing statements and any title curative documents in order to perfect or protect the Issuer's, the

Trustee's or the Borrower's respective interests in the Project Facility, and any security interests contemplated by the Financing Documents;

(4) all fees and expenses in connection with any actions or proceedings in order to perfect or protect the Issuer's, the Trustee's or the Borrower's respective interests in the Project Facility, except for removing Permitted Encumbrances;

(5) any expenses of the Borrower in enforcing any remedy against any contractor, subcontractor or materialman in accordance with Section 3.6 hereof;

(6) the cost of all insurance maintained with respect to the Project Facility pursuant to Section 6.3 hereof during the Construction Period and the cost of maintaining any payment or performance bond (or letter of credit in substitution therefor), if any, relating to the Project Facility;

(7) all interest payable on the Bonds during the Construction Period relating to the 2018 Project Facility;

(8) all interest payable on any interim financing the Borrower may have secured with respect to the Project Facility in anticipation of the issuance of the Bonds;

(9) all legal, accounting, financial advisory, investment banking, underwriting, rating agency, blue sky, legal investment and any other fees, discounts, costs and expenses incurred by the Issuer, the Borrower or the Trustee in connection with the preparation, reproduction, authorization, issuance, execution, delivery and sale of the Bonds and the other Financing Documents and all other documents in connection therewith, with the acquisition, construction, reconstruction and/or installation of the Project Facility, and with any other transaction contemplated by the Bonds, the Indenture and this Loan Agreement;

(10) the administration, acceptance and/or commitment fees, costs and expenses (including, but not limited to, reasonable attorneys' fees) of the Issuer and the Trustee;

(11) all appraisal and surveying costs;

(12) payment of the taxes and assessments for the 2018 Project Facility payable during or allocable to the Construction Period; and

(13) reimbursement to the Borrower for any of the above enumerated costs and expenses paid and incurred by the Borrower subsequent to the Inducement Date.

(B) Any disbursements from the Project Fund for the payment of the Project Costs relating to the Initial Project shall be made by the Trustee only upon the written order of the Authorized Representative of the Borrower. Each such written order shall be in substantially the form of the Request for Disbursement attached to the Indenture as Exhibit A thereto and shall be consecutively numbered and accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. Any disbursement for any item not described in, or the cost for which item is other than as described in, the information return filed by the Issuer in connection with the issuance of any Series of Tax-Exempt Bonds as required by Section 149(e) of the Code shall be accompanied by evidence satisfactory to the Trustee that the average reasonably expected economic life of the facilities being financed by such Series of Tax-Exempt Bonds is not less than 5/6ths of the average maturity of such Series of Tax-Exempt Bonds or, if such evidence is not presented with the disbursement or at the request

of the Trustee, by an opinion of Bond Counsel to the effect that such disbursement will not result in the interest on such Series of Tax-Exempt Bonds becoming included in the gross income of the Holders thereof for federal income tax purposes. At or prior to submitting a Request for Disbursement, the Authorized Representative shall provide the Trustee with either appropriate mechanics' lien affidavits or waivers from each payee under each such prior disbursement request or with evidence or documentation satisfactory to the Trustee that provision against the filing of any mechanics' or similar liens with respect to the payment being made has been taken by the Borrower by deposit or bonding. In case any contract provides for the retention by the Borrower of a portion of the contract price, there shall be paid 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.

(C) Any moneys relating to the Initial Bonds remaining in the Project Fund after the date of completion of the Initial Project and the payment, or provision for payment, in full of the Project Costs relating to the Initial Project, at the direction of the Authorized Representative of the Borrower, promptly shall be:

(1) used to construct, install, equip and improve such additional real or personal property in connection with the Initial Project as is designated by the Authorized Representative and the construction, installation, equipment and improvement of which will be permitted under the Enabling Act, provided that any such use shall be accompanied by evidence satisfactory to the Trustee that the average reasonably expected economic life of such additional property, together with the other property theretofore acquired with the proceeds of the Bonds, will not be less than 5/6ths of the average maturity of the Initial Bonds or, if such evidence is not presented with the direction, an opinion of Bond Counsel to the effect that the acquisition of such additional property will not result in the interest on the Initial Bonds becoming included in the gross income of the Holders of the Initial Bonds for federal income tax purposes;

(2) used for the purchase of Initial Bonds in the open market for the purpose of cancellation at prices not exceeding the full market value thereof plus accrued interest thereon to the date of payment therefor;

(3) paid into the Bond Fund to be applied to the redemption of the Initial Bonds; or

(4) used for a combination of the foregoing as is provided in that direction.

(D) In all such cases, any payments made pursuant to subsection (C) of this Section 3.3 shall be made only to the extent that such use or application will not, in the opinion of Bond Counsel or under ruling of the Internal Revenue Service, result in the interest on the Initial Bonds becoming included in the gross income of the Holders thereof for federal income tax purposes.

SECTION 3.4. COMPLETION OF THE 2018 PROJECT FACILITY. The Borrower will proceed with due diligence to commence and complete the acquisition, construction, reconstruction and installation of the 2018 Project Facility. Completion of the same shall be evidenced by a certificate signed by an Authorized Representative of the Borrower delivered to the Issuer and the Trustee stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the acquisition, construction, reconstruction and installation of the 2018 Project Facility have been completed with the exception of ordinary punchlist items and work awaiting seasonal opportunity, (D) that the Borrower or the Issuer has good and valid title to all Property constituting a portion of the 2018 Project Facility, and that the 2018 Project Facility is subject to this Loan Agreement, (E) the amount that the Trustee shall retain in the Project Fund for the payment of Project Costs not yet due or for liabilities which the Borrower is contesting or which

otherwise should be retained in the Project Fund and the reasons why such amounts should be retained, (F) the applicable Rebate Amount with respect to the Net Proceeds of the Project Fund and the earnings thereon (with a statement as to the determination of the Rebate Amount and a written direction to the Trustee of any required transfer to the Rebate Fund), and (G) that the 2018 Project Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate may state (1) that it is given without prejudice to any rights of the Borrower against third parties which exist at the date of such certificate or which may subsequently come into being, (2) that it is given only for the purposes of this Section 3.4, and (3) that no Person other than the Issuer and the Trustee may benefit therefrom. Such certificate shall be accompanied by (a) a permanent unconditional certificate of occupancy, or a letter from the local Governmental Authority stating no certificate of occupancy is required, and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the 2018 Project Facility for its intended purposes and (b) a certificate of the Borrower to the effect that the 2018 Project Facility will serve the purposes contemplated by this Loan Agreement and the Indenture.

SECTION 3.5. COMPLETION BY THE BORROWER. (A) In the event that the proceeds of the Bonds are not sufficient to pay in full all costs of acquiring, constructing, reconstructing and installing the 2018 Project Facility, the Borrower agrees to complete such acquisition, construction, reconstruction and installation and to pay all such sums as may be in excess of the moneys available therefor in the Project Fund. **THE ISSUER DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT THE MONEYS WHICH WILL BE DEPOSITED INTO THE PROJECT FUND, AND WHICH UNDER THE PROVISIONS OF THIS LOAN AGREEMENT WILL BE AVAILABLE FOR PAYMENT OF THE COST OF THE PROJECT, WILL BE SUFFICIENT TO PAY ALL OF THE COSTS WHICH WILL BE INCURRED IN CONNECTION THEREWITH.**

(B) No payment by the Borrower pursuant to this Section 3.5 shall entitle the Borrower to any reimbursement for any such expenditure from the Issuer or the Trustee or to any diminution or abatement of any amounts payable by the Borrower under this Loan Agreement or under any other Financing Document.

SECTION 3.6. REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a breach, default or event of default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, construction, reconstruction and installation of the 2018 Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Borrower may proceed, either separately or in conjunction with others, to exhaust the remedies of the Borrower and the Issuer against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Borrower may, in its own name or, with the prior written consent of the Issuer, in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Borrower deems reasonably necessary, and in such event the Issuer hereby agrees, at the Borrower's sole expense, to cooperate fully with the Borrower and to take all action necessary to effect the substitution of the Borrower for the Issuer in any such action or proceeding. The Borrower shall advise the Issuer and the Trustee of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Borrower as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 3.6 shall be deposited in the Project Fund and used to the extent necessary to complete the 2018 Project Facility and then deposited in the Bond Fund and applied as provided in Section 301(A) of the Indenture.

SECTION 3.7. INVESTMENT OF FUND MONEYS. (A) At the oral (promptly confirmed in writing) or written request of the Authorized Representative of the Borrower, any moneys held as part of any Fund

created under the Indenture shall be invested or reinvested by the Trustee in Authorized Investments. The Borrower covenants that the Borrower will restrict that investment and reinvestment and the use of the proceeds of the Tax-Exempt Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for the Tax-Exempt Bonds, so that the Tax-Exempt Bonds will not constitute arbitrage bonds under Section 148 of the Code.

(B) Any officer of the Issuer having responsibility for issuing the Initial Bonds is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee or agent of or consultant to the Issuer, or with the Borrower or any officer, employee or agent of or consultant to the Borrower, to give an appropriate certificate of the Issuer pursuant to said Section 148, for inclusion in the transcript of proceedings for the Initial Bonds, setting forth the reasonable expectations of the Issuer regarding the amount and use of the proceeds of the Initial Bonds and the facts, estimates and circumstances on which those expectations are based, that certificate to be premised on the reasonable expectations and the facts, estimates and circumstances on which those expectations are based, as provided by the Borrower, all as of the date of delivery of and payment for the Initial Bonds. The Borrower shall provide the Issuer with, and the Issuer's certificate shall be based on, a certificate of an appropriate officer, employee or agent of or consultant to the Borrower setting forth the reasonable expectations of the Borrower on the date of delivery of and payment for the Initial Bonds regarding the amount and use of the proceeds of the Initial Bonds and the facts, estimates and circumstances on which they are based.

SECTION 3.8. REBATE FUND. The Borrower agrees to make such payments to the Trustee as are required of it under Section 407 of the Indenture and to pay the costs and expenses of the independent certified public accounting firm or firm of attorneys engaged in accordance with Section 407 of the Indenture. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture.

ARTICLE IV

SECURITY FOR THE INITIAL BONDS

SECTION 4.1. EXECUTION OF SECURITY DOCUMENTS. At or before the delivery by the Issuer of the Initial Bonds, the Borrower shall execute and deliver to the Issuer and/or the Trustee the following documents (the "Security Documents"):

(A) The Mortgage, in recordable form, mortgaging to the Issuer the Mortgaged Property, which Mortgage shall constitute a first lien on the Mortgaged Property, subject only to the Permitted Encumbrances. Concurrently with the delivery of the Initial Bonds to the Trustee, the Issuer will assign all of its rights under the Mortgage to the Trustee for the benefit of the holders of the Initial Bonds;

(B) The Guaranty; and

(C) The Environmental Compliance Agreement pursuant to which, among other things, the Borrower indemnifies the Trustee against certain environmental liabilities related to the Project Facility.

SECTION 4.2 WARRANTY AS TO TITLE; ENCUMBRANCES; TITLE INSURANCE. (A) The Borrower warrants and represents to the Issuer that (1) it has good and marketable title to the Project Facility and all Mortgaged Property, free and clear of liens and encumbrances, except Permitted Encumbrances, so as to permit it to have quiet enjoyment and use thereof for purposes hereof and the Borrower's programs and (2) the Borrower has such rights of way, easements or other rights in land as may be reasonably necessary for ingress and egress to and from the Project Facility and all Mortgaged Property, for proper operation and utilization of the Project Facility and such Mortgaged Property and for utilities required to serve the Project Facility and such Mortgaged Property, together with such rights of way, easements or other rights in, to and over land as may be necessary for construction by the Borrower of the Project Facility.

(B) The Borrower covenants that title to the Project Facility, other than Permitted Encumbrances; provided, however, that nothing in this Section 4.2 shall prohibit the incurrence of Parity Indebtedness pursuant to Section 4.3 hereof.

(C) The Borrower warrants, represents and covenants that (1) the Project Facility is and shall be serviced by all necessary utilities (including, to the extent applicable, without limitation, electricity, gas, water, sewer, steam, heating, air-conditioning and ventilation), and (2) to the extent applicable, the Project Facility shall have its own separate and independent means of access, apart from any other property owned by the Borrower or others. Such access, however, may be through common roads or walks owned by the Borrower used also for other parcels owned by the Borrower.

SECTION 4.3. PARITY INDEBTEDNESS. The Borrower may incur additional indebtedness secured equally and ratably with respect to the lien on the Mortgaged Property as provided in the Indenture.

SECTION 4.4. RECORDATION OF SECURITY DOCUMENTS; UCC FILINGS. The Mortgage shall be recorded or filed, as the case may be, by the Issuer (but at the sole cost and expense of the Borrower) in the office of the County Clerk of Erie, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

(B) The Borrower hereby covenants that, during the term hereof, the Borrower shall execute one or more financing statements and continuation statements therefor as to the security interests granted

to the Issuer, the Trustee in any moneys (or investments thereof) and the right to receive the same, assigned or pledged to the Issuer or the Trustee pursuant to any Security Document and to file such financing statements and continuation statements in all appropriate public offices. The Borrower hereby irrevocably appoints each of the Issuer and the Trustee during the term hereof as its lawful attorney-in-fact to complete, on behalf of the Borrower, one or more financing statements and continuation statements therefor as to the security interests granted to the Issuer or the Trustee, as the case may be, in any moneys (or investments thereof) and the rights to receive the same, pledged to the Issuer or the Trustee pursuant to any Security Document and to file such financing statements and continuation statements therefor in any appropriate public office; provided, however, that so long as no Event of Default hereunder is then continuing, the Borrower shall be accorded the opportunity to review and approve any proposed financing statement or modification (but not continuation statements) prepared by the Issuer or the Trustee, but such statement or modification may be filed by the Issuer or the Trustee on behalf of the Borrower if the Borrower has not approved within a reasonable period of time, not to exceed thirty (30) days, after such statement was presented to the Borrower for approval; provided, further, that the failure to send any such copy to the Borrower for its review and approval shall not affect the validity or enforceability of any statement or modification executed by the Issuer or the Trustee or the filing thereof. The Issuer and the Trustee shall forward to the Borrower, in due course, a copy of any such financing or continuation statement filed on behalf of the Borrower as provided herein.

(C) The Issuer and the Borrower shall execute and deliver all instruments and shall furnish all information that is necessary or appropriate to protect any Lien created or contemplated by this Loan Agreement or any of the other Financing Documents.

SECTION 4.5. PLEDGE AND ASSIGNMENT OF ISSUER'S INTERESTS TO TRUSTEE. (A) The Issuer has, pursuant to the terms of the Pledge and Assignment, pledged and assigned certain of its rights and interests under and pursuant to this Loan Agreement to the Trustee as security for the payment of the principal of, premium, if any, and interest on the Bonds. Such pledge and assignment shall in no way impair or diminish any obligations of the Issuer under this Loan Agreement.

(B) The Borrower hereby acknowledges receipt of notice of and consents to such pledge and assignment by the Issuer to the Trustee and specifically agrees to perform for the benefit of the Trustee all of its duties and undertakings hereunder (except duties undertaken with respect to the Unassigned Rights).

ARTICLE V

LOAN BY THE ISSUER; REPAYMENT OF THE LOAN; LOAN PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1. LOAN PAYMENTS AND OTHER AMOUNTS PAYABLE. (A) Upon the terms and conditions of this Loan Agreement, the Issuer will make the Loan to the Borrower. In consideration of and in repayment of the Loan, the Borrower shall make, as Loan Payments, payments sufficient in amount to pay when due the Debt Service Payments due and payable on the Bonds. The Borrower shall pay Loan Payments as follows:

(1) on or before the fifth (5th) Business Day immediately preceding each Interest Payment Date, the Borrower shall cause immediately available funds to be delivered to the Trustee for deposit into the Bond Fund, in an amount equal to the amount due as interest on the Bonds on the next succeeding Interest Payment Date, so that the amount on deposit in the Bond Fund and available for the payment of interest on the fifth (5th) Business Day next preceding such Interest Payment Date, when added to the amount in the Bond Fund and available to the Trustee for such purpose, shall equal the interest payable on the Bonds on such Interest Payment Date;

(2) on or before the fifth (5th) Business Day immediately preceding each Bond Payment Date upon which a Sinking Fund Payment is due on the Bonds, the Borrower shall cause immediately available funds to be delivered to the Trustee for deposit into the Bond Fund, in an amount equal to the amount due as a Sinking Fund Payment on the Bonds on such Bond Payment Date; and

(3) on or before the fifth (5th) Business Day immediately preceding each Bond Payment Date upon which a principal payment is due on the Bonds, the Borrower shall cause immediately available funds to be delivered to the Trustee for deposit into the Bond Fund, in an amount equal to the amount due as principal on the Bonds on such Bond Payment Date.

(B) The Borrower shall pay as additional Loan Payments hereunder any premium when due on the Bonds and the following:

(1) Within thirty (30) days after receipt of a demand therefor from the Trustee, the Bond Registrar or any Paying Agent, the Borrower shall pay to the Trustee, the Bond Registrar or any Paying Agent, as the case may be, the following amounts: (a) the reasonable fees, costs and expenses of the Trustee, the Bond Registrar or Paying Agent for performing the obligations of the Trustee under the Indenture and the other Financing Documents; (b) the sum of the expenses of the Trustee, the Bond Registrar or Paying Agent reasonably incurred in performing the obligations of (i) the Borrower under this Loan Agreement, or (ii) the Issuer under the Bonds, the Indenture or this Loan Agreement; and (c) the reasonable attorneys' fees of the Trustee, the Bond Registrar or Paying Agent incurred in connection with the foregoing and other moneys due the Trustee, the Bond Registrar or Paying Agent pursuant to the provisions of any of the Financing Documents.

(2) (a) On the Closing Date, the Borrower shall pay to the Issuer, (i) a lump sum payment in an amount equal to \$143,000, representing the Issuer's administration fee for the issuance of the Initial Bonds; plus (ii) an additional lump sum in an amount equal to the fees and expenses of general counsel and Bond Counsel to the Issuer relating to the Project.

(b) Within thirty (30) days after receipt of a demand therefor from the Issuer, the Borrower shall pay to the Issuer the sum of the reasonable expenses (including, without limitation, reasonable attorney's fees and expenses) of the Issuer and the members, directors, officers, agents, servants and employees thereof incurred by reason of the Issuer's making of the Loan, the financing and/or refinancing of the Project Facility, the issuance and delivery of any Bonds, the marketing or remarketing of any Bonds or in connection with the carrying out of the Issuer's duties and obligations under this Loan Agreement or any of the other Financing Documents, and any other fee or expense of the Issuer with respect to the Project Facility, the Bonds or any of the other Financing Documents, the payment of which is not otherwise provided for under this Loan Agreement.

(C) The Borrower agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Borrower shall fail to make any payment required by this Section 5.1 for a period of more than ten (10) days from the date such payment is due, the Borrower shall pay the same, together with interest thereon, at the Default Interest Rate, from the date on which such payment was due until the date on which such payment is made.

(D) In the event of an application of moneys in the Project Fund toward prepayment of the principal of the Bonds pursuant to Section 404(D) of the Indenture, there shall be no abatement or reduction in the amounts payable by the Borrower under this Section 5.1.

(E) The Borrower shall be entitled to a credit against the Loan Payments next required to be made under Section 5.1(A) hereof to the extent that the balance of the Bond Fund is then in excess of amounts required (1) for payment of Bonds theretofore matured or theretofore called for redemption, (2) for payment of interest for which checks or drafts have been drawn and mailed by the Trustee, and (3) for deposit in the Bond Fund for use other than for the payment of Debt Service Payments on the Interest Payment Date next following the applicable date such Loan Payments are due pursuant to Section 5.1(A) hereof. In any event, however, if on any Interest Payment Date, the balance in the Bond Fund is insufficient to make required payments of Debt Service Payments on the Bonds, the Borrower forthwith will pay to the Trustee, for the account of the Issuer and for deposit into the Bond Fund, any deficiency.

SECTION 5.2. NATURE OF OBLIGATIONS OF THE BORROWER HEREUNDER. (A) The obligations of the Borrower to make the payments required by this Loan Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Borrower and shall be absolute and unconditional irrespective of any defense or any right of set-off, recoupment, counterclaim or abatement that the Borrower may otherwise have against the Issuer or the Trustee. The Borrower agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Loan Agreement, or terminate this Loan Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Borrower's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Issuer to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Loan Agreement.

(B) Nothing contained in this Section 5.2 shall be construed to release the Issuer from the performance of any of the agreements on its part contained in this Loan Agreement, and, in the event the Issuer should fail to perform any such agreement, the Borrower may institute such action against the Issuer as the Borrower may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 11.10 hereof); provided, however, that the Borrower shall look solely to the Issuer's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Borrower for the collection of a judgment (or other judicial process) requiring the payment of money by the Issuer in the event of any liability on the part of the Issuer, and no other Property or assets of the Issuer or of the members, directors officers, agents (other than the Borrower), servants or employees of the Issuer shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Borrower's remedies under or with respect to this Loan Agreement, the relationship of the Issuer and the Borrower hereunder or the Borrower's purchase of and title to the Project Facility, or any other liability of the Issuer to the Borrower.

SECTION 5.3. PREPAYMENT OF LOAN PAYMENTS. At any time that the Bonds are subject to redemption under Section 301(B) of the Indenture, the Borrower may, at its option, prepay, in whole or in part, the Loan Payments payable hereunder by causing there to be moneys in an amount equal to the Redemption Price of the Bonds being redeemed on deposit with the Trustee no more than sixty (60) days and no less than thirty (30) days prior to the date such moneys are to be applied to the redemption of such Bonds under Section 301 of the Indenture. Pending application for those purposes, any moneys so delivered shall be held by the Trustee in a special account in the Bond Fund and delivery of those moneys shall not operate to abate or postpone Loan Payments or additional Loan Payments otherwise becoming due or to alter or suspend any other obligations of the Borrower under this Loan Agreement.

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1. MAINTENANCE AND MODIFICATION OF THE PROJECT FACILITY. (A) So long as any of the Bonds are Outstanding, and during the term of this Loan Agreement, the Borrower shall keep and maintain or make arrangements with others to keep and maintain the Project Facility in accordance with (A) the requirements of the Security Documents, and (B) the purposes and requirements of the Act and the Code. The Borrower further agrees that it shall pay at its own expense all extraordinary costs of maintaining, repairing and replacing the Project Facility except insofar as funds are made available therefor from proceeds of insurance, condemnation or eminent domain awards as provided in Article VII of this Loan Agreement.

(B) So long as any of the Tax-Exempt Bonds are Outstanding, and during the term of this Loan Agreement, the Borrower shall keep and maintain or make arrangements with others to keep and maintain the Project Facility in accordance with purposes and requirements of the Code necessary to preserve the exclusion from gross income for federal income tax purposes of the interest paid and payable on the Tax-Exempt Bonds (including the Initial Bonds).

SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Borrower shall pay or cause to be paid, as the same respectively become due, (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility, (2) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, and (3) all assessments and charges of any kind whatsoever lawfully made against the Project Facility by any Governmental Authority for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated hereunder to pay only such installments as are required to be paid during all periods that any Bond shall be Outstanding and/or during the term of this Loan Agreement or any other Financing Document.

(B) Notwithstanding the provisions of subsection (A) of this Section 6.2, after prior notice to the Trustee, in the case of any material item, the Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any such taxes, assessments and other charges, provided that (1) no Event of Default shall have occurred and shall be continuing under any of the Financing Documents, (2) such proceeding shall suspend the collection of the contested taxes, assessments or charges from the Borrower and from the Project Facility, (3) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Borrower or the Project Facility is subject and shall not constitute a default thereunder, and (4) the Borrower shall have set aside in an interest-bearing account with the Trustee adequate cash reserves for the payment of the contested taxes, assessments and charges, together with all interest and penalties thereon.

SECTION 6.3. INSURANCE REQUIRED. So long as any Bond is Outstanding and/or during the term of this Loan Agreement, the Borrower shall maintain insurance with respect to the Project Facility against such risks and for such amounts and with such deductibles as are customary to the industry, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) (1) During and prior to completion of the Project Facility, builder's risk (or equivalent coverage) insurance upon any work done or material furnished in connection with the acquisition, construction, reconstruction and installation of the Project Facility, issued to the Borrower as insured and the Trustee as mortgagee and loss payee, as their interests may appear, and written in completed value form for the full insurable value of the Project Facility, and (2) at such time that builder's risk insurance is no longer available by virtue of completion of the acquisition, construction, reconstruction and installation of the Project Facility, insurance protecting the interests of the Borrower as insured and the Trustee as mortgagee and loss payee, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount not less than the greater of total principal amount of the Bonds Outstanding or the actual replacement value of the Project Facility.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Borrower is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Borrower who are located at or assigned to the Project Facility or who are responsible for the acquisition, construction, reconstruction and/or installation of the Project Facility.

(C) Insurance protecting the Borrower, the Issuer and the Trustee against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Borrower under Sections 8.2 and 8.13 of this Loan Agreement) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$500,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Borrower by any applicable workers' compensation law, and a separate umbrella liability policy protecting the Borrower, the Issuer and the Trustee, with a limit of not less than \$5,000,000.

(D) If the Project Facility is located within an area identified by the Secretary of Housing and Urban Development as having special flood hazards, insurance against loss by floods in an amount at least equal to the total principal amount of the Bonds Outstanding or to the maximum limit of coverage made available, whichever is less. If no portion of the Project Facility is located in such a federally designated "special flood hazard area," such fact shall be substantiated by a certificate in form satisfactory to the Trustee from a licensed surveyor, appraiser or professional engineer or other qualified person.

(E) THE ISSUER DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR IN LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BORROWER'S BUSINESS OR INTERESTS.

SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE. (A) Except as otherwise provided herein, all policies of insurance required by Section 6.3 (the "Policies") shall be issued by insurers having a minimum policy holders rating of "A" pursuant to the latest rating publication of Property and Casualty Insurers by A.M. Best Company and who are lawfully doing business in the State and are otherwise acceptable in all respects to the Issuer. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Borrower is engaged. All policies evidencing such insurance shall name the Borrower as insured and, in the case of the insurance specified in Section 6.3(A) and Section 6.3(D), shall name the Trustee as mortgagee and loss payee, as its interests may appear. The Borrower shall provide for at least thirty (30) days' written notice to the Issuer, the Trustee and the Trustee prior to cancellation, lapse, reduction in policy limits or material change in coverage

thereof. The insurance required by Section 6.3(A) hereof shall contain a standard non-contributory mortgagee endorsement in favor of the Trustee as mortgagee and loss payee, as its interests may appear. All insurance required hereunder shall be in form, content and coverage satisfactory to the Issuer. Blanket insurance policies shall not be acceptable for the purposes of this subsection unless otherwise approved to the contrary by the Issuer. Certificates satisfactory in form and substance to the Issuer to evidence all insurance required hereby shall be delivered to the Issuer and the Trustee on or before the Closing Date. At the request of the Trustee, the Borrower will deliver the policies to the Trustee. At least thirty (30) days prior to the expiration of any such policy, the Borrower shall furnish to the Issuer and the Trustee evidence that the policy has been renewed or replaced or is no longer required by this Loan Agreement.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Borrower. If at any time the Issuer and the Trustee are not in receipt of written evidence that all insurance required hereunder is in force and effect, the Issuer and the Trustee shall each have the right without notice to the Borrower to take such action as the Issuer and/or the Trustee deems necessary to protect their/its interest in the Project Facility, including, without limitation, the obtaining of such insurance coverage as the Issuer and the Trustee in their sole discretion deem appropriate, and all expenses incurred by the Issuer and/or the Trustee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Borrower to the Issuer and/or the Trustee, as the case may be, upon demand, together with interest thereon at the Default Interest Rate.

(C) The provisions of subsection 4 of Section 254 of the Real Property Law of the State covering the insurance of buildings against loss by fire shall not apply to this Loan Agreement.

SECTION 6.5. APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows: (A) the Net Proceeds of the insurance required by Section 6.3(A) and 6.3(D) hereof shall be paid to the Trustee and applied as provided in Section 7.1 hereof and Section 406 of the Indenture, and (B) the Net Proceeds of the insurance required by Section 6.3(B) and 6.3(C) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid; provided, however, that if the Net Proceeds of such insurance is less than \$500,000, such Net Proceeds shall be paid directly to the Borrower and applied by the Borrower as provided in this Section 6.5 and Article VII of this Loan Agreement.

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. DAMAGE OR DESTRUCTION. (A) If the Project Facility shall be damaged or destroyed, in whole or in part:

(1) the Issuer shall have no obligation to replace, repair, rebuild or restore the Project Facility;

(2) there shall be no abatement or reduction in the amounts payable by the Borrower under this Loan Agreement or under any of the other Financing Documents (whether or not the Project Facility is replaced, repaired, rebuilt or restored);

(3) the Borrower shall promptly give notice thereof to the Issuer and the Trustee; and

(4) except as otherwise provided in subsection (B) of this Section 7.1, and subject to the provisions of the Mortgage,

(a) the Borrower shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Borrower, provided that such changes, alterations or modifications do not (i) change the use of the Project Facility as specified in Section 8.18 hereof without the prior written consent of the Issuer, or (ii) adversely affect the exclusion from gross income for federal income tax purposes of the interest paid or payable on the Tax-Exempt Bonds; and

(b) pursuant to and in accordance with Section 406 of the Indenture, the Trustee shall make available to the Borrower (from the Net Proceeds of any insurance settlement) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility. In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Borrower shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. Any balance of such Net Proceeds remaining in the Insurance and Condemnation Fund after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be applied as provided in Section 406 of the Indenture.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, in the event that the cost of repairing any damage to the Project Facility exceeds the sum of all Indebtedness then secured by a Lien on the Project Facility or any part thereof, the Borrower shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Borrower shall notify the Issuer and the Trustee that it elects to cause the defeasance of the Bonds, as provided in the Tax Documents. In such event, or if an Event of Default shall have occurred and be continuing (or if an event exists which with the passage of time or notice or both would become an Event of Default), the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) the amount necessary to defease the Bonds in whole and all interest accrued thereon, together with any other sums payable to the Issuer or the Trustee

pursuant to this Loan Agreement, shall be transferred by the Trustee from the Insurance and Condemnation Fund to an escrow fund to be created by the Trustee at the written direction of the Borrower, and applied to the defeasance of the Bonds and payment of all such amounts to the Issuer and the Trustee. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to defease the Bonds in full and pay any and all amounts payable to the Issuer and the Trustee, the Borrower shall pay the difference between such amounts and the Net Proceeds of all insurance settlements so that all of the Bonds then Outstanding shall be defeased and any and all amounts payable under the Financing Documents to the Issuer and the Trustee shall be paid in full.

(C) If there are no Bonds Outstanding and all other amounts due under this Loan Agreement and the other Financing Documents are paid in full, all such Net Proceeds or the balance thereof shall be paid to the Borrower for its purposes.

(D) Except as otherwise provided in the Mortgage, unless an Event of Default under any of the Financing Documents shall have occurred and be continuing (or if an event exists which with the passage of time or notice or both would become an Event of Default), the Borrower may adjust all claims under any policies of insurance required by Section 6.3(A) and 6.3(D) hereof.

SECTION 7.2. CONDEMNATION. (A) To the knowledge of the Borrower, no condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility. The Borrower shall notify the Issuer and the Trustee of the institution of any condemnation proceedings and, within seven days after inquiry from the Issuer or the Trustee, inform the Issuer and the Trustee in writing of the status of such proceeding. If title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation:

- (1) the Issuer shall have no obligation to restore the Project Facility;
- (2) there shall be no abatement or reduction in the amounts payable by the Borrower under this Loan Agreement or under any of the other Financing Documents (whether or not the Project Facility is restored);
- (3) the Borrower shall promptly give notice thereof to the Issuer and the Trustee; and
- (4) except as otherwise provided in subsection (B) of this Section 7.2, and subject to the provisions of the Mortgage,
 - (a) the Borrower shall promptly restore the Project Facility (excluding any part of the Land or the Facility taken by Condemnation) to substantially the same condition and value as an operating entity as existed prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Borrower and consented to in writing by the Issuer, provided that such changes, alterations or modifications do not (i) change the use of the Project Facility as specified in Section 8.18 hereof without the prior written consent of the Issuer, or (ii) adversely affect the exclusion from gross income for federal income tax purposes of the interest paid or payable on the Tax-Exempt Bonds; and
 - (b) pursuant to and in accordance with Section 406 of the Indenture, the Trustee shall make available to the Borrower (from the Net Proceeds of any Condemnation award) such moneys as may be necessary to pay the costs of the restoration of the Project Facility. In the event such Net Proceeds are not sufficient to pay in full the costs of such restoration, the Borrower shall nonetheless complete such

restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. Any balance of such Net Proceeds remaining after payment of all of the costs of such restoration shall be applied in accordance with Section 406 of the Indenture.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.2, the Borrower shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (A) of this Section 7.2, if the Borrower shall notify the Issuer and the Trustee that it elects to cause the defeasance of all or a portion of the Bonds, as provided in the Tax Documents. In such event, or if an Event of Default under any of the Financing Documents shall have occurred and be continuing, (or if an event exists which with the passage of time or notice or both would become an Event of Default) the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to defease the Bonds in whole and all interest accrued thereon, together with any other sums payable to the Issuer or the Trustee pursuant to this Loan Agreement, shall be transferred by the Trustee from the Insurance and Condemnation Fund to an escrow fund to be created by the Trustee at the written direction of the Borrower, and applied to the defeasance of the Bonds and payment of all such amounts to the Issuer and the Trustee. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to defease the Bonds in full, the Borrower shall pay the difference between such amounts and the Net Proceeds of such Condemnation awards so that all of the Bonds then Outstanding shall be defeased and any and all amounts payable under the Financing Documents to the Issuer and the Trustee shall be paid in full.

(C) If title to, or use of, all or substantially all of the Project Facility shall be taken by Condemnation:

(1) neither the Issuer nor the Borrower shall have any obligation to restore the Project Facility;

(2) there shall be no abatement or reduction in the amounts payable by the Borrower under this Loan Agreement (or under any of the other Financing Documents); and

(3) the Net Proceeds of any Condemnation award shall be applied as provided in subsection (B) of this Section 7.2.

(D) If there are no Bonds Outstanding and all other amounts due under this Loan Agreement and the other Financing Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Borrower for its purposes.

(E) Except as otherwise provided in the Mortgage, unless an Event of Default under any of the Financing Documents shall have occurred and be continuing (or if an event exists which with the passage of time or notice or both would become an Event of Default), the Borrower shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof and may negotiate the settlement of any such proceeding. The Borrower shall notify the Issuer and the Trustee of the institution of any Condemnation proceedings and within seven days after inquiry from the Issuer or the Trustee shall inform the Issuer and the Trustee in writing as to the status of such proceeding.

(F) The Issuer shall, at the expense of the Borrower, cooperate fully with the Borrower in the handling and conduct of any such Condemnation proceeding. In no event shall the Issuer voluntarily settle, or consent to the settlement of, any Condemnation proceeding without the written consent of the Borrower and the Trustee.

SECTION 7.3. ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2, whether or not requiring the expenditure of the Borrower's own money, shall automatically become part of the Project Facility as if the same were specifically described herein.

ARTICLE VIII
SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY ISSUER. THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE BORROWER'S PURPOSES OR NEEDS. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Borrower hereby releases the Issuer and its members, directors, officers, agents (other than the Borrower), servants and employees from, agrees that the Issuer and its members, directors, officers, agents (other than the Borrower), servants and employees shall not be liable for and agrees to indemnify, defend and hold the Issuer and its members, directors, officers, agents (other than the Borrower), servants and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Issuer's undertaking the Project, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Issuer's financing, acquiring, constructing, reconstructing, equipping, installing, owning or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Issuer's obligations under this Loan Agreement or any of the other Financing Documents or the enforcement of or defense of validity of any provision of any Financing Document, and all liabilities or claims arising as a result of or in connection with the offering, issuance, sale or resale of the Bonds, (3) all claims arising from the issuance and sale of the Bonds, or any remarketing of the Bonds, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Issuer are not incurred or do not result from the intentional wrongdoing of the Issuer or any of its members, directors, officers, agents (other than the Borrower), servants or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Issuer or any of its members, directors, officers, agents (other than the Borrower), servants or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Issuer or its members, directors, officers, agents (other than the Borrower), servants or employees by any employee of the Borrower or any contractor of the Borrower 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 Borrower hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Borrower or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) To effectuate the provisions of this Section 8.2, the Borrower agrees to provide for and insure, in the liability policies required by Section 6.3(C) of this Loan Agreement, its liabilities assumed

pursuant to this Section 8.2, to the extent that the liabilities assumed give rise to personal injury or damage to the property.

(D) Notwithstanding any other provisions of this Loan Agreement, the obligations of the Borrower pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Loan Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Issuer, or its members, directors, officers, agents (other than the Borrower), servants or employees, relating thereto.

(E) The Borrower further agrees, at the request of the Issuer pursuant to Section 515(B) of the Indenture, to provide (1) the undertaking described in Section 515(A)(2) of the Indenture, or (2) the indemnification described in Section 515(A)(3) of the Indenture, as the case may be.

SECTION 8.3. RIGHT OF ACCESS TO THE PROJECT FACILITY. The Borrower agrees that the Issuer and the Trustee and their duly authorized agents shall have the right at all reasonable times to enter upon and to examine and inspect the Project Facility.

SECTION 8.4. BORROWER NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS; CONDITIONS UNDER WHICH EXCEPTIONS ARE PERMITTED. (A) The Borrower agrees that, so long as the Bonds are Outstanding and/or during the term of this Loan Agreement, it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or acquire all or substantially all of the assets of another Person; provided, however, that, if no Event of Default specified in Section 10.1 hereof shall have occurred and be continuing (or if no event exists which with the passage of time or notice or both would become an Event of Default), the Borrower may consolidate with or merge into another domestic entity organized and existing under the laws of one of the states of the United States, or permit one or more such domestic corporations to consolidate with or merge into it, or acquire all or substantially all of the assets of another Person, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided that (A) the Borrower provides prior written notice thereof to the Issuer, and the Issuer gives its prior written consent to the proposed transaction, which consent of the Issuer shall not be unreasonably withheld or delayed, (B) the surviving, resulting or transferee entity is a "501(c)(3) organization" (as such quoted term is used in Section 145 of the Code) and assumes in writing all of the obligations of and restrictions on the Borrower under this Loan Agreement and the other Financing Documents, (C) the proposed transaction will not, in and of itself, adversely affect the exclusion of the interest paid or payable on the Tax-Exempt Bonds from the gross income of the Holders thereof for federal income tax purposes, (D) the Borrower provides written notice to the Issuer and the Trustee that the Debt Service Coverage Ratio set forth in Section 2 of Schedule C to the Guaranty would be satisfied upon the consummation of the proposed transaction and (E) as of the date of such transaction, the Trustee and the Issuer shall be furnished with (1) an opinion of Bond Counsel as to the compliance with item (C) of this Section 8.4, (2) an opinion of counsel to the Borrower as to compliance with item (B) of this Section 8.4 and (3) a certificate, dated the effective date of such transaction, signed by an Authorized Representative of the Borrower and an authorized officer of the surviving, resulting or transferee entity or the transferee of its assets, as the case may be, to the effect that immediately after the consummation of the transaction and after giving effect thereto, no Event of Default exists under this Loan Agreement and no event exists which, with notice or lapse of time or both, would become such an Event of Default.

SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION. The Borrower agrees, whenever requested by the Issuer or the Trustee, to provide and certify or cause to be provided and certified such information concerning the Borrower, its finances and other topics as the Issuer or the Trustee from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Issuer or the Trustee to make any reports required by law or governmental regulation.

SECTION 8.6. BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES. (A) The Borrower agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, consistently applied, of all business and affairs of the Borrower.

(B) As soon as possible after the end of each fiscal year of the Borrower so long as any Bond shall be Outstanding, the Borrower shall furnish to the Issuer a certificate of an Authorized Representative of the Borrower stating that no Event of Default hereunder has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Borrower has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of the Bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

SECTION 8.7. COMPLIANCE WITH APPLICABLE LAWS. (A) The Borrower agrees, for the benefit of the Issuer and the Trustee, that it will, during any period in which any Bond is Outstanding, promptly comply in all material respects with all Applicable Laws.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Borrower may in good faith actively contest the validity or the applicability of any Applicable Law, after prior notice to the Trustee, and at its own expense, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, provided that (1) no Event of Default shall have occurred and shall be continuing under any of the Financing Documents, (2) the Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Financing Documents, (3) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Borrower or the Project Facility is subject and shall not constitute a default thereunder, (4) neither the Project Facility nor any part thereof nor any interest therein, nor any funds of the Issuer applicable to the acquisition, construction, reconstruction and/or installation of the Project Facility, will be in danger of being sold, forfeited, terminated, cancelled or lost at any time during the pendency of or after such proceeding, and (5) the Borrower shall have set aside in an interest-bearing account with the Trustee adequate cash reserves for the compliance with the contested Applicable Law, together with all interest and penalties related thereto. Otherwise, the Borrower shall promptly take such action with respect thereto as shall be satisfactory to the Issuer.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Issuer or any of its members, directors, officers, agents (other than the Borrower), servants or employees may be liable for prosecution for failure to comply therewith, the Borrower shall promptly take such action with respect thereto as shall be satisfactory to the Issuer.

SECTION 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES; LEASE, SALE OR GRANT OF USE BY THE BORROWER. (A) The Borrower hereby covenants that, except for Permitted Encumbrances, the Mortgage is a valid first Lien on the Mortgaged Property and the Borrower hereby agrees not to create or suffer to be created any other Lien, except for Permitted Encumbrances, on the Project Facility or any part thereof or any funds of the Issuer applicable to the Mortgaged Property.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.8, the Borrower may in good faith actively contest any such Lien, provided that the Borrower (1) first shall have notified the Issuer and the Trustee in writing of such contest, (2) is not in default under any of the Financing Documents, and (3) such Lien shall be removed promptly by the Borrower or secured by the Borrower's posting a bond in form and substance satisfactory to the Issuer and the Trustee.

(C) Subject to the provisions of the Tax Documents and the Mortgage, the Borrower may lease, sell or grant the right to occupy and use the Project Facility, in whole or in part, to others, provided that no such grant, sale or lease shall relieve the Borrower from its obligations under this Loan Agreement or adversely affect the exclusion from gross income of interest on the Bonds.

SECTION 8.9. PERFORMANCE OF THE BORROWER'S OBLIGATIONS. Should the Borrower fail to make any payment or to do any act as herein provided, the Issuer or the Trustee may, but need not, without notice to or demand on the Borrower and without releasing the Borrower from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Borrower or the Issuer, and paying all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Issuer or the Trustee in connection therewith; and the Borrower shall pay immediately upon demand all sums so incurred or expended by the Issuer or the Trustee under the authority hereof, together with interest thereon, at the Default Interest Rate.

SECTION 8.10. DEPRECIATION DEDUCTIONS, TAX CREDITS AND CODE ELECTIONS. (A) The parties agree that as between them the Borrower shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

(B) Pursuant to the Code and the Treasury Regulations, the Issuer can make various elections under the Code and/or the Treasury Regulations with respect to the Initial Bonds as described in the Tax Regulatory Agreement and Schedule O attached thereto (each, a "Code Election"). The Issuer hereby authorizes the Borrower to act as agent of the Issuer with respect to the Code Elections relating to the Initial Bonds, and hereby authorizes the Borrower to make the Code Elections relating to the Initial Bonds on behalf of the Issuer.

SECTION 8.11. COVENANT AGAINST ARBITRAGE BONDS. So long as any Tax-Exempt Bond shall be Outstanding, neither the Issuer nor the Borrower shall use, or direct or permit the use of, the proceeds of the Bonds or any other moneys within their respective control (including, without limitation, the proceeds of any insurance settlement or any Condemnation award with respect to the Project Facility) in any manner which, if such use had been reasonably expected on the date of issuance of the Tax-Exempt Bonds, would have caused any of the Tax-Exempt Bonds to be an "arbitrage bond" within the meaning ascribed to such quoted term in Section 148 of the Code. The Borrower agrees that it will comply with all of its covenants in the Tax Regulatory Agreement relating to the restrictions contained in Section 148 of the Code. The Issuer authorizes the Borrower, in the Issuer's behalf, to calculate and make the rebate payments required by Section 148 (f) of the Code. Notwithstanding the foregoing, there shall be no such obligation upon the Issuer with respect to the use or investment of its administrative fee, provided, however, that if the Borrower is required to rebate any amount with respect to such administrative fee, the Issuer shall provide, upon the reasonable request of the Borrower, such information concerning the investment of such administrative fee as shall be requested by the Borrower and as shall be reasonably available to the Issuer.

SECTION 8.12. IDENTIFICATION OF EQUIPMENT. All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Loan Agreement shall be properly identified by the Borrower by such appropriate records, including computerized records.

SECTION 8.13. INDEMNIFICATION OF THE TRUSTEE. (A) Notwithstanding any other provisions of the Financing Documents, the Borrower agrees to indemnify and hold the Trustee, and its directors, officers, agents and employees, harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, arising out of the execution, delivery, performance or administration of the Financing Documents, provided that the same are not a result of the gross negligence or willful misconduct of the Trustee.

(B) Notwithstanding any other provisions of this Loan Agreement or other Financing Documents, the obligations of the Borrower pursuant to this Section 8.13 shall remain in full force and effect after the termination of this Loan Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all reasonable fees, expenses and charges paid or incurred by the Trustee, or its directors, officers, agents or employees, relating thereto.

(C) To effectuate the provisions of this Section 8.13, the Borrower agrees to provide for and insure, in the liability policies required by Section 6.3(C) of this Loan Agreement, its liabilities assumed pursuant to this Section 8.13, to the extent that the liabilities assumed give rise to personal injury or damage to property.

SECTION 8.14. EMPLOYMENT OPPORTUNITIES. The Borrower shall insure that all employees and applicants for employment opportunities created as a result of the completion of the Project are afforded equal employment opportunities without discrimination.

SECTION 8.15. SALES AND USE TAX EXEMPTION. Because the Borrower enjoys its own exemption from sales and use taxes imposed by the State and its local governments, the Borrower does not intend to claim any sales tax exemption by virtue of the Issuer's involvement in the Project.

SECTION 8.16. RESTRICTION ON RELIGIOUS USE. (A) The Borrower agrees that with respect to any portion of the Project Facility financed or refinanced with the proceeds of Tax-Exempt Bonds (the "Tax-Exempt Project Facility"), so long as any Tax-Exempt Bonds are Outstanding under the Indenture, and unless and until the Tax-Exempt Project Facility is sold for the fair market value thereof, the Tax-Exempt Project Facility shall not be used for sectarian religious purposes 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; and, further provided, however, that if at any time hereafter, in the opinion of Bond Counsel, the then applicable law would permit the Tax-Exempt Project Facility to be used without regard to the above stated restriction, said restriction shall not apply to the Tax-Exempt Project Facility. The Issuer and its agents may conduct such inspections as the Issuer deems necessary to determine whether Tax-Exempt Project Facility is being used for any purpose proscribed hereby.

(B) The Borrower hereby further agrees that, so long as any Tax-Exempt Bonds are Outstanding under the Indenture, prior to any disposition of any portion of the Tax-Exempt Project Facility for less than fair market value, the Borrower 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 the

Tax-Exempt Project Facility to the restriction that (1) so long as such portion of the Tax-Exempt Project Facility (and, if included in the Tax-Exempt Project Facility, the real property on or in which such portion of the Tax-Exempt Project Facility is situated) shall exist and (2) until such portion of the 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 the Tax-Exempt Project Facility shall not be used for sectarian religious purposes 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 also provide that if at any time thereafter, in the opinion of Bond Counsel, the then applicable law would permit such portion of the Tax-Exempt Project Facility, or, if included in the Tax-Exempt Project Facility, 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 Tax-Exempt Project Facility or a portion thereof, upon foreclosure or otherwise, shall be considered a sale for the fair market value thereof.

SECTION 8.17. TERMINATION. (A) Upon (1) payment in full of the Loan evidenced by the Bonds, (2) termination of the Pledge and Assignment, (3) payment in full of all other Indebtedness evidenced by this Loan Agreement and (4) performance by the Borrower of all other obligations of the Borrower to the Issuer pursuant to the provisions of this Loan Agreement (collectively, the "Termination Preconditions"), this Loan Agreement shall terminate, except as provided in Section 11.8 hereof. Upon satisfaction of the Termination Preconditions, the Issuer agrees to execute and deliver to the Borrower the Termination of Loan Agreement, in substantially the form attached hereto as Exhibit C and by this reference made a part hereof.

(B) The Borrower agrees to (1) prepare evidence satisfactory to the Issuer of the satisfaction of the Termination Preconditions and (2) prepare the Termination of Loan Agreement and to forward same to the Issuer at least thirty (30) days prior to the date that the Borrower proposes that the issuer execute and deliver the Termination of Loan Agreement.

SECTION 8.18. USE OF THE PROJECT FACILITY. Subsequent to the Closing Date, (A) the Borrower shall not use the Project Facility, or permit the Project Facility to be used, by any Nonexempt Person or in any "unrelated trade or business", within the meaning of Section 513(a) of the Code, in such manner or to such extent as would cause the interest paid or payable on the Tax-Exempt Bonds to be includable in the gross income of the recipients thereof for federal income tax purposes or loss of the Borrower's status as an exempt organization under Section 501(c)(3) of the Code, and (B) the Borrower shall be entitled to use the Project Facility as an educational facility, but not (1) as facilities used or to be used primarily for sectarian instruction or as a place of religious worship or (2) primarily as in connection with any part of a program of a school or department of divinity for any religious denomination.

ARTICLE IX

ASSIGNMENTS; MERGER OF THE ISSUER

SECTION 9.1. ASSIGNMENT BY THE BORROWER. This Loan Agreement may not be assigned by the Borrower, in whole or in part, without the prior written consent of the Issuer and the Trustee, which consent shall not be unreasonably withheld or delayed.

SECTION 9.2. MERGER OF THE ISSUER. (A) Nothing contained in this Loan Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or assignment by the Issuer of its rights and interests hereunder to, any other public instrumentality or a political subdivision of the State or the Town of Amherst, New York which has the legal authority to perform the obligations of the Issuer hereunder, provided that (1) the exclusion of the interest payable on the Tax-Exempt Bonds from gross income for Federal income tax purposes shall not be adversely affect thereby; and (2) upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Loan Agreement, the Bonds and the Indenture to be kept and performed by the Issuer shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Issuer's rights and interests hereunder or under this Loan Agreement shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Issuer shall give notice thereof in reasonable detail to the Borrower and the Trustee. The Issuer shall promptly furnish to the Trustee and the Borrower such additional information or opinions with respect to any such consolidation, merger or assignment as the Trustee and the Borrower may reasonably request.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. EVENTS OF DEFAULT DEFINED. (A) The following shall be “Events of Default” under this Loan Agreement, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Loan Agreement, any one or more of the following events:

(1) A default by the Borrower in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.1(A) hereof.

(2) The Borrower shall fail to deliver to the Trustee, or cause to be delivered on their behalf, the moneys needed to redeem any outstanding Bonds in the manner and upon the date requested in writing by the Trustee as provided in Article III of the Indenture.

(3) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Borrower in this Loan Agreement and the continuance thereof for a period of thirty (30) days after written notice is given by the Issuer or the Trustee to the Borrower (with a copy to the Trustee, if given by the Issuer), or, if such covenant, condition or agreement is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Borrower to commence to cure within such thirty (30) day period and to thereafter prosecute the same with due diligence and, in any event, to cure such default within sixty (60) days after such written notice is given.

(4) The occurrence of an “Event of Default” under any of the other Financing Documents.

(5) Any representation or warranty made by the Borrower herein or in any other Financing Document proves to have been materially false at the time it was made.

(6) The Borrower shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

(7) Any sale, conveyance, lease agreement or any other change of ownership, whether occurring voluntarily or involuntarily, or by operation of law or otherwise, by the Issuer or the Borrower (except pursuant to this Loan Agreement or a Permitted Encumbrance) of their respective interests in the Project Facility or any part thereof, or the granting of any easements or restrictions or the permitting of any encroachments on the Project Facility, except as permitted in this Loan Agreement or a Permitted Encumbrance.

(8) (a) The filing by the Borrower (as debtor) of a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy statute; (b) the failure by the Borrower within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Borrower’s ability to carry out its obligations hereunder; (c) the commencement of a case under the Bankruptcy Code against the Borrower as the debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Borrower and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days; (d) the entry of an order for relief by a court of competent jurisdiction under the Bankruptcy Code or any other federal or state bankruptcy statute with respect to the debts of the Borrower; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by

final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Borrower, unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment.

(9) The removal of the Equipment or any portion thereof outside the Town of Amherst, New York, without the prior written consent of the Issuer, other than in connection with a removal permitted under Section 4.1 hereof.

(10) Any provision of this Loan Agreement or any of the other Financing Documents shall at any time for any reason cease to be valid and binding on the related obligor thereunder or shall be declared to be null and void by any court or governmental authority or agency having jurisdiction over the Borrower, or the validity or the enforceability thereof shall be contested by the Borrower, the Issuer or the Trustee, in a judicial or administrative proceeding or the Borrower shall revoke or attempt to revoke the Guaranty.

(11) Any Financing Document shall cease to be in full force and effect, or any Lien created or purported to be created in any collateral pursuant to any Financing Document shall fail to be valid, enforceable and perfected Lien in favor of the secured party or parties named in such Financing Document, having the priority purported to be given such Lien under such Financing Documents, or the Borrower, the Trustee or any Governmental Authority shall assert any of the foregoing, unless such failure of validity, enforceability or perfection is caused by the negligence or intentional act of the lender.

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Loan Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Trustee within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Loan Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Borrower to make the payments required by Sections 3.5 and 5.1 hereof, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 8.2 and 8.13 hereof and to comply with the provisions of Sections 2.2(G), 3.3, 3.5, 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Issuer and the Borrower, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, and partial or entire failure of utilities. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

(C) Notwithstanding any other provision of this Loan Agreement, failure of the Borrower to comply with Section 8.6(B) of this Loan Agreement shall not be considered an Event of Default; however, the Trustee may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Borrower to comply with its obligations under Section 8.6(B) hereof.

SECTION 10.2. REMEDIES ON DEFAULT. (A) Whenever any Event of Default shall have occurred, the Issuer and/or the Trustee may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Borrower, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all unpaid Loan Payments payable pursuant to Section 5.1(A) hereof, and (b) all other payments due under this Loan Agreement or any of the other Financing Documents;

(2) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Borrower under this Loan Agreement

(3) terminate disbursement of the Bond Proceeds; or

(4) exercise any remedies available pursuant to any of the other Financing Documents.

(B) Notwithstanding anything herein to the contrary, whenever any Event of Default or Default shall have occurred, the Issuer may take any action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Borrower under this Loan Agreement.

(C) Any sums paid to the Issuer as a consequence of any action taken pursuant to this Section 10.2 (excepting sums payable to the Issuer as a consequence of action taken to enforce the Unassigned Rights) shall be paid to the Trustee and applied in accordance with the provisions of Section 609 of the Indenture.

(D) No action taken pursuant to this Section 10.2 shall relieve the Borrower from its obligations to make all payments required by this Loan Agreement and the other Financing Documents.

SECTION 10.3. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Loan Agreement or the other Financing Documents or now or hereafter existing at law or in equity. 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 X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Borrower should default under any of the provisions of this Loan Agreement, and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Borrower herein contained, the Borrower shall, on demand therefor, pay to the Issuer or the Trustee, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 10.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE ISSUER:

Town of Amherst Development Corporation
4287 Main Street
Amherst, New York 14226
Attention: Chief Executive Officer

WITH A COPY TO:

Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, New York 14202
Attention: Joseph M. Reynolds, Esq.

AND:

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: Christopher C. Canada, Esq.

IF TO THE BORROWER:

Daemen College
4380 Main Street
Amherst, New York 14226
Attention: President

WITH A COPY TO:

Hodgson Russ LLP
140 Pearl Street
Buffalo, New York 14202
Attention: Terrence M. Gilbride, Esq.

IF TO THE TRUSTEE:

The Bank of New York Mellon, as Trustee
101 Barclay Street, 7 East
New York, New York 10286
Attention: Christopher Spinelli, Vice President

WITH A COPY TO:

Buchanan Ingersoll & Rooney PC
640 Fifth Avenue, 9th Floor
New York, New York 10019
Attention: David Fernandez, Esq.

(C) A duplicate copy of each notice, certificate and other communication given hereunder by the Issuer or the Borrower shall be given to the Trustee.

(D) The Issuer, the Borrower and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 11.2. BINDING EFFECT. This Loan Agreement shall inure to the benefit of the Issuer, the Borrower, the Trustee and the holders of the Bonds and shall be binding upon the Issuer, the Borrower and, as permitted by this Loan Agreement, their respective successors and assigns.

SECTION 11.3. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Issuer or the Borrower to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then each such phrase, sentence, clause, paragraph or section shall be deemed separable from the remaining phrases, sentences, clauses, paragraphs or sections hereof and shall in no way affect the validity of the other provisions of this Loan Agreement.

SECTION 11.4. AMENDMENTS. This Loan Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto, with the written consent of the Trustee.

SECTION 11.5. EXECUTION OF COUNTERPARTS. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.6. APPLICABLE LAW. This Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State.

SECTION 11.7. AMOUNTS REMAINING IN FUNDS. (A) Any amounts in the Bond Fund remaining unclaimed by the Holders of Bonds for 2 years after the due date thereof (whether at stated maturity, by redemption or pursuant to any mandatory sinking fund requirements or otherwise), shall be paid to the Borrower. With respect to that principal of and any premium and interest on the Bonds to be paid from moneys paid to the Borrower pursuant to the preceding sentence, the Holders of the Bonds entitled to those moneys shall look solely to the Borrower for the payment of those moneys.

(B) Further, any other amounts remaining in the Bond Fund created under this Loan Agreement or the Indenture after all of the Outstanding Bonds shall be deemed to have been paid and discharged under the provisions of the Indenture and all other amounts required to be paid under this Loan Agreement and the Indenture have been paid, shall be paid to the Borrower to the extent that those moneys are in excess of the amounts necessary to effect the payment and discharge of the Outstanding Bonds.

SECTION 11.8. SURVIVAL OF OBLIGATIONS. (A) The obligations of the Borrower to make the payments required by Section 5.1(B) hereof and to provide the indemnity required by Sections 3.3, 8.2 and 8.13 hereof shall survive the termination of this Loan Agreement and the full payment of the Bonds, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Borrower with respect to the Unassigned Rights shall survive the termination of this Loan Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Issuer, or its members, directors, officers, agents, servants or employees, relating thereto.

(C) The obligation of the Borrower to make Loan Payments under Section 5.1(A) with respect to any premium due on the Bonds upon an occurrence of an Event of Taxability hereof shall survive the termination of this Loan Agreement.

SECTION 11.9. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Loan Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Loan Agreement.

SECTION 11.10. NO RECOURSE; SPECIAL OBLIGATION. (A) All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Loan Agreement, in the Bonds, in the other Financing Documents executed by the Issuer and in the other documents and instruments connected herewith or therewith, and in any documents supplemental thereto, shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent, servant or employee of the Issuer in his individual capacity, and no recourse under or upon any obligation, covenant or agreement in the Financing Documents contained or otherwise based upon or in respect of the Financing Documents, or for any claim based hereon or thereon or otherwise in respect hereof or thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Issuer or of any successor entity or political subdivision or any Person executing any of the Financing Documents on behalf of the Issuer, either directly or through the Issuer or any successor entity or political subdivision or any Person so executing any of the Financing Documents on behalf of the Issuer, it being expressly understood that the Financing Documents and the Bonds issued thereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent, servant or employee of the Issuer or of any successor entity or political subdivision or any Person so executing any of the Financing Documents on behalf of the Issuer because of the creation of the indebtedness thereby authorized, or under or by reason of the obligations, covenants or agreements contained in the Financing Documents or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee because of the creation of the indebtedness authorized by the Financing Documents, or under or by reason of the obligations, covenants


or agreements contained in the Financing Documents 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 by the Issuer of the Financing Documents and the issuance, sale and delivery of the Bonds.

(B) The obligations and agreements of the Issuer contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the Town of Amherst, New York, and neither the State of New York nor the Town of Amherst, New York shall be liable hereon or thereon, and, further, such obligations and agreements 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 this Loan Agreement and the other Financing Documents (except for revenues derived by the Issuer with respect to the Unassigned Rights).

(C) No order or decree of specific performance with respect to any of the obligations of the Issuer hereunder shall be sought or enforced against the Issuer unless (1) 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 days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) 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 (3) 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 (other than the Borrower), servants or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Issuer and its members, directors, officers, agents (other than the Borrower), servants 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, directors, officers, agents (other than the Borrower), servants and employees against all liability expected to be incurred as a result of compliance with such request. Any failure to provide the indemnity and/or security required in this Section 11.10(C) shall not affect the full force and effect of an Event of Default hereunder.

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be executed in their respective names by their respective Authorized Representatives, all as of the day and year first above written.

TOWN OF AMHERST
DEVELOPMENT CORPORATION

BY: 

David S. Mingoia
Chief Executive Officer

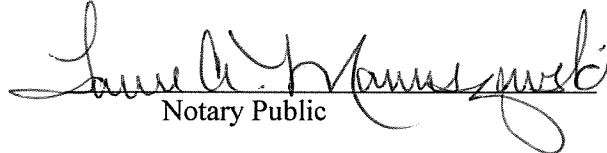
DAEMEN COLLEGE

BY: 

Authorized Officer

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 1 day of June, in the year 2018, before me, the undersigned, personally appeared DAVID S. MINGOIA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

LAURE A. MANUSZEWSKI
Notary Public, State of New York
No. 01MA5034933
Qualified in Erie County, 2018
Commission Expires October 24, 2019

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 13th day of June, in the year 2018, before me, the undersigned, personally appeared LISA ARIDA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument


Notary Public

Pamella Weisberg
Notary Public, State of New York
Qualified in Rensselaer County
No. 01WE4943734
Commission Expires October 31, 2018

APPENDIX A

SCHEDULE OF DEFINITIONS

The following words and terms used in the attached document shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

The following words and terms used in the document to which this Appendix is attached shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

“Account” means, with respect to any Series of Bonds, an account created within any Fund designated and created pursuant to Section 401 of the Indenture.

“Accountant” means an independent certified public accountant or a firm of independent certified public accountants selected by the Borrower.

“Act” means the Enabling Act.

“Additional Bonds” means any bonds issued by the Issuer pursuant to Section 214 of the Indenture.

“Additional Equipment” means, in connection with any Additional Project, any additional materials, machinery, equipment, fixtures or furnishings intended to be acquired with the proceeds of a related Series of Additional Bonds, or intended to be acquired with any payment which the Borrower incurred in anticipation of the issuance of such Series of Additional Bonds and for which the Borrower will be reimbursed from the proceeds of such Series of Additional Bonds, and such substitutions and replacements therefor and additions thereto as may be made from time to time pursuant to the Loan Agreement.

“Additional Facility” means, in connection with any Additional Project, any buildings, improvements, structures, and other related facilities (A) located on the Land or the Additional Land, (B) financed or refinanced with the proceeds of the sale of a Series of Additional Bonds or any payment made by the Borrower pursuant to Section 3.5 of the Loan Agreement or any payment which the Borrower incurred in anticipation of the issuance of such Series of Additional Bonds and for which the Borrower will be reimbursed from the proceeds of such Series of Additional Bonds, and (C) not constituting a part of the Additional Equipment, all as they may exist from time to time.

“Additional Land” means, with respect to any Series of Additional Bonds, any real estate which will be the site of an Additional Project Facility intended to be financed with the proceeds of such Series of Additional Bonds.

“Additional Project” means the purposes for which any Series of Additional Bonds may be issued.

“Additional Project Facility” means any Additional Land, Additional Facility or Additional Equipment acquired by the Issuer in connection with the issuance of any Series of Additional Bonds.

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time

hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Issuer were the owner of the Project Facility and as if the Borrower and not the Issuer were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Arbitrage Certificate” means (A) with respect to the Initial Bonds, the Initial Arbitrage Certificate and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar document executed by the Issuer in connection with the issuance and sale of such Series of Additional Bonds.

“Authorized Denominations” means: (A) with respect to the Initial Bonds, \$5,000 and any integral multiple of \$5,000 in excess thereof, except that, if as a result of a redemption, partially redeemed Initial Bonds cannot be issued in such denominations, such partially redeemed Initial Bonds shall be reissued in such other denominations to the extent required to effect such redemption; and (B) with respect to any Series of Additional Bonds, the authorized denominations for such Series of Additional Bonds as set forth in the supplemental indenture relating thereto.

“Authorized Investments” means any of the following: (A) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America; (B) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (1) U.S. Export-Import Bank (“Eximbank”), (2) Farmers Home Administration (“FmHA”), (3) Federal Financing Bank, (4) Federal Housing Administration Debentures (“FHA”), (5) General Services Administration, (6) Government National Mortgage Association (“GNMA” or “Ginnie Mae”), (7) U.S. Maritime Administration, and (8) U.S. Department of Housing and Urban Development (“HUD”); (C) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself): (1) Federal Home Loan Bank System, (2) Federal Home Loan Mortgage Corporation (“FHLMC” or “Freddie Mac”), (3) Federal National Mortgage Association (“FNMA” or “Fannie Mae”), (4) Student Loan Marketing Association (“SLMA” or “Sallie Mae”), (5) Resolution Funding Corp. (“REFCORP”) obligations, and (6) Farm Credit System; (D) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by Standard & Poor’s of “AAAm-G”, “AAA-m”; or “AA-m” and if rated by Moody’s rated “Aaa”, “Aa1” or “Aa2”; (E) certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral; (F) certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF; (G) investment agreements, including GIC’s, Forward Purchase Agreements and Reserve Fund Put Agreements acceptable to the Trustee; (H) commercial paper rated, at the time of purchase, “Prime - 1” by Moody’s and “A-1” or better by Standard & Poor’s; (I) bonds or notes issued by any state or municipality which are rated by Moody’s and Standard & Poor’s in one of the two highest rating

categories assigned by such agencies; (J) federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime - 1” or “A3” or better by Moody’s and “A-1” or “A” or better by Standard & Poor’s; and (K) repurchase agreements for 30 days or less must follow the following criteria. The criteria is described as follows: (1) Repos must be between the municipal entity and a dealer bank or securities firm (a) primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor’s Corporation and Moody’s Investor Services, or (b) banks rated “A” or above by Standard & Poor’s Corporation and Moody’s Investor Services; (2) the written repo contract must include the following: (a) securities which are acceptable for transfer are: (i) direct U.S. governments, or (ii) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC), (b) the term of the repo may be up to 30 days, (c) the collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities), (d) valuation of collateral - the securities must be valued weekly, marked-to-market at current market price plus accrued interest. The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%, and (3) legal opinion which must be delivered to the municipal entity: (a) repo meets guidelines under state law for legal investment of public funds.

“Authorized Representative” means the Person or Persons at the time designated to act on behalf of the Issuer or the Borrower, as the case may be, by written certificate furnished to the Trustee containing the specimen signature of each such Person and signed on behalf of (A) the Issuer by its Chairman, Vice-Chairman or Chief Executive Officer, or such other person as may be authorized by resolution of the Issuer to act on behalf of the Issuer, (B) the Borrower by its President, Chief Executive Officer or Chief Financial Officer, or such other person as may be authorized by the board of trustees of the Borrower to act on behalf of the Borrower and (C) the Trustee by any Vice President, Assistant Vice President or Trust Officer, or such other person as may be authorized by the board of directors of the Trustee to act on behalf of the Trustee.

“Available Moneys” means any moneys on deposit with the Trustee for the benefit of the Bondholders which are (A) proceeds of the Bonds, or of any bonds issued for the purpose of refunding the Bonds, (B) amounts on deposit for a period of 124 consecutive days during which no petition in bankruptcy under the Bankruptcy Code has been filed against the entity which paid such money, and no similar proceedings have been instituted under state insolvency or other laws affecting creditors' rights generally, or (C) any moneys with respect to which an unqualified opinion from nationally recognized counsel has been received stating that such payments to Bondholders would not constitute voidable preferences under Section 547 of the Bankruptcy Code, or similar state or federal laws with voidable preferences in the event of the filing of a petition for relief under the Bankruptcy Code, or similar state or federal laws with voidable preference provisions by or against the entity from which the money is received.

“Bankruptcy Code” means the United States Bankruptcy Code, constituting Title 11 of the United States Code, as amended from time to time, and any successor statute.

“Beneficial Owner” means, with respect to a Bond, a Person owning a Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

“Beneficial Ownership Interest” means the beneficial right to receive payments and notices with respect to the Bonds which are held by the Depository under a Book Entry System.

“Bond” or “Bonds” means, collectively, (A) the Initial Bonds and (B) any Additional Bonds.

“Bond Counsel” means the law firm of Hodgson Russ LLP, Albany, New York or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who are acceptable to the Issuer.

“Bond Fund” means the fund so designated established pursuant to Section 401(A)(3) of the Indenture.

“Bondholder” or “Holder” or “Owner of the Bonds” means the registered owner of any Bond, as indicated on the bond register maintained by the Bond Registrar, except that wherever appropriate the term “Owners” shall mean the owners of the Bonds for federal income tax purposes.

“Bond Payment Date” means each Interest Payment Date and each date on which principal or interest or premium, if any, or a Sinking Fund Payment, shall be payable on the Bonds according to their terms and the terms of the Indenture, including without limitation scheduled mandatory Redemption Dates, unscheduled mandatory Redemption Dates, dates of acceleration of the Bonds pursuant to Section 602 of the Indenture, optional Redemption Dates and Stated Maturity, so long as any Bonds shall be Outstanding.

“Bond Proceeds” means (A) with respect to the Initial Bonds, the proceeds of the sale of the Initial Bonds, including any accrued interest, paid to the Trustee on behalf of the Issuer by the Underwriter as the purchase price of the Initial Bonds, and (B) with respect to any Series of Additional Bonds, the proceeds of the sale of such Series of Additional Bonds, including any accrued interest, paid to the Trustee on behalf of the Issuer by the purchasers of such Series of Additional Bonds as the purchase price of such Series of Additional Bonds.

“Bond Purchase Agreement” means (A) with respect to the Initial Bonds, the Initial Bond Purchase Agreement, and (B) with respect to any Series of Additional Bonds, any similar document executed by the Issuer and/or the Borrower in connection with the issuance and sale of such Series of Additional Bonds.

“Bond Rate” means, with respect to any Bond, the applicable rate of interest on such Bond, as set forth in such Bond.

“Bond Register” means the register maintained by the Bond Registrar in which, subject to such reasonable regulations as the Issuer, the Trustee or the Bond Registrar may prescribe, shall provide for the registration of the Bonds and for the registration of transfers of the Bonds.

“Bond Registrar” means the Trustee, acting in its capacity as bond registrar under the Indenture, and its successors and assigns as bond registrar under the Indenture.

“Bond Resolution” means (A) with respect to the Initial Bonds, the Initial Bond Resolution and (B) with respect to any Series of Additional Bonds, any resolution adopted by the members of the board of directors of the Issuer authorizing the issuance of such Series of Additional Bonds.

“Bond Year” (A) with respect to the Initial Bonds, means each one (1) year period ending on the anniversary of the Closing Date relating to the Initial Bonds, or such other bond year as the Borrower and the Issuer may select from time to time in a manner complying with the Code, and (B) with respect to any Series of Additional Bonds issued as Tax-Exempt Bonds, shall have the meaning set forth in the supplemental indenture related to such Series of Additional Bonds.

“Book Entry Bonds” means Bonds held in Book Entry Form with respect to which the provisions of Section 213 of the Indenture shall apply.

“Book Entry Form” or “Book Entry System” means, with respect to the Bonds, a form or system, as applicable, under which (A) the Beneficial Ownership Interests may be transferred only through a book entry and (B) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Bondholder, with the physical Bond certificates “immobilized” in the custody of the Depository or a custodian on behalf of the Depository. The Book Entry System which is maintained by and the responsibility of the Depository (and which is not maintained by or the responsibility of the Issuer or the Trustee) is the record that identifies, and records the transfer of the interests of, the Owners of book entry interests in the Bonds.

“Borrower” means Daemen College, a not-for-profit education corporation organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted by Section 8.4 of the Loan Agreement.

“Business Day” means any day of the year other than (A) a Saturday or Sunday, (B) a day on which the New York Stock Exchange is closed or (C) a day on which commercial banks in New York, New York, or the city or cities in which the Office of the Trustee is located, are authorized or required by law, regulation or executive order to close.

“Certificate of Authentication” means the certificate of authentication in substantially the form attached to the form of the Initial Bonds attached as Schedule I to the Indenture.

“Certificate of Determination” means, (A) with respect to the Initial Bonds, the certificate of determination executed by the Chairman, Vice Chairman or Chief Executive Officer of the Issuer relating to the Initial Bonds, and (B) with respect to any Series of Additional Bonds, the document by which the Issuer evidences its approval of the terms of such Series of Additional Bonds.

“Closing Date” means (A) with respect to the Initial Bonds, the date on which authenticated Initial Bonds are delivered to or upon the order of the Underwriter and payment is received therefor by the Trustee on behalf of the Issuer, and (B) with respect to any Series of Additional Bonds, the date on which such Additional Bonds of such Series are authenticated and delivered to the purchaser thereof and payment therefor is received by the Trustee on behalf of the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of said Code, and the applicable regulations (whether proposed, temporary or final) of the United States Treasury Department promulgated under said Code and the statutory predecessor of said Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“Completion Date” means (A) with respect to the Initial Project, the date of substantial completion of the undertaking of the Initial Project, as evidenced in the manner provided in Section 3.4 of the Loan Agreement and (B) with respect to any Additional Project, the date of substantial completion of

the undertaking of such Additional Project, as evidenced in the manner provided in Section 3.4 of the Loan Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

“Construction Period” means, with respect to the 2018 Project Facility and Initial Project or any Additional Project, as the case may be, the period (A) beginning on the earlier of the Inducement Date or the Official Action Date relating thereto and (B) ending on the Completion Date relating thereto.

“Continuing Disclosure Agreement” means (A) with respect to the Initial Bonds, the Initial Continuing Disclosure Agreement and (B) with respect to any Series of Additional Bonds, any similar document executed by the Borrower in connection with the issuance of such Series of Additional Bonds.

“Cost of the Project” means (A) with respect to the Initial Project, all those costs and items of expense relating thereto enumerated in Section 3.3(A) of the Loan Agreement incurred subsequent to the Inducement Date, including costs which the Borrower incurred prior to the Inducement Date with respect to the Initial Project in anticipation of the issuance of the Initial Bonds and for which the Borrower may be reimbursed from proceeds of the Initial Bonds pursuant to the provisions of the Initial Tax Regulatory Agreement, and (B) with respect to any Additional Project, all those costs and items of expense relating thereto enumerated in Section 3.3 of the Loan Agreement, including costs which the Borrower incurred with respect to such Additional Project in anticipation of the issuance of the related Series of Additional Bonds and for which the Borrower will be reimbursed from proceeds of the related Series of Additional Bonds.

“Debt Service Coverage Ratio” means the ratio of the Net Revenues Available for Debt Service for a Fiscal Year to Maximum Annual Debt Service (expressed as the number of times covered).

“Debt Service Payment” means, with respect to any Bond Payment Date, (A) the interest payable on the Bonds on such Bond Payment Date, plus (B) the principal, if any, payable on the Bonds on such Bond Payment Date, plus (C) the premium, if any, payable on the Bonds on such Bond Payment Date, plus (D) the Sinking Fund Payments, if any, payable on the Bonds on such Bond Payment Date.

“Default Interest Rate” means the rate of interest equal to 9% per annum, or the maximum permitted by law, whichever is less.

“Defaulted Payment” shall have the meaning ascribed to such term in Section 207(C) of the Indenture.

“Defeasance Obligations” means (A) cash, or (B) direct obligations of the United States of America or of any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States, including, but not limited to, United States Treasury obligations.

“Depository” means, initially, The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State, or its nominee, or any other securities depository designated in any supplemental resolution of the Issuer to serve as securities depository for the Bonds that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a Book Entry System to record ownership of book entry interests in Bonds, and to effect transfers of book entry interests in Book Entry Bonds.

“Depository Letter” means (A) with respect to the Initial Bonds, the Initial Depository Letter, and (B) with respect to any Series of Additional Bonds issued as Book Entry Bonds, any letter of representations by and among the Issuer, the Trustee and the Depository relating to such Series of Additional Bonds, and any amendments or supplements thereto entered into with respect thereto.

“Direct Participant” means a Participant as defined in the Depository Letter.

“Equipment” means, collectively, the Initial Equipment and any Additional Equipment.

“Enabling Act” means Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended.

“Event of Default” means (A) with respect to the Indenture, any of those events defined as an Event of Default by the terms of Article VI of the Indenture, (B) with respect to the Loan Agreement, any of those events defined as an Event of Default by the terms of Article X of the Loan Agreement, and (C) with respect to any other Financing Document, any of those events defined as an Event of Default by the terms thereof.

“Event of Taxability” means, with respect to any Series of Tax-Exempt Bonds, (A) the enactment of a statute or promulgation of a regulation eliminating, in whole or in part, the applicable exemption, as such exists on the Closing Date, from gross income for federal income tax purposes for interest payable under such Series of Tax-Exempt Bonds, (B) a “final determination by decision or ruling by a duly constituted administrative authority” to the effect that such exemption for interest payable under such Series of Tax-Exempt Bonds is not available, is no longer available or is contrary to law, (C) the expiration of the right to further administrative review of any determination, decision or ruling to the effect that such exemption for interest payable under such Series of Tax-Exempt Bonds is not available, is no longer available or is contrary to law, or (D) receipt by the Trustee of a written opinion of Bond Counsel that there is no longer a basis for the Holders of such Series of Tax-Exempt Bonds (or any former Holder, other than a Holder who is or was a Substantial User of the Project Facility or a Related Person thereto) to claim that any interest paid and payable on such Series of Tax-Exempt Bonds is not excluded from gross income for federal income tax purposes. For the purposes of clause (B) above, a “final determination by decision or ruling by a duly constituted administrative authority” shall mean (1) the issuance of a ruling (including, but not limited to, a revenue ruling or a letter ruling) by the IRS or any successor thereto, or (2) the issuance of a preliminary notice of proposed deficiency (“30-Day Letter”), a statutory notice of deficiency (“90-Day Letter”), or other written order or directive of similar force and effect by the IRS, or any other United States Governmental Authority having jurisdiction therein. Notwithstanding the foregoing, nothing in this definition of “Event of Taxability” shall be construed (x) to mean or include consideration of the interest payable on a Series of the Tax-Exempt Bonds for purposes of calculating the interest expense which may be deducted by a bank or other Financial Borrower, or (y) to mean that the any Holder of such Series of the Tax-Exempt Bonds shall have any obligation to contest or appeal any assertion or decision that any interest payable under such Series of the Tax-Exempt Bonds is subject to taxation, or (z) to mean or include the imposition of an alternative minimum tax or preference tax or environmental tax or branch profits tax on any Holder of a Series of the Tax-Exempt Bonds, in the calculation of which is included the interest paid or payable under the Tax-Exempt Bonds.

“Excluded Facility” means, collectively, Rosary Hall, the Business & Commerce Building, the Existing Equipment, the 2018 Project Facility and related Land.

“Extraordinary Services” and “Extraordinary Expenses” means all reasonable services rendered and all reasonable expenses incurred by the Trustee or any paying agent under the Indenture, other than

Ordinary Services and Ordinary Expenses, including, but not limited to, reasonable attorneys fees and any services rendered and any expenses incurred with respect to an Event of Default or with respect to the occurrence of an event which upon the giving of notice or the passage of time would ripen into an Event of Default under any of the Financing Documents.

“Facility” means the Initial Facility and any Additional Facilities.

“Final Maturity” means, with respect to any particular Bond, the final Stated Maturity of the principal due on such Bond, unless such Bond is called for redemption in whole prior to such date, in which case any such term shall mean the Redemption Date relating to such Bond.

“Financing Documents” means (A) with respect to the Initial Bonds, the Initial Financing Documents and (B) with respect to any Series of Additional Bonds, any similar documents executed by the Borrower and/or the Issuer in connection with the issuance of such Series of Additional Bonds.

“Financing Statements” means any and all financing statements (including continuation statements) or other instruments filed or recorded from time to time to perfect the security interests created in the Financing Documents.

“Fiscal Year” means (i) the period of twelve (12) months beginning June 1 of each year, or (ii) such other consecutive twelve (12) month period selected by the Borrower as its fiscal year for accounting purposes.

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

“Fund” means any Fund designated and created pursuant to Section 401 of the Indenture.

“Government Obligations” means (A) cash, (B) direct obligations of the United States of America, (C) obligations unconditionally guaranteed by the United States of America and (D) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (B) or (C).

“Governmental Authority” means the United States of America, the State, any political subdivision thereof, any other state and any agency, department, commission, board, bureau or instrumentality of any of them.

“Gross Bond Proceeds” means “gross proceeds” as defined in Section 148(f)(6)(B) of the Code, presently including, without limitation, the original proceeds of the Bonds, investment proceeds, amounts held in a sinking fund, amounts invested in a reasonably required reserve or replacement fund, certain investment-type property pledged as security for the Bonds by the Borrower or by the Issuer, amounts received with respect to the Loan Agreement, any amounts used to pay Debt Service Payments on the Bonds, and any amounts received as a result of investing any of the foregoing.

“Gross Proceeds” means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance claim or Condemnation award.

“Guaranty” means the guaranty dated as of June 1, 2018 from the Borrower to the Trustee, as said guaranty may be amended or supplemented from time to time.

“Holder” or “holder”, when used with respect to a Bond, means Bondholder.

“Immediate Notice” means notice transmitted through a time-sharing terminal, if operative as between any two parties, or if not operative, same-day notice by telephone, telecopy or telex, followed by prompt written confirmation sent by overnight delivery.

“Indebtedness” means (A) the payment of the Debt Service Payments on the Bonds according to their tenor and effect, (B) all other payments due from the Borrower or the Issuer to the Trustee pursuant to any Financing Document, (C) the performance and observance by the Issuer and the Borrower of all of the covenants, agreements, representations and warranties made for the benefit of the Trustee pursuant to any Financing Document, (D) the monetary obligations of the Borrower to the Issuer and its members, directors, officers, agents, servants and employees under the Loan Agreement and the other Financing Documents, and (E) all interest, penalties and late charges accruing on any of the foregoing.

“Indemnified Parties” shall mean the Trustee, the Issuer, the Underwriter and the payee and holder of any Initial Bond.

“Indenture” means the trust indenture dated as of June 1, 2018 by and between the Issuer and the Trustee, as said trust indenture may be amended or supplemented from time to time.

“Independent Counsel” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not a full-time employee of the Borrower or the Issuer.

“Indirect Participant” means a Person utilizing the Book Entry System of the Depository by, directly or indirectly, clearing through or maintaining a custodial relationship with a Direct Participant.

“Inducement Date” means (A) with respect to the Initial Project, the date which is sixty (60) days prior to the earlier of (1) May 18, 2018 or (2) the date on which the Borrower declared its official intent to reimburse expenditures made with respect to the Initial Project with proceeds of borrowed money, and (B) with respect to any Additional Project, the date which is sixty (60) days prior to the earlier of (1) the date on which the Issuer adopts an inducement resolution with respect to such Additional Project or (2) the date on which the Borrower declares its official intent to reimburse expenditures made with respect to such Additional Project with proceeds of borrowed money.

“Initial Arbitrage Certificate” means the certificate dated the Closing Date for the Initial Bonds executed by the Issuer and relating to certain requirements set forth in Section 148 of the Code applicable to the Initial Bonds and the Initial Project.

“Initial Bond Purchase Agreement” means the bond purchase agreement dated June 7, 2018 by and among the Underwriter, the Issuer and the Borrower relating to the purchase of the Initial Bonds by the Underwriter, as said bond purchase agreement may be amended or supplemented from time to time.

“Initial Bond Resolution” means the resolution of the members of the board of directors of the Issuer duly adopted on May 18, 2018 authorizing the Issuer to undertake the Initial Project, to issue and sell the Initial Bonds and to execute and deliver the Initial Financing Documents to which the Issuer is a party.

“Initial Bonds” means the Issuer’s Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000, issued pursuant to the Initial Bond Resolution and Article II of the Indenture and sold to the Underwriter pursuant to the provisions of the Initial Bond Purchase Agreement, in substantially the form attached to the Indenture as Schedule I thereto, and any Initial Bonds issued in exchange or substitution therefor.

“Initial Continuing Disclosure Agreement” means the continuing disclosure agreement dated as of June 14, 2018 by and between the Borrower and the Trustee relating to the Initial Bonds, as said continuing disclosure agreement may be amended or supplemented from time to time.

“Initial Depository Letter” means any letter of representations by and among the Issuer and the Depository relating to the Initial Bonds, and any amendments or supplements thereto entered into with respect thereto.

“Initial Equipment” means all materials, machinery, equipment, fixtures or furnishings intended to be acquired with the proceeds of the Initial Bonds, or acquired with any payment which the Borrower incurred in anticipation of the issuance of the Initial Bonds and for which the Borrower will be reimbursed from the proceeds of the Initial Bonds, and such substitutions and replacements therefor and additions thereto as may be made from time to time pursuant to the Loan Agreement, including, without limitation, all of the Property described in Exhibit B attached to the Loan Agreement.

“Initial Facility” means all buildings (or portions thereof), improvements, structures and other related facilities, and improvements thereto, (A) located on the Initial Land, (B) financed or refinanced with the proceeds of the sale of the Initial Bonds or any payment which the Borrower incurred in anticipation of the issuance of the Initial Bonds and for which the Borrower will be reimbursed from the proceeds of the Initial Bonds or any payment made by the Borrower pursuant to Section 3.5 of the Loan Agreement, and (C) not constituting a part of the Initial Equipment, all as they may exist from time to time.

“Initial Financing Documents” means the Initial Bonds, the Indenture, the Loan Agreement, the Pledge and Assignment, the Guaranty, the Initial Tax Documents, the Initial Underwriter Documents and any other document now or hereafter executed by the Issuer or the Borrower in favor of the Holders of the Initial Bonds or the Trustee which affects the rights of the Holders of the Initial Bonds or the Trustee in or to the Initial Project Facility, in whole or in part, or which secures or guarantees any sum due under the Initial Bonds or any other Initial Financing Document, each as amended from time to time, and all documents related thereto and executed in connection therewith.

“Initial Land” means the real estate described on Exhibit A attached to the Loan Agreement, which is the site of the Initial Project.

“Initial Official Statement” means the official statement delivered in connection with the sale of the Initial Bonds by the Underwriter.

“Initial Preliminary Official Statement” means the preliminary official statement delivered in connection with the sale of the Initial Bonds by the Underwriter.

“Initial Project” shall have the meaning assigned to such term in the fourth recital clause to the Indenture and the Loan Agreement.

“Initial Project Facility” means, collectively, the Initial Land, the Initial Facility and the Initial Equipment.

“Initial Tax Documents” means, collectively, the Initial Arbitrage Certificate and the Initial Tax Regulatory Agreement.

“Initial Tax Regulatory Agreement” means the tax regulatory agreement dated the Closing Date for the Initial Bonds executed by the Borrower in favor of the Issuer and the Trustee regarding, among other things, the restrictions prescribed by the Code in order for interest on the Initial Bonds to be and remain excludable from the gross income of the Holders thereof for federal income tax purposes.

“Initial Underwriter Documents” means the Initial Bond Purchase Agreement, the Initial Letter of Representation, the Initial Continuing Disclosure Agreement, the Initial Preliminary Official Statement, the Initial Official Statement and any other document now or hereafter executed by the Issuer or the Borrower in connection with the sale of the Initial Bonds by the Underwriter.

“Insurance and Condemnation Fund” means the fund so designated established pursuant to Section 401(A)(3) of the Indenture.

“Interest Payment Date” means (A) with respect to the Initial Bonds, April 1 and October 1 of each year, commencing October 1, 2018, and (B) with respect to any Additional Bonds, the Stated Maturity of each installment of interest on such Additional Bonds, as set forth in the supplemental Indenture authorizing the issuance of such Series of Additional Bonds. In any case, the final Interest Payment Date of any Series of the Bonds shall be the Maturity Date relating thereto.

“Issuer” means (A) the Town of Amherst Development Corporation and its successors and assigns, and (B) any public instrumentality or political subdivision resulting from or surviving any consolidation or merger to which Town of Amherst Development Corporation or its successors or assigns may be a party.

“Land” means the Initial Land and any Additional Land.

“Letter of Instructions” means the letter of instructions dated June 14, 2018 by and among the Prior Issuer, the Prior Trustee and the Borrower, as acknowledged by the Trustee and the Issuer.

“Letter of Representation” means the Initial Letter of Representation.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes hereof, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Loan” means the loan by the Issuer of the proceeds received from the sale of the Bonds to the Borrower pursuant to the provisions of the Loan Agreement.

“Loan Agreement” means the loan agreement dated as of June 1, 2018 by and between the Issuer and the Borrower, as said loan agreement may be amended or supplemented from time to time.

“Loan Payments” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 5.1 of the Loan Agreement.

“Long-Term Indebtedness” means Indebtedness having an original maturity of greater than one (1) year or Indebtedness on which the Borrower has an option to extend the maturity thereof for a period of greater than one (1) year beyond the date of the original incurrence thereof.

“Maturity Date” means, with respect to any Bond, the final Stated Maturity of the principal of such Bond.

“Maximum Annual Debt Service” means on any date, when used with respect to any Long-Term Indebtedness, the greatest amount required in the then current or any future Bond Year to pay the sum of: (1) interest on such Long-Term Indebtedness payable in such Bond Year, excluding accrued interest received upon the issuance of such Long-Term Indebtedness and capitalized interest financed by the issuance of such Long-Term Indebtedness; and (2) the principal and the Sinking Fund Payments due on such Long-Term Indebtedness in such Bond Year.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of the Borrower.

“Mortgage” means the mortgage and security agreement dated as of June 1, 2018 from the Borrower to the Issuer, which, among other things, (a) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Initial Project Facility, excluding the Excluded Facility and (b) assigns to the Issuer the rents, issues and profits of the Initial Project Facility, excluding the Excluded Facility, as said mortgage and security agreement may be amended or supplemented from time to time.

“Mortgage Assignment” means the assignment of mortgage dated as of June 1, 2018 from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, as said assignment of mortgage may be amended or supplemented from time to time.

“Mortgaged Property” means all Property which may from time to time be subject to the Lien of the Mortgage.

“Net Proceeds” means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such Gross Proceeds.

“Net Revenues Available For Debt Service” means the amount of unrestricted revenues, gains and other support less unrestricted expenses and losses (excluding from such revenues and expenses unrealized capital gains or losses, the receipt of insurance proceeds (except business interruption insurance), and extraordinary items and further excluding from such expenses depreciation, interest on long-term indebtedness, all as determined in accordance with generally accepted accounting principles.

“Nonexempt Entity” means any Person other than (A) a state or local governmental entity or (B) a Person described in Section 501(c)(3) of the Code which has been recognized in writing by the Internal Revenue Service as being exempt from taxation under Sections 501(a) and Section 501(c)(3) of the Code.

“Office of the Trustee” means the corporate trust office of the Trustee specified in Section 1103 of the Indenture, or such other address as the Trustee shall designate pursuant to Section 1103 of the Indenture.

“Official Statement” means (A) with respect to the Initial Bonds, the Initial Official Statement, and (B) with respect to any Series of Additional Bonds, any similar document approved by the Issuer and the Borrower in connection with the sale by the Underwriter of the related Series of Additional Bonds.

“Ordinary Services” and “Ordinary Expenses” means those reasonable services normally rendered with those reasonable expenses, including reasonable attorneys’ fees, normally incurred by a trustee or a paying agent, as the case may be, under instruments similar to the Indenture.

“Outstanding” means, when used with reference to the Bonds as of any date, all Bonds which have been duly authenticated and delivered by the Trustee under the Indenture, except:

(A) Bonds theretofore cancelled or deemed cancelled by the Trustee or theretofore delivered to the Trustee for cancellation;

(B) Bonds for the payment or redemption of which moneys or Defeasance Obligations shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or Redemption Date of any such Bonds) in accordance with the Indenture (whether upon or prior to the maturity or Redemption Date of any such Bonds); provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form and substance to the Trustee shall have been filed with the Trustee; and

(C) Bonds in lieu of or in substitution for which other Bonds have been authenticated and delivered under the Indenture.

In determining whether the Owners of a requisite aggregate principal amount of Bonds Outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions hereof, Bonds which are held by or on behalf of the Borrower (unless all of the outstanding Bonds are then owned by the Borrower) shall be disregarded for the purpose of any such determination. If the Indenture shall be discharged pursuant to Article X of the Indenture, no Bonds shall be deemed to be Outstanding within the meaning of this definition.

“Owner” or “owner”, when used with respect to a Bond, means the Registered Owner of such Bond, except that wherever appropriate the term “Owner” shall mean the owner of such Bond for federal income tax purposes.

“Participant” shall have the meaning assigned to such term in Section 213(B) of the Indenture.

“Paying Agent” means the Trustee, acting as such, and any additional paying agent for the Bonds appointed pursuant to Article VII of the Indenture, their respective successors and any other corporation that may at any time be substituted in their respective places pursuant to the Indenture.

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens, (C) Liens for taxes, assessments and utility charges (1) to the extent permitted by Section 6.2(B) of the Loan Agreement, or (2) at the time not delinquent,

(D) any Lien on the Project Facility obtained through any Financing Document, (E) any Lien on the Project Facility in favor of the Trustee, (F) the Conveyance Documents, and (G) any Lien on the Project Facility approved or granted by the Borrower.

“Person” means an individual, partnership, corporation, limited liability company, trust, unincorporated organization or Governmental Authority.

“Plans and Specifications” means: (A) with respect to the Initial Project, the description of the Initial Project Facility appearing in the fourth recital clause to the Indenture and the Loan Agreement; and (B) with respect to any Additional Project, (1) as to the Issuer, the description of such Additional Project appearing in the Issuer’s preliminary inducement resolution relating thereto, and (2) as to the Trustee, the plans and specifications for such Additional Project prepared by the Borrower, and all amendments and modifications thereof made by approved change orders; and, if an item for the construction of the Additional Facility is not specifically detailed in the aforementioned plans and specifications, but rather is described by way of manufacturer’s or supplier’s or contractor’s shop drawings, catalog references or similar descriptions, the term also includes such shop drawings, catalog references and descriptions.

“Pledge and Assignment” means the pledge and assignment dated as of June 1, 2018 from the Issuer to the Trustee, and acknowledged by the Borrower, pursuant to which the Issuer has assigned to the Trustee its rights under the Loan Agreement (except the Unassigned Rights), as said pledge and assignment may be amended or supplemented from time to time.

“Predecessor Bonds” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by such particular Bond; and, for purposes of this definition, any Bond authenticated and delivered under Section 205 of the Indenture in lieu of a lost, destroyed or stolen Bond shall be deemed to evidence the same debt as the lost, destroyed or stolen Bond.

“Preliminary Official Statement” means (A) with respect to the Initial Bonds, the Initial Preliminary Official Statement, and (B) with respect to any Series of Additional Bonds, any similar document approved by the Issuer and the Borrower for use in connection with the issuance of the related Series of Additional Bonds.

“Principal Payment Date” means (A) with respect to the Initial Bonds, each Interest Payment Date on which a Sinking Fund Payment is due on the Bonds, and the Maturity Date of each of the Initial Bonds, and (B) with respect to any Additional Bonds, the Stated Maturity of each installment of principal due on such Additional Bonds.

“Prior Bonds” means, collectively, the (i) Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006A and (ii) the Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006B.

“Prior Indenture” means the trust indenture dated as of June 1, 2006 by and between the Prior Issuer and the Prior Trustee, as amended and supplemented by a first supplemental indenture dated as of February 1, 2008 by and between the Prior Issuer and the Prior Trustee, as amended and supplemented by the second supplemental indenture dated as of February 25, 2010 by and between the Prior Issuer and the Prior Trustee, and as further amended and supplemented by the First Omnibus Amendment to the Indenture and Related Financing Documents dated as of December 1, 2017 by and among the Prior Issuer, the Prior Trustee, the Borrower, Manufacturers and Traders Trust Company, as credit facility issuer, and Assured Guaranty Corp., as successor to Radian Asset Assurance Inc.

“Prior Issuer” means the Town of Amherst Industrial Development Agency.

“Prior Project Facility” shall have the meaning assigned to such term in the 4th WHEREAS clause of the Indenture.

“Prior Reserve Fund” means the reserve fund held by the Prior Trustee with respect to the Prior Bonds.

“Prior Trustee” means Manufacturers and Traders Trust Company, a banking corporation constituting a trust company organized and existing under the laws of the State of New York, acting as trustee under the Prior Indenture.

“Project” means (A) with respect to the Initial Bonds, the Initial Project, and (B) with respect to any Series of Additional Bonds, the Additional Project with respect to which such Series of Additional Bonds were issued.

“Project Costs” means Costs of the Project.

“Project Facility” means, collectively, the Initial Project Facility and all Additional Project Facilities.

“Project Fund” means the fund so designated established pursuant to Section 401(A)(1) of the Indenture.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Rating Agency” means Fitch, if the Bonds are rated by Fitch at the time, Moody’s, if the Bonds are rated by Moody’s at the time, and Standard & Poor’s, if the Bonds are rated by Standard & Poor’s at the time, and their successors and assigns.

“Rebate Amount” shall have the meaning assigned to such term in the Tax Documents.

“Rebate Fund” means the fund so designated established pursuant to Section 401(A)(4) of the Indenture.

“Rebate Fund Earnings Account” means the special account so designated within the Rebate Fund established pursuant to Section 401(A)(4)(b) of the Indenture.

“Rebate Fund Principal Account” means the account so designated within the Rebate Fund established pursuant to Section 401(A)(4)(a) of the Indenture.

“Record Date” means either a Regular Record Date or a Special Record Date.

“Redemption Date” means, when used with respect to a Bond, the date upon which a Bond is scheduled to be redeemed pursuant to the Indenture.

“Redemption Price” means, when used with respect to a Bond, the principal amount thereof plus the applicable premium, if any, payable upon the prior redemption thereof pursuant to the provisions of the Indenture and such Bond.

“Regular Record Date” means, with respect to the interest and any Sinking Fund Payment or principal payment due on the Bonds on or prior to maturity payable on any Bond on any Interest Payment Date, the fifteenth (15th) day (whether or not a Business Day) of the calendar month preceding the calendar month in which such Interest Payment Date occurs.

“Request for Disbursement” means a request from the Borrower, as agent of the Issuer, signed by an Authorized Representative of the Borrower, stating the amount of the disbursement sought and containing the statements, representations and other items required by Article IV of the Indenture and by Section 3.3 of the Loan Agreement, which Request for Disbursement shall be in substantially the form of Exhibit A attached to the Indenture.

“Requirement” or “Local Requirement” means any law, ordinance, order, rule or regulation of a Governmental Authority.

“Securities Laws” means the Securities Act of 1933, as amended, and all other securities laws of the United States of America or the State to the extent that such laws may now or hereafter be applicable to or affect the issuance, sale and delivery of the Bonds and any transfer or resale thereof.

“Security Documents” shall have the meaning assigned to such term in Section 4.1 of the loan Agreement.

“Series” or “Series of Bonds” means all of the Bonds of a single series authenticated and delivered pursuant to the Indenture.

“SEQRA” means Article 8 of the Environmental Conservation Law of the State and the statewide and local regulations thereunder.

“Series 2018 Project Account” means the account so designated within the Project Fund established pursuant to Section 401(A)(1)(a) of the Indenture.

“Sinking Fund Payments” means (A) with respect to the Initial Bonds, the sinking fund redemption payments due on the Initial Bonds pursuant to Section 301(C) of the Indenture and (B) with respect to any Additional Bonds, the sinking fund redemption payments (if any) required pursuant to the supplemental Indenture authorizing issuance of such Additional Bonds.

“Special Record Date” means a date for the payment of any Defaulted Payment on the Bonds fixed by the Trustee pursuant to Section 207(C) of the Indenture.

“Standard & Poor’s” means Standard & Poor’s Ratings Services, a division of the McGraw-Hill Companies, Inc., and its successors and assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of the Borrower.

“State” means the State of New York.

“Stated Maturity” means, when used with respect to any Bond or any installment of interest thereon, the date specified in such Bond as the fixed date on which the principal of such Bond or such installment of interest on such Bond is due and payable.

“Substantial User” means any Person constituting a “substantial user” within the meaning ascribed to such term in Section 147(a) of the Code.

“Supplemental Indenture” means any indenture supplemental to or amendatory of the Indenture executed by the Issuer in accordance with Article VIII of the Indenture.

“Tax Documents” means, collectively, (A) with respect to the Initial Bonds, the Initial Tax Documents and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar documents executed by the Issuer and/or the Borrower in connection with the issuance of such Series of Additional Bonds.

“Tax-Exempt Bond” means any Bond issued as an obligation of the Issuer, the interest on which is intended to be excluded from the gross income of the Holder thereof for federal income tax purposes pursuant to Section 103 and Section 145 of the Code, including but not limited to the Initial Bonds.

“Tax Regulatory Agreement” means (A) with respect to the Initial Bonds, the Initial Tax Regulatory Agreement and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar document executed by the Borrower in connection with the issuance and sale of such Series of Additional Bonds.

“Term Bonds” means Bonds having a single stated maturity for which Sinking Fund Installments are specified in Section 301(C) of the Indenture (or, if such Bonds are Additional Bonds, in the supplemental indenture authorizing the issuance of such Bonds).

“Termination of Loan Agreement” means a termination of Loan Agreement by and between the Borrower, as borrower, and the Issuer, as lender, intended to evidence the termination of the Loan Agreement, substantially in the form attached as Exhibit C to the Loan Agreement.

“Trust Estate” means all Property which may from time to time be subject to a Lien in favor of the Trustee created by the Indenture or any other Financing Document.

“Trust Revenues” means (A) all payments of loan payments made or to be made by or on behalf of the Borrower under the Loan Agreement (except payments made with respect to the Unassigned Rights), (B) all other amounts pledged to the Trustee by the Issuer or the Borrower to secure the Bonds or performance of their respective obligations under the Loan Agreement and the Indenture, (C) the Net Proceeds (except proceeds with respect to the Unassigned Rights) of insurance settlements and Condemnation awards with respect to the Project Facility, (D) moneys and investments held from time to time in each fund and account established under the Indenture and all investment income thereon, except (1) moneys and investments held in the Rebate Fund, (2) moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, (3) unclaimed funds held under Section 410 of the Indenture, and (4) as specifically otherwise provided, and (E) all other moneys received or held by the Trustee for the benefit of the Bondholders pursuant to the Indenture. Notwithstanding anything to the contrary, amounts held in the Rebate Fund shall not be considered Trust Revenues and shall not be subject to the Lien of the Indenture, and amounts held therein shall not secure any amount payable on the Bonds.

“Trustee” means The Bank of New York Mellon, a banking corporation organized and existing under the laws of the State of New York, or any successor trustee or co-trustee acting as trustee under the Indenture.

“Unassigned Rights” means (A) the rights of the Issuer granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 3.8, 4.4, 5.1(B)(2), 5.1(C), 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.11, 8.14, 8.16, 8.17, 8.18, 9.1, 9.2, 11.1, 11.4, 11.8 and 11.10 of the Loan Agreement, (B) the moneys due and to become due to the Issuer for its own account or the members, directors, officers, agents (other than the Borrower), servants and employees of the Issuer for their own account pursuant to Sections 2.2, 5.1(B)(2), 5.1(C), 6.4(B), 8.2, 10.2 and 10.4 of the Loan Agreement, and (C) the right to enforce the foregoing pursuant to Article X of the Loan Agreement. Notwithstanding the preceding sentence, to the extent the obligations of the Borrower under the Sections of the Loan Agreement listed in (A), (B) and (C) above do not relate to the payment of moneys to the Issuer for its own account or to the members, officers, directors, agents (other than the Borrower), servants and employees of the Issuer for their own account, such obligations, upon assignment of the Loan Agreement by the Issuer to the Trustee pursuant to the Pledge and Assignment, shall be deemed to and shall constitute obligations of the Borrower to the Issuer and the Trustee, jointly and severally, and either the Issuer or the Trustee may commence an action to enforce the Borrower’s obligations under the Loan Agreement.

“Underwriter” means (A) with respect to the Initial Bonds, Janney Montgomery Scott LLC, as original purchaser of the Initial Bonds on the Closing Date relating thereto, and (B) with respect to any Series of Additional Bonds, the original purchaser of such Series of Additional Bonds on the Closing Date relating thereto.

“Underwriter Documents” means, collectively, (A) with respect to the Initial Bonds, the Initial Underwriter Documents and (B) with respect to any Additional Bonds, any similar documents executed by the Issuer and/or the Borrower in connection with the issuance of such Additional Bonds.

“Yield”, when used with respect to the Initial Bonds, shall have the meaning assigned to such term in the Initial Tax Regulatory Agreement.

“2001 Project Facility” shall have the meaning assigned to such term in the 4th WHEREAS clause of the Indenture.

“2006 Project Facility” shall have the meaning assigned to such term in the 4th WHEREAS clause of the Indenture.

“2018 Project Facility” shall have the meaning assigned to such term in the 4th WHEREAS clause of the Indenture.

EXHIBIT A
DESCRIPTION OF THE INITIAL LAND

- SEE ATTACHED -

PARCEL I

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, and State of New York, being parts of Lots Nos. 14 and 15, Township 12, Range 7 of the Holland Land Company's Survey and being more particularly described as follows:

BEGINNING at a point in the northerly line of Main Street (99 feet wide) distant 114.78 feet westerly of its intersection with the westerly line of a certain subdivision entitled "Campus of Snyder" as filed in the Erie County Clerk's Office under Map Cover No. 1684; thence westerly along the northerly line of Main Street a distance of 544.93 feet; thence northerly along a line at an interior angle of 90° 00' 00" a distance of 258.01 feet; thence easterly along a line at an interior angle of 90° 00' 00" a distance of 42.23 feet to a point in the southwest corner of the existing Marian Library building; thence along the existing outside building wall line of said Marian Library building the following courses and distances:

- (1) easterly 10.7 feet;
- (2) northerly 2.8 feet;
- (3) easterly 54.0 feet;
- (4) southerly 2.8 feet;
- (5) easterly 3.3 feet;
- (6) southerly 8.35 feet;
- (7) easterly 24.5 feet;
- (8) northerly 1.9 feet;
- (9) westerly 1.7 feet;
- (10) northerly 30.2 feet;
- (11) easterly 20.45 feet;
- (12) southerly 0.65 feet;
- (13) easterly 25.0 feet;
- (14) northerly 10.7 feet;
- (15) westerly 3.3 feet;
- (16) northerly 32.8 feet;
- (17) westerly 4.8 feet;
- (18) northerly 28.0 feet to a point on the existing outside building wall line of the Duns Scotus Hall building;

thence continuing along the existing outside building wall line of said Duns Scotus Hall building the following courses and distances:

- (19) easterly 208.0 feet;
- (20) southerly 29.25 feet to a point on the existing outside building wall line of the Athletic Facility (Gymnasium) building;

thence continuing along the existing outside building wall line of said Athletic Facility (Gymnasium) building the following courses and distances:

(21) westerly 10.5 feet;
(22) southerly 20.0 feet;
(23) easterly 3.7 feet;
(24) southeasterly 28.0 feet;
(25) southerly 3.7 feet;
(26) easterly 9.5 feet;
(27) southerly 84.3 feet;
(28) easterly 25.5 feet;
(29) southerly 24.5 feet;
(30) easterly 118.1 feet to the southeast corner of said Athletic Facility (Gymnasium) building;

thence southerly along a line perpendicular to the northerly line of Main Street a distance of 169.05 feet to the point or place of beginning, containing 3.42 acres, more or less.

TOGETHER WITH a non-exclusive easement for ingress and egress over the following described lands:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, and State of New York, being part of Lot No. 15, Township 12, Range 7 of the Holland Land Company's Survey and being more particularly described as follows:

BEGINNING at a point in the northerly line of Main Street (99 feet wide) distant 659.71 feet westerly of its intersection with the westerly line of a certain subdivision entitled "Campus of Snyder" as filed in the Erie County Clerk's Office under Map Cover No. 1684; thence westerly along the northerly line of Main Street a distance of 84.54 feet; thence northerly along a line at an interior angle of 90° 00' 00" a distance of 258.01 feet; thence easterly along a line at an interior angle of 90° 00' 00" a distance of 84.54 feet; thence southerly along a line at an interior angle of 90° 00' 00" a distance of 258.01 feet to the point or place of beginning, containing 21,812.17 square feet, more or less.

PARCEL II

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 14, Township 12, Range 7 of the Holland Land Company's Survey and further distinguished as being Subdivision Lots Nos. 36 to 41 inclusive as shown on map filed in Erie County Clerk's Office under Cover No. 1684, being further bounded and described as follows:

BEGINNING at a point of curve in the east line of Campus Drive distant 171 feet east, measured at right angles, from a point in the east line of land conveyed to Horace A. Bates by deed recorded in Erie County Clerk's Office in Liber 521 of Deeds at page 574 distant 445 feet North 7° 30' East from a concrete monument located on the north line of Main Street at the southwest corner of land subdivided on said Map Cover 1684, said point of beginning being distant 75 feet South 7° 30' West of the northwest corner of Subdivision Lot No. 36; thence North 7° 30' East along the east line of Campus Drive 575 feet to the northwest corner of Subdivision Lot No. 41; thence South 82° 30' East along the north line

of Subdivision Lot No. 41, 105 feet to the northeast corner of Subdivision Lot No. 41; thence South 7° 30" West along the east line of Subdivision Lots Nos. 41, 40, 39 and 38 , 400 feet to the southeast corner of Subdivision Lot No. 38; thence South 13° 12' 38" West along the east line of Subdivision Lot No. 37, 100.50 feet to the southeast corner of Subdivision Lot No. 37; thence South 82° 30' East 94.75 feet to the northeast corner of Subdivision Lot No. 36, said point being in the west line of Campus Drive East; thence southwesterly along the northwest line of Campus Drive East, being a line curving to the southwest having a radius of 149 feet, an arc length of 22.32 feet to a point of tangent; thence South 46° 18' 17" West along the northwest line of Campus Drive East, tangent to the last described curved line, a distance of 119 feet to a point of curve; thence southwesterly and northwesterly along a line curving to the west and northwest, having a radius of 57.63 feet and tangent to the last described course, an arc length of 142.02 feet to the point of beginning.

BEARINGS refer to Magnetic North.

PARCEL III

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 14, Township 12, Range 7 of the Holland Land Company's Survey and further distinguished as being Subdivision Lots Nos. 5 to 14 inclusive as shown on map filed in Erie County Clerk's Office under Cover No. 1684, being further bounded and described as follows:

BEGINNING at the southwest corner of Subdivision Lot No. 5 as shown on said Map Cover No. 1684, said southwest corner of Subdivision Lot No. 5 being in the east line of land conveyed to Horace A. Bates by deed recorded in Erie County Clerk's Office in Liber 521 of Deeds at page 574 and distant 370 feet North 7° 30' East from a concrete monument located on the north line of Main Street at the southwest corner of land situated on said Map Cover No. 1684; thence North 7° 30' East along the west line of Subdivision Lots Nos. 5 to 14 inclusive 930 feet to the northwest corner of Subdivision Lot No. 14; thence South 82° 30' East 111 feet to the northeast corner of Subdivision Lot No. 14 on the west line of Campus Drive; thence South 7° 30' West along the west line of Campus Drive 855 feet to a point of curve located in the east line of Subdivision Lot No. 5 distant 20 feet South 7° 30' West of the northeast corner of Subdivision Lot No. 5; thence southeasterly along the southwest line of Campus Drive, being a line curving to the east, having a radius of 134.64 feet and tangent to the last described course, an arc length of 79.55 feet to the southeast corner of Subdivision Lot No. 5; thence North 82° 30' West 133.82 feet to the point of beginning.

BEARINGS refer to Magnetic North.

PARCEL IV

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 14, Township 12, Range 7 of the Holland Land Company's Survey and further distinguished as being Subdivision Lots Nos. 30 to 35

inclusive and Subdivision Lot No. 42 as shown on a map filed in Erie County Clerk's Office under Cover No. 1684, being further bounded and described as follows:

BEGINNING at a point in the east line of Campus Drive distant 171 feet east, measured at right angles, from a point in the east line of land conveyed to Horace A. Bates by deed recorded in Erie County Clerk's Office in Liber 521 of Deeds, page 574 distant 1020 feet North 7° 30' East from a concrete monument located on the north line of Main Street at the southwest corner of land subdivided on said Map Cover No. 1684, said point of beginning being at the southwest corner of Subdivision Lot No. 42; thence North 7° 30' East along the east line of Campus Drive 80 feet to a point of curve; thence northeasterly along a line curving to the east having a radius of 20 feet and tangent to the east line of Campus Drive an arc length of 31.42 feet to a point of tangent in the south line of Eton Lane; thence South 82° 30' East along the south line of Eton Lane, being the north line of Subdivision Lots Nos. 42 and 30, a distance of 170 feet to a point of curve; thence southeasterly along a line curving to the south, having a radius of 20 feet and tangent to the south line of Eton Lane, an arc length of 31.42 feet to a point of tangent in the west line of Campus Drive East; thence South 7° 30' West along the west line of Campus Drive East 505 feet to a point of curve, distant 25 feet South 7° 30' West of the northeast corner of Subdivision Lot No. 35; thence southwesterly along the northwest line of Campus Drive East, being a line curving to the west, having a radius of 149 feet and tangent to the last described course, an arc length of 78.59 feet to the southeast corner of Subdivision Lot No. 35; thence North 82° 30' West along the south line of Subdivision Lot No. 35, 94.75 feet to the southwest corner of Subdivision Lot No. 35; thence North 13° 12' 38" East along the west line of Subdivision Lot No. 35, 100.50 feet to the northwest corner of Subdivision Lot No. 35; thence North 7° 30' East along the west line of Subdivision Lots Nos. 34, 33, 32 and 31, 400 feet to the southeast corner of Subdivision Lot No. 42; thence North 82° 30' West along the south line of Subdivision Lot No. 42, 105 feet to the point of beginning.

BEARINGS refer to Magnetic North

EXHIBIT B
DESCRIPTION OF THE INITIAL EQUIPMENT

All articles of personal property and all appurtenances acquired with the proceeds of the Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 issued by Town of Amherst Development Corporation.

EXHIBIT C

FORM OF TERMINATION OF LOAN AGREEMENT

WHEREAS, DAEMEN COLLEGE, a not-for-profit development corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4380 Main Street, Amherst, New York (the “Borrower”), and TOWN OF AMHERST DEVELOPMENT CORPORATION, a not-for-profit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4287 Main Street, Amherst, New York (the “Issuer”), entered into an Loan Agreement dated as of June 1, 2018 (the “Loan Agreement”); and

WHEREAS, pursuant to the Loan Agreement, (A) the Issuer agreed (1) to issue its Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 (the “Initial Bonds”), and (2) to make a loan to the Borrower of the proceeds of the Initial Bonds (the “Loan”) for the purpose of assisting in financing the Initial Project, and (B) in consideration of the Loan, the Borrower will agree (1) to cause the Initial Project to be undertaken and completed, (2) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the Borrower for the payment of) the costs of the Initial Project, and (3) to make payments sufficient in amount to pay when due all amounts due with respect to the Initial Bonds (the “Loan Payments”) to or upon the order of the Issuer in repayment of the Loan, which Loan Payments shall include amounts equal to the Debt Service Payments due on the Initial Bonds

WHEREAS, the Initial Bonds were issued pursuant to the terms of a trust indenture dated as of June 1, 2018 (the “Indenture”) between the Issuer and The Bank of New York Mellon, as trustee (the “Trustee”) for the holders of the Initial Bonds and all other indebtedness issued by the Issuer under the Indenture (collectively with the Initial Bonds, the “Bonds”); and

WHEREAS, as security for the Bonds, the Issuer executed and delivered to the Trustee a pledge and assignment dated as of June 1, 2018 (the “Pledge and Assignment”) from the Issuer to the Trustee, and acknowledged by the Borrower, which Pledge and Assignment assigned to the Trustee certain of the Issuer’s rights under the Loan Agreement; and

WHEREAS, pursuant to the Loan Agreement, the Borrower and the Issuer agreed that the Loan Agreement would terminate upon (1) payment in full of the Loan evidenced by the Bonds, (2) termination of the Pledge and Assignment, (3) payment in full of all other Indebtedness (as defined therein) evidenced by the Loan Agreement and (4) performance by the Borrower of all other obligations of the Borrower to the issuer pursuant to the provisions of the Loan Agreement; and

WHEREAS, the Bonds and the other Indebtedness have been paid in full, and the Borrower and the Issuer now desire to evidence the termination of the Loan Agreement;

NOW, THEREFORE, it is hereby agreed that the Loan Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 11.8 of the Loan Agreement, certain obligations of the Borrower shall survive the termination of the Loan Agreement, and the execution of this termination of Loan Agreement by the Issuer is not intended, and shall not be construed, as a waiver or alteration by the Issuer or the Borrower of the provisions of Section 11.8 of the Loan Agreement.

IN WITNESS WHEREOF, the Borrower and the Issuer have signed this termination of Loan Agreement and caused same to be dated as of the ___ day of _____, _____.

DAEMEN COLLEGE

BY: _____
Authorized Officer

TOWN OF AMHERST
DEVELOPMENT CORPORATION

BY: _____
Authorized Officer

CLOSING ITEM NO.: A-4

TOWN OF AMHERST
DEVELOPMENT CORPORATION

TO

THE BANK OF NEW YORK MELLON,
AS TRUSTEE

PLEDGE AND ASSIGNMENT

WITH

ACKNOWLEDGMENT

THEREOF BY

DAEMEN COLLEGE

DATED AS OF JUNE 1, 2018

RELATING TO THE REVENUE BONDS (DAEMEN COLLEGE PROJECT), SERIES
2018 IN THE AGGREGATE PRINCIPAL AMOUNT OF \$28,600,000 ISSUED BY
TOWN OF AMHERST DEVELOPMENT CORPORATION.

PLEDGE AND ASSIGNMENT

THIS PLEDGE AND ASSIGNMENT dated as of June 1, 2018 (the "Pledge and Assignment") is from TOWN OF AMHERST DEVELOPMENT CORPORATION, a not-for-profit corporation of the State of New York (the "State") having an office for the transaction of business located at 4287 Main Street, Amherst, New York (the "Issuer") to THE BANK OF NEW YORK MELLON, a banking corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 101 Barclay Street, 7 East, New York, New York, as trustee (the "Trustee") for the holders of (A) the Issuer's Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 (the "Initial Bonds"), and (B) any additional bonds (the "Additional Bonds", and collectively with the Initial Bonds, the "Bonds") issued by the Issuer pursuant to a certain trust indenture dated as of June 1, 2018 (the "Indenture") by and between the Issuer and the Trustee, and is acknowledged by DAEMEN COLLEGE (the "Borrower"), a not-for-profit education corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4287 Main Street, Amherst, New York.

For value received, the receipt of which is hereby acknowledged, the Issuer hereby pledges, assigns, transfers and sets over to the Trustee, and hereby grants the Trustee a lien on and security interest in, all of the Issuer's right, title and interest in any and all moneys due or to become due to the Issuer and any and all other rights and remedies of the Issuer under or arising out of a loan agreement dated as of June 1, 2018 (the "Loan Agreement") by and between the Issuer, as lender, and the Borrower, as borrower (except for the "Unassigned Rights", as defined therein, and moneys payable pursuant to the Unassigned Rights); provided, however, that the assignment made hereby shall not permit the amendment of the Loan Agreement without the prior written consent of the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

The Trustee shall have no obligation, duty or liability under the Loan Agreement except as specifically set forth in the Loan Agreement as applicable to the Trustee and accepted pursuant to the acceptance herewith, nor shall the Trustee be required or obligated in any manner to fulfill or perform any obligation, covenant, term or condition of the Issuer thereunder or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times. The Issuer shall at all times remain liable to observe and perform all of its covenants and obligations under the Loan Agreement in accordance with the terms and limitations thereof.

The Issuer hereby irrevocably constitutes and appoints the Trustee its true and lawful attorney, with power of substitution for the Issuer and in the name of the Issuer or in the name of the Trustee or otherwise, for the use and benefit of the holders of the Bonds, to ask, demand, require, receive, collect, compromise, compound and give discharges and releases of all claims for any and all moneys due or to become due under or arising out of the Loan Agreement (except for claims relating to moneys due or to become due with respect to the Unassigned Rights) and to endorse any checks and other instruments or orders in connection therewith, and, if any Event of Default specified in the Indenture or the Bonds or any other Financing Document shall occur, (A) to settle, compromise, compound and adjust any such claims (except for claims arising pursuant to the Unassigned Rights), (B) to exercise and enforce any and all claims, rights, powers and remedies of the Issuer under or arising out of the Loan Agreement (except for rights of the Issuer relating to, and moneys payable pursuant to, the Unassigned Rights), (C) to file, commence and prosecute any suits, actions and proceedings at law or in equity in any court of competent jurisdiction to collect any such sums assigned to the Trustee hereunder and to enforce any rights in respect thereto and all other claims, rights, powers and remedies of the Issuer under or arising out of the

Loan Agreement (except for rights of the Issuer relating to, and moneys payable pursuant to, the Unassigned Rights), and (D) generally to sell, assign, transfer, pledge, make any agreement with respect to and otherwise deal with any of such claims, rights, powers and remedies as fully and completely as though the Trustee were the absolute owner thereof for all purposes, and at such times and in such manner as may seem to the Trustee to be necessary or advisable in its absolute discretion.

The Issuer further agrees that at any time and from time to time, upon the written request of the Trustee, and at the sole cost and expense of the Borrower, the Issuer will promptly and duly execute and deliver any and all such further instruments and documents as the Trustee may deem desirable in order to obtain the full benefits of this Pledge and Assignment and all rights and powers herein granted.

The Issuer hereby ratifies and confirms the Loan Agreement and does hereby warrant and represent (A) that the Loan Agreement is in full force and effect, (B) that the Issuer is not in default under the Loan Agreement, and (C) that the Issuer has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Pledge and Assignment shall remain in effect, the whole or any part of the moneys, rights or remedies hereby assigned to anyone other than the Trustee.

All moneys due and to become due to the Trustee under or pursuant to the Loan Agreement shall be paid directly to the Trustee at 101 Barclay Street, 7 East, New York, New York, or at such other address as the Trustee may designate to the Borrower and the Issuer in writing from time to time.

If the Issuer shall pay or cause to be paid, or there shall be paid, to the Trustee or its successors and assigns as the trustee for the holders of the Bonds or any part thereof, the principal of, premium, if any, and interest on the Bonds and all other sums due or to become due pursuant to the Indenture and this Pledge and Assignment and the other Financing Documents, then this Pledge and Assignment and the estate and rights created hereby shall cease, terminate and be void, and thereupon the Trustee shall cancel and discharge the lien of this Pledge and Assignment and execute and deliver to the Issuer, and record, if necessary, such instruments in writing as shall be requisite to release the lien hereof, and shall reconvey, release, assign and deliver unto the Issuer the estate, right, title and interest in and to any and all property conveyed, sold, transferred, assigned or pledged to the Trustee, or otherwise subject to the lien of this Pledge and Assignment.

This Pledge and Assignment shall be binding upon the Issuer and its successors and assigns and shall inure to the benefit of the Trustee and its successors and assigns as trustee for the holders of the Bonds.

The obligations and agreements of the Issuer contained herein and in the other Financing Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Issuer, and not of any member, officer, director, agent (other than the Borrower) or employee of the Issuer in his individual capacity, and the members, officers, directors, agents (other than the Borrower) and employees of the Issuer shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

The obligations and agreements of the Issuer contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the Town of Amherst, New York, and neither the State of New York nor the Town of Amherst, New York shall be liable hereon or thereon, and, further, such obligations and agreements 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 sale or other disposition of the Project Facility (except for revenues derived by the Issuer with respect to the Unassigned Rights).

No order or decree of specific performance with respect to any of the obligations of the Issuer hereunder shall be sought or enforced against the Issuer unless (A) 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, (B) 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 (C) 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, officers, directors, agents (other than the Borrower) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify, defend and hold harmless the Issuer and its members, officers, agents (other than the Borrower), servants and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Issuer, furnish to the Issuer satisfactory security to protect the Issuer and its members, officers, agents (other than the Borrower), servants and employees against all liability expected to be incurred as a result of compliance with such request. The limitations on the obligations of the Issuer contained in the preceding paragraphs by virtue of any lack of assurance or indemnity required by the preceding paragraph hereof shall not be deemed to prevent the occurrence and full force and effect of any Event of Default.

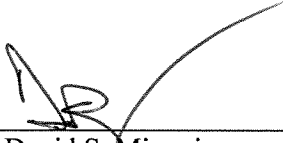
This Pledge and Assignment shall be governed exclusively by the applicable laws of the State of New York.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the Issuer has duly executed this Pledge and Assignment as of the day and year first above written.

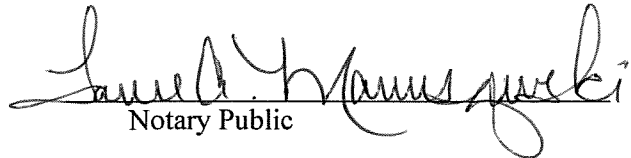
TOWN OF AMHERST
DEVELOPMENT CORPORATION

BY: _____


David S. Mingoia
Chief Executive Officer

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 7 day of June, 2018, in the year 2018, before me, the undersigned, personally appeared DAVID S. MINGOIA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

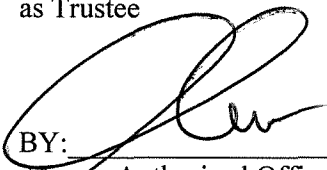
LAURE A. MANUSZEWSKI
Notary Public, State of New York
No. 01MA5034933
Qualified in Erie County
Commission Expires October 24, 2019

ACCEPTANCE

THE BANK OF NEW YORK MELLON, as trustee (the "Trustee") hereby accepts the foregoing pledge and assignment dated as of June 1, 2018 (the "Pledge and Assignment") and agrees to fulfill all the duties and obligations imposed on the Trustee under the Pledge and Assignment and under the provisions of the loan agreement dated as of June 1, 2018 (the "Loan Agreement") by and between Town of Amherst Development Corporation, as lender, and Daemen College, as borrower.

IN WITNESS WHEREOF, the Trustee has duly executed this Acceptance as of June 1, 2018.

THE BANK OF NEW YORK MELLON,
as Trustee

BY: 

Authorized Officer

Christopher Spinelli
Vice President

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the 8th day of June, in the year 2018, before me, the undersigned, personally appeared CHRISTOPHER SPINELLI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Tamara L. Nolbers
Notary Public State of New York
No. 01WO6177935
Qualified in Nassau County
Commission Expires 11/19/2019

ACKNOWLEDGMENT BY BORROWER OF ASSIGNMENT OF
SELLER'S RIGHTS UNDER LOAN AGREEMENT

The undersigned hereby acknowledges receipt of notice of the pledge and assignment by Town of Amherst Development Corporation (the "Issuer") to The Bank of New York Mellon, as trustee (the "Trustee") of certain of the Issuer's rights and remedies under a loan agreement dated as of June 1, 2018 (the "Loan Agreement") by and between the Issuer, as lender, and the undersigned, as borrower, which assignment is contained in a certain pledge and assignment dated as of June 1, 2018 (the "Pledge and Assignment") from the Issuer to the Trustee, which Pledge and Assignment includes the right to collect and receive all amounts payable by the undersigned under the Loan Agreement (except for rights of the Issuer and moneys payable pursuant to the "Unassigned Rights", as defined in the Loan Agreement). The undersigned, intending to be legally bound, hereby agrees with the Trustee (A) to pay directly to the Trustee all sums due and to become due to the Issuer from the undersigned under the Loan Agreement (except for moneys payable pursuant to the Unassigned Rights), without set-off, counterclaim or deduction for any reason whatsoever, except as otherwise provided in the Loan Agreement, (B) except as otherwise provided in the Loan Agreement, not to seek to recover from the Trustee any moneys paid to the Trustee pursuant to the Loan Agreement, (C) to perform for the benefit of the Trustee all of the duties and undertakings of the undersigned under the Loan Agreement (except for duties and obligations relating to the Unassigned Rights), and (D) that the Trustee shall not be obligated by reason of the Pledge and Assignment or otherwise to perform or be responsible for the performance of any of the duties, undertakings or obligations of the Issuer under the Loan Agreement.

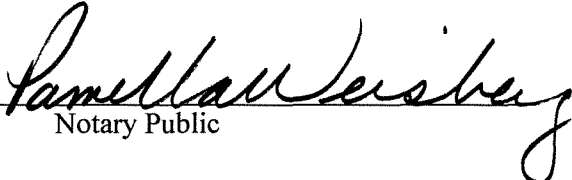
IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of June 1, 2018.

DAEMEN COLLEGE

BY: *Lori Arida*
Authorized Officer

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 13th day of June, in the year 2018, before me, the undersigned, personally appeared LISA ARIDA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Pamella Weisberg
Notary Public, State of New York
Qualified in Rensselaer County
No. 01WE4943734
Commission Expires October 31, 2018



County Clerk's Recording Page

Return to:
BOX 74

Party 1:
DAEMEN COLLEGE

Party 2:
TOWN OF AMHERST DEVELOPMENT
AGENCY

Book Type: M Book: 13859 Page: 3371
Page Count: 62
Doc Type: MORTGAGE
Rec Date: 06/18/2018
Rec Time: 09:51:30 AM
Control #: 2018119053
UserID: Donna G
Trans #: 18110720
Document Sequence Number
MTDJ2018005659

Recording Fees:

Consideration Amount: 28600000.00

| | |
|-----------------------|----------|
| RECORDING | \$330.00 |
| COE CO \$1 RET | \$1.00 |
| COE STATE \$14.25 GEN | \$14.25 |
| COE STATE \$4.75 RM | \$4.75 |
| MTG AFF \$5 | \$5.00 |

| | |
|--------------|--------|
| BASIC MT | \$0.00 |
| SONYMA MT | \$0.00 |
| ADDL MT/NFTA | \$0.00 |
| SP MT/M-RAIL | \$0.00 |
| NY STATE TT | \$0.00 |
| ROAD FUND TT | \$0.00 |

Total: \$355.00

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Michael P. Kearns
Erie County Clerk

CLOSING ITEM NO.: A-5

DAEMEN COLLEGE

TO

TOWN OF AMHERST DEVELOPMENT CORPORATION

MORTGAGE

DATED AS OF JUNE 1, 2018

THIS MORTGAGE (A) AFFECTS TANGIBLE AND INTANGIBLE PERSONAL PROPERTY AS WELL AS REAL PROPERTY, (B) CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS, AND (C) IS INTENDED TO CONSTITUTE A SECURITY AGREEMENT UNDER THE UNIFORM COMMERCIAL CODE OF THE STATE OF NEW YORK.

TABLE OF CONTENTS

(This Table of Contents is not part of
the Mortgage and is for convenience of reference only.)

| | <u>PAGE</u> |
|---------------|-------------|
| PARTIES..... | 1 |
| RECITALS..... | 1 |

ARTICLE I

DEFINITIONS

| | |
|-----------------------------------|---|
| Section 1.01. Definitions..... | 6 |
| Section 1.02. Interpretation..... | 6 |

ARTICLE II

LAND MORTGAGE; GRANTING CLAUSES;
SECURITY AGREEMENT; GENERAL COVENANTS

| | |
|--|----|
| Section 2.01. Granting Clauses..... | 7 |
| Section 2.02. Security Agreement..... | 9 |
| Section 2.03. Information Under the Uniform Commercial Code..... | 10 |
| Section 2.04. Performance of Covenants..... | 10 |
| Section 2.05. Priority of Lien of Mortgage; Discharge of Liens and Encumbrances..... | 10 |

ARTICLE III

REPRESENTATIONS AND WARRANTIES

| | |
|---|----|
| Section 3.01. Representations and Warranties of the Issuer..... | 11 |
| Section 3.02. Representations and Warranties of the Borrower..... | 11 |
| Section 3.03. Performance of Covenants..... | 12 |
| Section 3.04. Payment of Principal and Interest on the Bonds..... | 12 |
| Section 3.05. Priority of Lien of Mortgage..... | 12 |

ARTICLE IV

MAINTENANCE, MODIFICATION, TAXES AND INSURANCE

| | |
|---|----|
| Section 4.01. Maintenance of and Modifications to the Mortgaged Property by the Borrower..... | 13 |
| Section 4.02. Insurance Required..... | 13 |
| Section 4.03. Utility Charges..... | 13 |

ARTICLE V

SPECIAL COVENANTS

Section 5.01. Right of Access to the Mortgaged Property 14
Section 5.02. Inspection of Mortgaged Property Books 14
Section 5.03. Agreement to Provide Information 14
Section 5.04. Books of Record and Account 14
Section 5.05. Compliance with Applicable Laws 14
Section 5.06. Recordation of Mortgage and Mortgage Assignment and Filing of
Security Instruments..... 15
Section 5.07. Enforcement of Duties and Obligations of the Borrower..... 15
Section 5.08. Environmental Provisions 15
Section 5.09. Enforcement of Rights under Assigned Contract Rights 15

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.01. Events of Default Defined..... 17
Section 6.02. Acceleration; Annulment of Acceleration..... 18
Section 6.03. Enforcement of Remedies 18
Section 6.04. Appointment of Receivers..... 20
Section 6.05. Application of Moneys..... 20
Section 6.06. Remedies Cumulative 21
Section 6.07. Termination of Proceedings 21
Section 6.08. Waiver and Non-Waiver of Event of Default 21
Section 6.09. Repayment and Securing of Expenses Paid by the Issuer..... 21
Section 6.10. Other Actions by the Issuer..... 22
Section 6.11. Repayment and Securing of Collection Costs Incurred by the Issuer 22

ARTICLE VII

MISCELLANEOUS

Section 7.01. Limitation of Rights 23
Section 7.02. Notices..... 23
Section 7.03. Counterparts; Amendments..... 24
Section 7.04. Applicable Law 24
Section 7.05. Table of Contents and Section Headings not Controlling..... 24
Section 7.06. Severability 24
Section 7.07. Covenants Run with the Land 25
Section 7.08. Usury 25
Section 7.09. Tax Laws..... 25
Section 7.10. Revenue Stamps 25
Section 7.11. Further Assurance 25
Section 7.12. Satisfaction of Mortgage 25

| | | |
|--|---|--------|
| Section 7.13. | Lien Law | 25 |
| Section 7.14. | Recovery of Sums Required to be Paid..... | 26 |
| Section 7.15. | Absolute and Unconditional Obligation..... | 26 |
| Section 7.16. | Changes in Laws Regarding Taxation | 26 |
| Section 7.17. | No Credits On Account Of The Debt..... | 26 |
| Section 7.18. | Offsets, Counterclaims And Defenses. | 26 |
| Section 7.19. | Non-Residential Property | 27 |
| Section 7.20. | Waiver of Trial By Jury | 27 |
| Section 7.21. | Waiver of Statutory Rights..... | 27 |
| Section 7.22. | Indemnity | 27 |
| Section 7.23. | Enforceability | 28 |
| Section 7.24. | Payment of Costs And Expenses of the Issuer | 28 |
| TESTIMONIUM..... | | 29 |
| SIGNATURES | | 29 |
| ACKNOWLEDGEMENTS | | 30 |
| APPENDIX A – Schedule of Definitions | | AppA-1 |
| EXHIBIT A - Description of the Land..... | | A-1 |
| EXHIBIT B - Description of the Equipment..... | | B-1 |
| EXHIBIT C - Description of Additional Permitted Encumbrances | | C-1 |

MORTGAGE

THIS MORTGAGE dated as of June 1, 2018 (the "Mortgage") from DAEMEN COLLEGE (the "Borrower"), a not-for-profit education corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4380 Main Street, Amherst, New York 14226 to TOWN OF AMHERST DEVELOPMENT CORPORATION (the "Issuer"), a not-for-profit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4287 Main Street, Amherst, New York, as issuer of (1) the Issuer's Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 (the "Initial Bonds"), and (2) any additional bonds (the "Additional Bonds", and collectively with the Initial Bonds, the "Bonds") issued by the Issuer pursuant to a certain trust indenture dated as of June 1, 2018 (the "Indenture") by and between the Issuer and THE BANK OF NEW YORK MELLON, as trustee (the "Trustee");

WITNESSETH:

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the "Enabling Act") (A) authorizes any county to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, pursuant to the provisions of the Enabling Act and Revenue Ruling 57-187 and Private Letter Ruling 200936012, the Town Board of the Town of Amherst, New York (the "Town Board") adopted a resolution on October 5, 2009 (the "Sponsor Resolution") (A) authorizing the reincorporation of the Issuer under the Enabling Act and (B) appointing the initial members of the board of directors of the Issuer, who serve at the pleasure of the Town of Amherst, New York; and

WHEREAS, on February 3, 2010, a certificate of reincorporation was filed with the New York Secretary of State's Office (the "Certificate of Reincorporation") creating the Issuer pursuant to the Enabling Act as a public instrumentality of the Town of Amherst, New York; and

WHEREAS, in April, 2018, the Borrower presented an application (the "Application") to the Issuer, which Application requested that the Issuer consider undertaking a project (the "Initial Project") for the benefit of the Borrower, said Initial Project to consist of the following: (A) the refinancing, in whole or in part, of the Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006A issued on June 30, 2006 in the original aggregate principal amount of \$20,925,000 (the "Series 2006A Bonds"), which Series 2006A Bonds financed the following project: (1) the refinancing of the Town of Amherst Industrial Development Agency Civic Facility Revenue Bonds (Daemen College Project), Series 2001A (the "Series 2001A Bonds") used to finance (a) the acquisition by the Town of Amherst Industrial Development Agency (the "Prior Issuer") of a leasehold interest in an approximately 5.7 acre parcel of land (the "Student Housing Land") located on the campus of the Borrower at 4380 Main Street in the Town of Amherst, Erie County,

New York (the “Campus”) on which is located Rosary Hall and the Business & Commerce Building (the “Other Land” and, together with the Student Housing Land, the “Land”), (b) the acquisition by the Prior Issuer of an interest in the existing buildings located on the Student Housing Land containing 23 existing student housing units (the “Existing Student Housing”) and of an interest in Rosary Hall and an interest in the Business & Commerce Building, both of which are located on the Other Land (the Existing Student Housing, Rosary Hall and the Business & Commerce Building being collectively referred to as the “Existing Facility”), (c) the demolition of the Existing Student Housing, (d) the construction on the Student Housing Land of 7 new apartment style housing units with a total of approximately 384 beds (the “New Housing Facility”) and (e) the acquisition and installation by the Prior Issuer of an interest in certain existing furniture and fixtures located in Rosary Hall and in the Business and Commerce Building (the “Existing Equipment”) (the Land, the Existing Facility, the New Housing Facility and the Existing Equipment being collectively referred to as the “2001 Project Facility”); and (2) paying a portion of the costs incidental to the issuance of the Series 2006A Bonds, including issuance costs of the Series 2006A Bonds and a debt service reserve fund to secure the Series 2006A Bonds; (B) the refinancing, in whole or in part, of the Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006B issued on June 30, 2006 in the original aggregate principal amount of \$17,075,000 (the “Series 2006B Bonds” and, together with the Series 2006A Bonds, the “Prior Bonds”), which Series 2006B Bonds financed the following project: (1) the acquisition of an interest or interests in portions of the Land; (2) the construction of a new library and information center on the Land to contain approximately 47,200 gross square feet of space (the “Library Facility” and together with the Existing Facility, the “Facility”); (3) the acquisition of an interest in and installation of equipment and fixtures to be located in or attached to the Library Facility (the “Library Equipment” and, together with the Existing Equipment, the “Equipment”) (the Library Facility and the Library Equipment being collectively referred to as the “2006 Project Facility”); and (4) paying a portion of the costs incidental to the issuance of the Series 2006B Bonds, including issuance costs of the Series 2006B Bonds and a debt service reserve fund to secure the Series 2006B Bonds; (C) (1) the renovation of and improvements to the science facilities in Duns Scotus Hall, all on the Land, and (2) the undertaking of various deferred maintenance improvements to Campus facilities, all on the Land (collectively, the “2018 Project Facility” and, together with the Facility, the “Initial Project Facility”); (D) the financing of all or a portion of the costs of the foregoing by the issuance of revenue bonds of the Issuer in one or more issues or Series in an aggregate principal amount sufficient to pay the cost of undertaking the Initial Project, together with necessary incidental costs in connection therewith, in an amount then estimated to be approximately \$35,000,000 and in any event not to exceed \$37,000,000 (the “Obligations”); and (E) paying a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations, any hedge termination fees and any reserve funds as may be necessary to secure the Obligations; and

WHEREAS, the Chief Executive Officer of the Issuer (A) caused notice of a public hearing of the Issuer (the “Public Hearing”) pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”) and, as provided in the Certificate of Reincorporation, pursuant to the applicable provisions of Section 859-a and Section 859-b of the General Municipal Law of the State of New York (the “GML”), to hear all persons interested in the Initial Project and the financial assistance being contemplated by the Issuer with respect to the Initial Project, to be published on April 18, 2018 in The Amherst Bee, a newspaper of general circulation available to the residents of the Town of Amherst, New York, (B) caused notice of the Public Hearing to be posted on April 17, 2018 at the Town Clerk’s Office located at 5583 Main Street, Amherst, New York, (C) caused notice of the Public Hearing to be mailed on April 13, 2018 to the chief executive officers of the county and of each city, town, village and school district in which the Initial Project Facility is (or will be) located, (D) conducted the Public Hearing on May 4, 2018 at 8:30 a.m., local time at 4287 Main Street, Amherst, New York, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) which fairly summarized the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of

the board of directors of the Issuer and to the Town Board of the Town of Amherst, New York (the “Town Board”); and

WHEREAS, by resolution adopted by the Town Board on May 16, 2018 (the “Public Approval”), the Town Board approved the issuance of the Obligations for purposes of Section 147(f) of the Code; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the board of directors of the Issuer on May 18, 2018 (the “SEQR Resolution”), the Issuer determined that the Initial Project constituted a “Type II action” (as such quoted term is defined under SEQRA), and therefor that no further action with respect to the Initial Project was required under SEQRA; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on May 18, 2018 (the “Initial Bond Resolution”), the board of directors of the Issuer (A) authorized the issuance of the Issuer’s Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 (the “Initial Bonds”) for the purpose of financing a portion of the costs of the Initial Project, (B) authorized the circulation of a preliminary official statement (the “Initial Preliminary Official Statement”) in connection with the marketing of the Initial Bonds and (C) delegated to the Chairman, Vice Chairman and Chief Executive Officer of the Issuer authority to determine the final details of the Initial Bonds (the “Bond Details”) once the marketing of the Initial Bonds is completed and the Borrower has agreed to the Bond Details; and

WHEREAS, the Issuer will now issue the Initial Bonds under the Initial Bond Resolution, a certificate of determination dated June 14, 2018 (the “Certificate of Determination”) executed by the Chairman, Vice Chairman or Chief Executive Officer of the Issuer and a trust indenture dated as of June 1, 2018 (the “Indenture”) by and between the Issuer and The Bank of New York Mellon, as trustee (the “Trustee”) for the holders of the Initial Bonds and any additional bonds issued by the Issuer under the Indenture (the “Additional Bonds”, and collectively with the Initial Bonds, the “Bonds”); and

WHEREAS, prior to or simultaneously with the issuance of the Initial Bonds, the Issuer and the Borrower will execute and deliver a loan agreement dated as of June 1, 2018 (the “Loan Agreement”) by and between the Issuer, as lender, and the Borrower, as borrower, pursuant to the terms of which Loan Agreement (A) the Issuer will agree (1) to issue the Initial Bonds, and (2) to make a loan to the Borrower of the proceeds of the Initial Bonds (the “Loan”) for the purpose of assisting in financing the Initial Project, and (B) in consideration of the Loan, the Borrower will agree (1) to cause the Initial Project to be undertaken and completed, (2) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the Borrower for the payment of) the costs of the Initial Project, and (3) to make payments in amounts sufficient to pay when due all amounts due with respect to the Initial Bonds (the “Loan Payments”) to or upon the order of the Issuer in repayment of the Loan, which Loan Payments shall include amounts equal to the Debt Service Payments (as defined in the Indenture) due on the Initial Bonds; and

WHEREAS, pursuant to the terms of the Indenture, the net proceeds of the sale of the Initial Bonds (the “Bond Proceeds”) will be deposited into various trust funds held by the Trustee under the Indenture and will be disbursed by the Trustee from time to time to pay the costs of the Initial Project, but only upon satisfaction of the requirements for making such disbursements set forth in the Indenture and in the Loan Agreement; and

WHEREAS, as security for the Initial Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment dated as of June 1, 2018 (the “Pledge and Assignment”) from the Issuer to the Trustee, and acknowledged by the Borrower, which Pledge and Assignment will assign to the Trustee certain of the Issuer’s rights under the Loan Agreement; and

WHEREAS, pursuant to the Pledge and Assignment, basic Loan Payments made by the Borrower under the Loan Agreement are to be paid directly to the Trustee; and

WHEREAS, as additional security for the Initial Bonds, (A) the Borrower will execute and deliver to the Issuer this Mortgage, which among other things, (1) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Initial Project Facility, excluding Rosary Hall, the Business & Commerce Building, the Existing Equipment and the 2018 Project Facility and related Land (collectively, the “Excluded Facility”) (the Initial Project Facility, excluding the Excluded Facility, is hereinafter referred to as the “Mortgaged Facility”) and (2) assigns to the Issuer the rents, issues and profits of the Mortgaged Facility and (B) the Issuer will execute and deliver to the Trustee an assignment of mortgage dated as of June 1, 2018 (the “Mortgage Assignment”) from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee; and

WHEREAS, the (A) Borrower’s obligation (1) to make all Loan Payments under the Loan Agreement and (2) to perform all obligations related thereto and (B) Issuer’s obligation to pay the Initial Bonds will be further secured by a guaranty dated as of June 1, 2018 (the “Guaranty”) from Borrower to the Trustee; and

WHEREAS, (A) the Initial Bonds will be initially purchased by Janney Montgomery Scott LLC, acting as underwriter for the Initial Bonds (the “Underwriter”) pursuant to a bond purchase agreement dated June 7, 2018 (the “Initial Bond Purchase Agreement”) by and among the Underwriter, the Issuer and the Borrower, (B) the Underwriter will utilize the Initial Preliminary Official Statement and a final official statement (the “Initial Official Statement”) in connection with the initial offering of the Initial Bonds, and (C) the Underwriter also intends to obtain a rating of the Initial Bonds from one or more securities rating agencies (each such rating agency that provides a rating of the Initial Bonds, a “Rating Agency”); and

WHEREAS, to assure compliance with the continuing disclosure requirements imposed by the United States Securities and Exchange Commission, the Borrower will execute and deliver to the Underwriter and the Trustee a continuing disclosure agreement dated as of June 14, 2018 (the “Initial Continuing Disclosure Agreement”) relating to the Initial Bonds; and

WHEREAS, the Initial Bonds will be issued as “book-entry-only” obligations to be held by The Depository Trust Company, as depository (the “Depository”) for the Initial Bonds, and, to comply with the requirements of the Depository, the Issuer will execute and deliver to the Depository a letter of representations (the “Initial Depository Letter”) relating to the Initial Bonds; and

WHEREAS, to demonstrate compliance with the provisions of the Code relating to the issuance of tax-exempt obligations, (A) the Issuer will (1) execute an arbitrage certificate dated the date of delivery of the Initial Bonds (the “Initial Arbitrage Certificate”) relating to certain requirements set forth in Section 148 of the Code relating to the Initial Bonds, (2) execute a completed Internal Revenue Service Form 8038 (Information Return for Private Activity Bonds) relating to the Initial Bonds (the “Information Return”) pursuant to Section 149(e) of the Code, and (3) file the Information Return with the Internal Revenue Service, (B) the Borrower will execute a tax regulatory agreement dated the date of delivery of the Initial Bonds (the “Initial Tax Regulatory Agreement”) relating to the requirements in Sections 145 through 150 of the Code relating to the Initial Bonds and (C) the Underwriter will execute a letter (the

“Issue Price Letter”) confirming the issue price of the Initial Bonds for purposes of Section 148 of the Code; and

WHEREAS, all things necessary to constitute this Mortgage a valid first priority Lien on and pledge of the Mortgaged Property (as hereinafter defined) herein described in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Mortgage, as security for the Borrower’s obligations under the Financing Documents (as hereinafter defined), have in all respects been duly authorized;

NOW THEREFORE, THIS MORTGAGE FURTHER WITNESSETH:

KNOW ALL MEN BY THESE PRESENTS, that the Borrower, in order to secure payment of the principal of, premium, if any, and interest on the Bonds, originally in the aggregate principal amount of \$28,600,000 according to their tenor and effect, and all amounts required to be paid to the Trustee under the Loan Agreement, originally in the maximum principal amount of \$28,600,000, according to the tenor and effect of the Loan Agreement, the payment of all other sums required to be paid hereunder and under the Indenture and the other Financing Documents (as hereinafter defined) and the performance and observance by the Borrower of all of the covenants, agreements, representations and warranties herein and in the Indenture and the other Financing Documents, does hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.01. DEFINITIONS. All of the capitalized terms used in this Mortgage and the preambles hereto not otherwise defined shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Appendix A and made a part hereof.

SECTION 1.02. INTERPRETATION. In this Mortgage, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder”, and any similar terms as used in this Mortgage, refer to this Mortgage, and the term “heretofore” shall mean before the date of this Mortgage, and the term “hereafter” shall mean after the date of this Mortgage;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa; and

(D) any certificates, letters or opinions required to be given pursuant to this Mortgage shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Mortgage.

ARTICLE II

LAND MORTGAGE; GRANTING CLAUSES; SECURITY AGREEMENT; GENERAL COVENANTS

SECTION 2.01. GRANTING CLAUSES. The Borrower, in consideration of the execution and delivery by the Trustee of the Indenture, the purchase and acceptance of the Bonds by the holders and owners thereof, and for other good and valuable consideration, receipt of which is hereby acknowledged, and in order to secure (1) the payment of the principal of, premium, if any, and interest on the Initial Bonds, issued in the original aggregate principal amount of \$28,600,000 according to their tenor and effect, (2) all amounts required to be paid to the Issuer and the Trustee under the Loan Agreement originally in the aggregate principal amount of \$28,600,000 according to its tenor and effect, (3) the payment of all other sums required to be paid hereunder and under the Indenture and the other Financing Documents, and (4) the performance and observance by the Borrower of all of the covenants, agreements, representations and warranties herein and in the Indenture and the other Financing Documents (all of the above in (1) through (4) being collectively referred to herein as the "Mortgage Indebtedness"), hereby warrants, assigns, mortgages, hypothecates, pledges, grants a Lien on and security interest in, sets over and confirms unto the Issuer, and the Issuer's successors and assigns forever, all of the estate, right, title and interest of the Borrower in, to and under any and all of the following described property (the "Mortgaged Property"), whether now owned or held or hereafter acquired:

(A) The Land (as more particularly described in Exhibit A attached hereto), together with the appurtenances thereto and the title in and to any portion of the Land lying in the streets and roads in front of and adjoining said Land;

(B) All buildings, structures, improvements, fixtures and appurtenances now standing, or at any time hereafter constructed or placed, upon the Land or any part thereof, including all right, title and interest of the Issuer and the Borrower in and to all building materials and fixtures of every kind and nature whatsoever on the Land or in any building now or hereafter standing on the Land or any part thereof, including, without limitation, the Mortgaged Facility, together with all construction contracts, subcontracts, licenses, permits, and approvals for the Mortgaged Facility;

(C) The Equipment (as more particularly described in Exhibit B attached hereto), together with all repairs, replacements, improvements, substitutions and renewals thereof and therefore, and all parts, accessories and additions incorporated therein or affixed thereon;

(D) All easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property (including, without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Mortgaged Property or now or hereafter transferred to the Mortgaged Property) and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Mortgaged Property to the center line thereof;

(E) Any and all moneys, securities and other investment property from time to time held by the Issuer under the terms of this Mortgage or by the Trustee under the terms of the Indenture (other than moneys, securities and other investment property held in the Rebate Fund), and any and all other Property of every name and nature, from time to time hereinafter by delivery or by writing of any kind conveyed,

mortgaged, pledged, assigned or transferred as and for additional security hereunder by the Borrower or by anyone on its behalf or with its written consent in favor of the Issuer or the Trustee;

(F) All rights and interests of the Borrower in any and all moneys due or to become due to the Borrower under or arising out of the Loan Agreement or the Indenture; provided, that the assignment made by this clause shall not impair or diminish any obligation of the Borrower under the Loan Agreement; provided, further, however, that the assignment made by this clause shall not give to the Issuer the right to amend the Loan Agreement without the prior written consent of the Borrower;

(G) All leases, subleases, licenses, contract rights, general intangibles, accounts and other agreements affecting the acquisition, construction, use, operation or occupancy of all or any portion of the Mortgaged Facility, or the other real property described above now or hereafter entered into, and the right to receive and apply the rents, issues, fees and profits of the Mortgaged Property or the other real property described above to the payment of the Mortgage Indebtedness;

(H) All rights and interests of the Borrower in any insurance policies affecting the Mortgaged Property, and all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Facility, or the other real property described above, including, without limitation, the right to receive and apply the proceeds of any insurance or judgments, or settlements made in lieu thereof, for damage to any of the foregoing, subject to the Borrower's right to use such insurance proceeds or condemnation award for restoration of the Mortgaged Property as provided in the Loan Agreement;

(I) All right, title and interest of the Borrower in and to (1) all contracts from time to time executed by the Borrower or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale, license or financing of the Mortgaged Property or any part thereof and all agreements relating to the purchase, lease or occupancy of any portion of the Mortgaged Property or any property which is adjacent or peripheral to the Mortgaged Property, (2) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Mortgaged Property or any part thereof, and (3) all drawings, plans, specifications and similar or related items relating to the Mortgaged Property;

(J) All trade names, trademarks, logos, copyrights, good will and books and records, to the extent same are used solely in connection with the operation of the Mortgaged Property or any part thereof, and all general tangibles of the Borrower related to the use, operation or construction of the Mortgaged Property, now existing or hereafter arising;

(K) All other proceeds of the conversion, whether voluntary or involuntary, of the Mortgaged Facility, or any other Property or rights encumbered or conveyed hereby into cash or liquidated claims, including, without limitation, all title insurance, hazard insurance, Condemnation and other awards, subject to the Borrower's right to use such Condemnation award for restoration of the Mortgaged Facility, as provided in the Loan Agreement;

(L) All extensions, additions, substitutions and accessions with respect to any of the foregoing, and all proceeds and products (both cash and non-cash) of all of the foregoing; and

(M) The right, in the name and on behalf of the Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of the Issuer or the Trustee in the Mortgaged Property;

TO HAVE AND TO HOLD the foregoing Mortgaged Property unto the Issuer and its respective successors and assigns forever;

SUBJECT, HOWEVER, to the Permitted Encumbrances;

PROVIDED, HOWEVER, that, if (A) there shall be no Event of Default under the Indenture, (B) the Borrower shall perform and observe all the covenants to be performed and observed hereunder and under the Loan Agreement and the other Financing Documents to which the Borrower is a party, and (C) the Borrower has paid or caused to be paid to the Issuer and the Trustee all sums of money due or to become due to the Issuer and the Trustee in accordance with the terms and provisions hereof and of the other Financing Documents to which it is a party, including, without limitation all amounts owed under all indemnification provisions, then upon such final payments and such performance and observance, this Mortgage and the rights hereby granted shall cease, terminate and be void; otherwise, this Mortgage to be and remain in full force and effect.

SECTION 2.02. SECURITY AGREEMENT. (A) The Mortgaged Property includes both real and personal Property and all other rights and interest, whether tangible or intangible in nature, of the Borrower in the Mortgaged Property. This Mortgage shall also constitute a security agreement under the Uniform Commercial Code of the State so that the Issuer shall have and may enforce a security interest in any or all of the Mortgaged Property, in addition to (but not in limitation of) the Lien upon that portion of the Mortgaged Property constituting part of the realty imposed by the foregoing provisions hereof, such security interest to attach at the earliest moment permitted by law and also to include and attach to all additions and accessions thereto, all substitutions and replacements therefor, all proceeds thereof, including insurance and Condemnation proceeds, and all contract rights, rental or lease payments and general intangibles of the Borrower obtained in connection with or relating to the Mortgaged Property as well as any and all items of Property in the foregoing classifications which are hereafter acquired. The Borrower shall, at the request of the Issuer, deliver to the Issuer any and all further instruments which the Issuer shall require in order to further secure and perfect the Lien of this Mortgage. Pursuant to the Uniform Commercial Code of the State, the Borrower hereby authorizes (1) the Issuer, and (2) upon assignment of this Mortgage by the Issuer to the Trustee pursuant to the Mortgage Assignment, the Trustee to execute and file continuation statements without the necessity of the Borrower's signature as debtor (copies of which shall be sent to the Borrower promptly after the filing thereof) if either the Issuer or the Trustee shall determine that such are necessary or advisable in order to perfect or continue the perfection of the Issuer's or the Trustee's respective security interests in any of the Mortgaged Property covered by this Mortgage, and shall pay to the Issuer or the Trustee, as the case may be, on demand, any reasonable expenses incurred by the Issuer or the Trustee, as the case may be, in connection with the preparation, execution and filing of such statements and any continuation statements that may be filed by the Issuer or the Trustee, as the case may be.

(B) The Borrower shall not change its name or principal place of business without giving the Issuer and the Trustee at least thirty days prior written notice thereof, which notice shall be accompanied by new financing statements executed by the Borrower in the same form as the financing statements delivered to the Issuer and/or the Trustee on the date hereof except for the change of name and/or address. Without limiting the foregoing, the Borrower hereby irrevocably appoints (1) the Issuer, and (2) upon assignment of this Mortgage by the Issuer to the Trustee pursuant to the Mortgage Assignment, the Trustee, and each of their respective officers, as attorneys-in-fact for the Borrower to execute, deliver and file such instruments for and on behalf of the Borrower. The chief executive office and principal place of business or operations of the Borrower is located at 4380 Main Street, Amherst, New York 14226, and the Borrower will not move its chief executive office or its principal place of business or operations except to such new location as the Borrower may establish in accordance with this Section 2.02. The originals of all documents evidencing any portion of the Mortgaged Property and the only original books of account and records of the Borrower relating thereto are, and will continue to be, kept at such chief

executive office or at such new location as the Borrower may establish in accordance with this Section 2.02.

SECTION 2.03. INFORMATION UNDER THE UNIFORM COMMERCIAL CODE. The following information is stated in order to facilitate filings under the Uniform Commercial Code of the State:

(A) The Secured Party is Town of Amherst Development Corporation, having an office for the transaction of business located at 4287 Main Street, Amherst, New York 14226.

(B) The Debtor is Daemen College, having an office for the transaction of business located at 4380 Main Street, Amherst, New York 14226.

SECTION 2.04. PERFORMANCE OF COVENANTS. The Borrower hereby covenant that the Borrower will faithfully observe and perform, or cause to be observed and performed, at all times any and all covenants, undertakings, stipulations and provisions on its parts to be observed or performed contained in this Mortgage and the other Financing Documents to be executed by the Borrower.

SECTION 2.05. PRIORITY OF LIEN OF MORTGAGE; DISCHARGE OF LIENS AND ENCUMBRANCES. (A) The Borrower hereby represents and warrants that, except for Permitted Encumbrances, the Borrower is lawfully seized of the estate conveyed hereby and the Borrower has the right to grant and convey its interest in the Mortgaged Property, and the Borrower will warrant and defend title to its interest in the Mortgaged Property against all claims and demands, excepting the Permitted Encumbrances.

(B) The Borrower shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Mortgaged Facility, or any part thereof, without the prior written consent of the Issuer.

(C) Notwithstanding the provisions of subsection (B) of this Section 2.05, the Borrower may in good faith contest any such Lien, after prior notice to the Issuer in the case of any material item, and at its own expense, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, provided that (1) no Event of Default shall have occurred and shall be continuing under any of the Financing Documents, (2) the Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to this Mortgage, (3) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Borrower or the Mortgaged Property is subject and shall not constitute a default thereunder, (4) neither the Mortgaged Property nor any part thereof nor any interest therein, nor the Lien of the Issuer thereon, nor any funds of the Borrower or the Issuer applicable to the acquisition, construction or installation of the Mortgaged Property, will in the reasonable opinion of the Issuer be in danger of being sold, forfeited, terminated, canceled, lost or adversely affected at any time during the pendency of or after such proceeding, and (5) the Borrower shall have set aside in an interest-bearing account with a bank, and otherwise in a manner reasonably satisfactory to the Issuer, adequate cash reserves for the discharge of the contested Lien, together with all interest and penalties related thereto, or in the alternative the Borrower shall have furnished such security as may be required in the proceeding, or as may otherwise be reasonably requested or required by the Issuer to insure the discharge of the contested Lien, together with all interest and penalties related thereto.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.01. REPRESENTATIONS AND WARRANTIES OF THE ISSUER. The Issuer hereby represents and warrants that it has the power to issue the Bonds, to execute and deliver the Financing Documents to which the Issuer is a party and to accept this mortgage from the Borrower; and that all action on the part of the Issuer for the issuance of the Bonds and the execution and delivery of the Financing Documents to which the Issuer is a party has been duly and effectively taken.

SECTION 3.02. REPRESENTATIONS AND WARRANTIES OF THE BORROWER. The Borrower represents and warrants as follows:

(A) (1) The Borrower has good, marketable and insurable title to the Land, subject only to Permitted Encumbrances, (2) the Borrower owns or will own all fixtures and articles of personal Property now or hereafter constituting part of the Mortgaged Property, including any substitutions or replacements thereof, and accessions thereto, free and clear of all Liens and claims, and (3) this Mortgage is and will remain a valid and enforceable Lien on the Mortgaged Property.

(B) The Borrower is not-for-profit education corporation duly organized and validly existing under the laws of the State of New York, is duly authorized to do business in the State, and has the power to enter into and perform this Mortgage and the other Financing Documents executed by the Borrower and to mortgage and pledge its interest in the Mortgaged Property in the manner and to the extent herein set forth; and this Mortgage and the other Financing Documents executed by the Borrower constitute valid and enforceable obligations according to their respective terms.

(C) Neither the execution and delivery of this Mortgage or the other Financing Documents executed by the Borrower, the consummation of the transactions contemplated hereby or thereby nor the fulfillment of or compliance with the provisions hereof or thereof will violate any provision of the Borrower's charter or by-laws, or conflict with or result in a breach of or default under any of the terms, conditions or provisions of any order, judgment, law, restriction, agreement or instrument to which the Borrower is a party to or by which the Borrower or any of its Property is or may be bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Borrower under the terms of any such instrument or agreement.

(D) The Mortgaged Property and the construction and operation thereof currently complies and will continue to comply with all Applicable Laws.

(E) The Land is not located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as same may have been amended to date.

(F) The Borrower has all necessary certificates, licenses, authorizations, registrations, permits and approvals necessary for the commencement of the construction on and the operation of the Mortgaged Facility, including, but not limited to, all required environmental, zoning and planning permits and approvals, all of which are in full force and effect and not, to the knowledge of the Borrower, subject to any revocation, amendment, release, suspension, forfeiture or the like; the present and contemplated use and occupancy of the Land does not conflict with or violate any such certificate, license, authorization, registration, permit of approval; and the Borrower has delivered to the Issuer, prior to the

execution hereof, duplicate originals or officially certified copies of all such certificates, licenses, authorizations, registrations, permits and approvals.

(G) (1) The Borrower is now, and after giving effect to this Mortgage will be, in a solvent condition, (2) the execution and delivery of this Mortgage by the Borrower does not constitute a “fraudulent conveyance” within the meaning of Title 11 of the United States Code as now constituted or under any other applicable statute, and (3) no bankruptcy or insolvency proceedings are pending or contemplated by or, to the best of the Borrower’s knowledge, against the Borrower.

SECTION 3.03. PERFORMANCE OF COVENANTS. The Borrower hereby covenants that the Borrower will faithfully observe and perform at all times any and all covenants, undertakings, stipulations, warranties and provisions on its part to be observed or performed contained in the Financing Documents.

SECTION 3.04. PAYMENT OF PRINCIPAL AND INTEREST ON THE BONDS. As provided in the guaranty, the Borrower hereby covenant that the Borrower will promptly pay, or cause to be paid, the Debt Service Payments on the Bonds at the place, on the dates and in the manner provided therein.

SECTION 3.05. PRIORITY OF LIEN OF MORTGAGE. The Borrower covenants that the Borrower shall not create or suffer to be created any Lien, except Permitted Encumbrances, upon the Mortgaged Property or any part thereof.

ARTICLE IV

MAINTENANCE, MODIFICATION, TAXES AND INSURANCE

SECTION 4.01. MAINTENANCE OF AND MODIFICATIONS TO THE MORTGAGED PROPERTY BY THE BORROWER. Subject to the applicable provisions of the Loan Agreement, the Borrower shall (A) keep the Mortgaged Facility, in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (B) make all necessary repairs and replacements to the Mortgaged Facility, or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), (C) not remove or demolish any portion of the Mortgaged Facility, or alter in any material respect the character of any improvement without the prior written consent of the Issuer, (D) not permit the Mortgaged Facility, to become deserted or abandoned, and (E) operate the Mortgaged Facility, in a sound and economic manner. Subject to the applicable provisions of the Loan Agreement, the Borrower shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by fire or other property hazard or casualty (including any fire or other property hazard or casualty for which insurance was not obtained or obtainable) or which may be affected by any taking by any public or quasi-public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Land.

SECTION 4.02. INSURANCE REQUIRED. At all times throughout the term of this Mortgage, including, without limitation, during any period of construction of the Mortgaged Facility, the Borrower shall maintain the insurance described in Article VI of the Loan Agreement, regardless of whether the Loan Agreement shall be terminated or shall be for any reason not in full force and effect, and shall within ten (10) days of request therefor by the Issuer deliver proof to the Issuer that such insurance has been and is being maintained.

SECTION 4.03. UTILITY CHARGES. The Borrower shall pay or cause to be paid, as the same respectively become due, all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Mortgaged Property.

ARTICLE V

SPECIAL COVENANTS

SECTION 5.01. RIGHT OF ACCESS TO THE MORTGAGED PROPERTY. The Issuer and the Borrower agree that the Issuer or the duly authorized agents of the Issuer shall have the right (but not the duty) at all reasonable times upon reasonable notice (except in the event of an Event of Default or in the event of an emergency) to enter upon and to examine and inspect the Mortgaged Property. Such right of access shall include, without limitation, the right to enter upon the Mortgaged Property to conduct such tests, analyses, environmental audits, inspections and soil borings as the Issuer may deem necessary or advisable in its sole discretion as set forth in the Loan Agreement.

SECTION 5.02. INSPECTION OF MORTGAGED PROPERTY BOOKS. The Borrower hereby covenants that all books and documents in its possession relating to the Mortgaged Property and the revenues derived from the Mortgaged Property shall at all reasonable times upon reasonable notice (except in the event of an Event of Default) be open to inspection by such accountants or other agents as the Issuer may from time to time designate.

SECTION 5.03. AGREEMENT TO PROVIDE INFORMATION. The Borrower agrees, whenever requested by the Issuer, to provide and certify or cause to be provided and certified such information concerning the Borrower, its finances and other topics as may be reasonably required pursuant to the Loan Agreement or as the Issuer from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Issuer to make any reports required by Applicable Law.

SECTION 5.04. BOOKS OF RECORD AND ACCOUNT. The Borrower agrees to maintain, in accordance with the Loan Agreement, proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Borrower.

SECTION 5.05. COMPLIANCE WITH APPLICABLE LAWS. (A) The Borrower agrees that it will, at all times prior to the termination of this Mortgage, promptly and fully comply with all (1) Applicable Laws, (2) covenants, conditions and restrictions of record relating to the ownership, use, construction, operation or leasing of the Mortgaged Property, (3) covenants, conditions and restrictions set forth in any document or instrument creating a lien or charge upon all or any portion of the Mortgaged Property, and (4) policies of insurance at any time in force with respect to the Mortgaged Property and required hereunder or under the Loan Agreement.

(B) The Borrower may in good faith actively contest the validity or the applicability of any such requirements, after prior notice to the Issuer in the case of any material item, and at its own expense, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, provided that (1) no Event of Default shall have occurred and shall be continuing under any of the Financing Documents, (2) the Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to this Mortgage, (3) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Borrower or the Mortgaged Property is subject and shall not constitute a default thereunder, (4) neither the Mortgaged Property nor any part thereof nor any interest therein, nor the Lien of the Issuer, nor any funds of the Issuer applicable to the acquisition, construction or installation of the Mortgaged Property, will be in danger of being sold, forfeited, terminated, canceled, lost or adversely affected at any time during the pendency of or after such proceeding, and (5) the Borrower shall have set aside in an interest-bearing

account with a bank, and otherwise in a manner reasonably satisfactory to the Issuer, adequate cash reserves for the performance of the contested requirement, together with all interest and penalties related thereto, or in the alternative the Borrower shall have furnished such security as may be required in the proceeding, or as may otherwise be reasonably requested or required by the Issuer to insure the performance of the contested requirement, together with all interest and penalties related thereto. This Section 5.05(B) shall not be deemed to apply to the payment of taxes or assessments (which is covered by Section 4.03), or to the contest of Liens (which is covered by Section 2.05 hereof).

SECTION 5.06. RECORDATION OF MORTGAGE AND MORTGAGE ASSIGNMENT AND FILING OF SECURITY INSTRUMENTS. (A) By acceptance of the benefits of this Mortgage, the Issuer hereby covenants that it will, at the sole cost and expense of the Borrower, cause this Mortgage and the Mortgage Assignment and all supplements hereto and thereto, together with all other security instruments and financing statements, to be recorded and filed, as the case may be, in such manner and in such places as may be requested by the Trustee in order to perfect the Liens created by the Financing Documents. The Borrower covenants that it will, upon request of the Issuer or the Trustee, cause to be filed all documents requested by the Issuer or the Trustee, as the case may be, including, without limitation, continuation statements under the Uniform Commercial Code of the State, in such manner and in such places as may be required by law in order to protect and maintain in force the Liens of the Financing Documents.

(B) Without limiting the foregoing, the Borrower hereby irrevocably appoints the Issuer as attorney-in-fact for the Borrower to execute, deliver and file such instruments for and on behalf of the Borrower without the necessity of the signature of the Borrower or anyone claiming under or through the Borrower, including, but not limited to, the Borrower.

SECTION 5.07. ENFORCEMENT OF DUTIES AND OBLIGATIONS OF THE BORROWER. The Borrower hereby covenants that the Borrower will take all legally available action to fully comply with the covenants of the Borrower contained in the Loan Agreement in the manner and at the times provided in the Loan Agreement.

SECTION 5.08. ENVIRONMENTAL PROVISIONS. (A) The Borrower hereby represents and warrants to the Issuer that, other than as permitted by Applicable Laws, (1) no Hazardous Material is currently located at, on, in, under or about the Mortgaged Property, (2) no releasing, emitting, discharging, leaching, dumping, disposing or transporting of any Hazardous Material from the Mortgaged Property onto any other property or from any other property onto or into the Mortgaged Property has occurred or is occurring in violation of any Applicable Law, (3) no notice of violation, non-compliance, liability or potential liability, lien, complaint, suit, order or other notice with respect to the Mortgaged Property is presently outstanding under any Applicable Law or from any Governmental Authority, nor does the Borrower have knowledge or reason to believe that any such notice will be received or is being threatened, and (4) the Mortgaged Property and the operation thereof are in material compliance with all Applicable Laws and all covenants, conditions, and restrictions of record relating to the ownership, use, operation, construction or leasing of the Mortgaged Property.

(B) The Borrower shall comply with all of the terms, conditions and provisions of the Environmental Compliance Agreement. All of the representations, certifications, statements of reasonable expectation and covenants made by the Borrower in the Environmental Compliance Agreement are hereby declared to be for the benefit of, among others, the Issuer and, by this reference, are incorporated herein by this reference as though set forth in full herein.

SECTION 5.09. ENFORCEMENT OF RIGHTS UNDER ASSIGNED CONTRACT RIGHTS. The Borrower agrees to perform all obligations, conditions and agreements to be performed by the Borrower with respect to all permits, licenses and approvals for the Mortgaged Property and to enforce the

performance of all obligations, conditions and agreements to be performed by each third party with respect to contracts, subcontracts, and other agreements for the acquisition, construction, use or occupancy of the Mortgaged Property.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be “Events of Default” under this Mortgage and the terms “Event of Default” or “default” shall mean, whenever they are used in this Mortgage, any one or more of the following events:

(1) default by the Borrower in the due and punctual payment of any sum due under Section 5.1(A) of the Loan Agreement;

(2) default by the Borrower in the due and punctual payment of any sum due under the Guaranty relating to the principal of, premium, if any, and interest on the Bonds;

(3) default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Borrower in this Mortgage or any other Financing Document to be performed or observed and the continuance thereof for a period of thirty (30) days after written notice is given by the Issuer to the Borrower, or, if such covenant, condition or agreement is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Borrower to commence to cure within such thirty (30) day period and to thereafter prosecute the same with due diligence and, in any event, to cure such default within sixty (60) days after such written notice is given;

(4) the occurrence of an “Event of Default” under any of the Financing Documents;

(5) any representation or warranty made by the Borrower herein or in any other Financing Document shall have been materially false at the time that it was made;

(6) the Borrower shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due;

(7) the Borrower shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof;

(8) the Mortgaged Property, or any part thereof, is in any manner, whether voluntarily or involuntarily, encumbered, assigned, leased, subleased, sold, transferred or conveyed, except as is expressly provided in the Loan Agreement, or the Borrower threatens to encumber, assign, lease, sublease, sell, transfer or convey, the Mortgaged Property, or any part thereof, to any person without the prior written consent of the Issuer, except as is expressly provided in the Loan Agreement;

(9) (a) the filing by the Borrower (as debtor) of a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy statute; (b) the failure by the Borrower within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Borrower’s ability to carry out its obligations hereunder; (c) the commencement of

a case under the Bankruptcy Code against the Borrower as the debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Borrower and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days; (d) the entry of an order for relief by a court of competent jurisdiction under the Bankruptcy Code or any other federal or state bankruptcy statute with respect to the debts of the Borrower; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Borrower unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment;

(10) final judgment for the payment of money in excess of \$500,000 shall be rendered against the Borrower and the Borrower shall not discharge the same or cause it to be bonded or discharged within sixty (60) days from the entry thereof, or shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based or entered and secure a stay of execution pending such appeal; and

(11) the imposition of a Lien on the Mortgaged Property other than a Lien being contested as provided in Section 8.8(B) of the Loan Agreement or a Permitted Encumbrance.

SECTION 6.02. ACCELERATION; ANNULMENT OF ACCELERATION. (A) Upon the occurrence and continuance of an Event of Default hereunder, the Issuer may, by notice in writing delivered to the Borrower, declare the whole of the Mortgage Indebtedness immediately due and payable, whereupon the same shall become and be immediately due and payable, anything in this Mortgage or any other Financing Document to the contrary notwithstanding. In such event, there shall be due and payable the total amount of the Mortgage Indebtedness plus all accrued but unpaid interest thereon and all interest which will accrue thereon to the date of payment together with any premium payable thereon. If the Bonds shall become so immediately due and payable, the Issuer may immediately declare by written notice to the Borrower all unpaid installment purchase payments payable by the Borrower under Section 5.1(A) of the Loan Agreement or otherwise to be immediately due and payable.

(B) At any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Mortgage, the Issuer may, at its option, annul such declaration and its consequences. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.03. ENFORCEMENT OF REMEDIES. (A) Upon the occurrence and continuance of any Event of Default, the Issuer may proceed forthwith to protect and enforce its rights under this Mortgage and the other Financing Documents by such suits, actions or proceedings as the Issuer shall deem appropriate, including, without limitation, an action to foreclose the Lien of this Mortgage, in which case the Mortgaged Property or any interest therein may be sold for cash or credit in one or more interests and in any order or manner, in one parcel and as an entirety or in more than one parcel, and in any order or manner as the Issuer may elect.

(B) The Issuer may sue for, enforce payment of and receive any amounts due or becoming due from the Borrower for principal, premium, interest or otherwise under any of the provisions of this Mortgage or the other Financing Documents, without prejudice to any other right or remedy of the Issuer.

(C) Regardless of the happening of an Event of Default, the Issuer may institute and maintain such suits and proceedings as the Issuer may be advised shall be necessary or expedient to prevent any

impairment of the security under this Mortgage by any acts which may be unlawful or in violation of this Mortgage, or to preserve or protect the interests of the Issuer.

(D) The Issuer shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Issuer or the Borrower, which the Issuer, in its discretion, feels should be brought to protect its interest in the Mortgaged Property.

(E) Upon the occurrence of any Event of Default hereunder, the Borrower, upon demand of the Issuer, shall forthwith surrender the possession of, and it shall be lawful for the Issuer, by such officer or agent as it may appoint, to take possession of, all or any part of the Mortgaged Property, together with the books, papers and accounts of the Borrower pertaining thereto, and to hold, operate and manage the same, and from time to time to make all needed repairs and improvements as the Issuer shall deem wise; and the Issuer may sell the Mortgaged Property or any part thereof, or lease the Mortgaged Property or any part thereof in the name and for the account of the Issuer or the Borrower, collect, receive and sequester the rents, revenues, earnings, income, products and profits therefrom, and pay out of the same all proper costs and expenses of taking, holding, leasing, selling and managing the Mortgaged Property, including reasonable compensation to the Issuer and its agents and counsel, and any charges hereunder, and any taxes and other charges prior to the Lien of this Mortgage which the Issuer may deem it wise to pay, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received in accordance with the provisions of Section 6.05 hereof.

Whenever all that is due under the Bonds and the other Financing Documents, including any amounts which may have been accelerated pursuant to Section 6.02 herein, shall have been paid and all defaults made good, the Issuer shall surrender possession to the Borrower; the same right of entry, however, to exist upon any subsequent Event of Default.

(F) Notwithstanding anything herein contained to the contrary, the Issuer and the Borrower and anyone claiming through or under the Issuer or the Borrower (1) will not (a) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, (b) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (c) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the Property so sold or any part thereof, (2) hereby expressly waive all benefit or advantage of any such law or laws, and (3) covenant not to hinder, delay or impede the execution of any power herein granted or delegated to the Issuer, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. The Borrower, for itself and all who may claim under it, waives, to the extent that the Borrower lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof.

(G) Upon and during the continuance of any Event of Default, the Issuer shall be entitled to exercise any and all rights of a secured party with respect to the Mortgaged Property under the Uniform Commercial Code. The Issuer may take possession of any of the Mortgaged Property and sell any portion of such property pursuant to the provisions of the New York Uniform Commercial Code and generally exercise any of such other rights and remedies with respect to such property as may be provided by said Code. Any requirement of such Uniform Commercial Code as to reasonable notice shall be met by delivering written notice to the Borrower ten (10) days prior to any such sale. In the event of any foreclosure under this Mortgage, the Mortgaged Property may be sold in whole or in part as part of the

realty or separately. The Issuer shall also be entitled to take possession of, assemble and collect all or any portion of the Mortgaged Property and require the Borrower to assemble the Mortgage Property and make it available at any place the Borrower may designate so as to allow the Issuer to take possession of or dispose of all or any portion of the Mortgaged Property.

(H) Upon and during the continuance of any Event of Default, the Issuer shall be entitled to ask for, demand, collect, receive, compound and give acquaintance therefor or any part thereof, to extend the time of payment of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any thereof, to endorse the name of the Borrower on any checks, drafts or other orders or instruments for the payment of moneys payable to the Borrower which shall be issued in respect thereof, to exercise and enforce any rights and remedies in respect thereof, to file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by the Issuer necessary or advisable for the purpose of collecting or enforcing payment and performance thereof, to make test verifications thereof or any portion thereof, to notify any or all account debtors thereunder to make payment thereof directly to the Issuer for the account of the Issuer and to require the Borrower to forthwith give similarly notice to the account debtors and to require the Borrower forthwith to account for and transmit to the Issuer in the same form as received all proceeds (other than physical property) or collection thereof received by the Borrower and, until so transmitted, to hold the same in trust for the Issuer and not commingle such proceeds with any other funds of the Borrower.

(I) Upon the occurrence of an Event of Default, the Issuer may cause one or more environmental remedial actions to be taken, provided that the exercise of any of such remedies shall not be deemed to have relieved the Borrower from any responsibility therefor or given the Issuer "control" over the Mortgaged Property or cause the Issuer to be considered to be a mortgagee in possession, "owner" or "operator" of the Mortgaged Property for purposes of any Environmental Law.

(J) Without limiting the generality of the foregoing, upon the occurrence of any Event of Default, the Issuer may take such other actions or proceedings as the Issuer deems necessary or advisable to protect its interest in the Mortgaged Property and ensure payment and performance of the Mortgaged Indebtedness including, without limitation, appointment of a receiver (and the Borrower hereby waives any right to object to such appointment and any requirement relating to the condition, value or adequacy of the Mortgaged Property) and exercise of any of the Issuer's remedies provided in the Loan Agreement or the other Financing Documents, or in any document evidencing, securing or relating to any of the Mortgage Indebtedness available to a secured party under the Uniform Commercial Code in the State or under other applicable law.

SECTION 6.04. APPOINTMENT OF RECEIVERS. Upon the occurrence of an Event of Default hereunder and the filing of a suit or commencement of other judicial proceedings to enforce rights of the Issuer under this Mortgage, the Issuer shall be entitled, as a matter of right, without notice and without regard to the adequacy of any security for the debt secured hereby, to the appointment of a receiver or receivers of the Mortgaged Property and of the revenues and receipts thereof, pending the conclusion of such proceedings and any appeal therefrom, with such powers as the court making such appointment shall confer. The receiver shall be entitled to occupational rent from an owner/occupant and may upon non-payment of said rent evict the owner/occupant.

SECTION 6.05. APPLICATION OF MONEYS. The Net Proceeds received by the Issuer pursuant to any right given or action taken under the provisions of this Article VI shall, during the continuance of an Event of Default hereunder, be applied in the following order of priority (A) first, to the payment of the fees, costs and expenses of the Issuer, including reasonable attorney's fees; (B) second, in accordance with the provisions contained in the Indenture respecting the application of moneys received

under the enforcement provisions of the Indenture; (C) third, to the payment of any sum or charge (other than principal, premium, if any, or interest) evidenced or secured by this Mortgage and all interest payable thereon; (D) fourth, to the payment of interest on principal amounts then due and payable under the Loan Agreement or any other Financing Document; and (E) fifth, the balance thereof to be applied in reduction of any other amounts then due and payable under the Loan Agreement or any other Financing Document.

SECTION 6.06. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Mortgage or under any other Financing Document or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver thereof or an acquiescence therein, and every right or remedy given by this Mortgage to the Issuer may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to either of them in this Article VI, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Mortgage.

SECTION 6.07. TERMINATION OF PROCEEDINGS. In case any proceeding taken by the Issuer on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuer, then the Issuer and the Borrower shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Issuer shall continue as if no such proceeding had been taken.

SECTION 6.08. WAIVER AND NON-WAIVER OF EVENT OF DEFAULT. (A) The Issuer may, in its discretion, agree in writing to waive any Event of Default hereunder and its consequences and annul any acceleration in accordance with Section 6.02 hereof. No such waiver shall extend to or affect any other existing or any subsequent Event of Default.

(B) The failure of the Issuer to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. The Borrower shall not be relieved of the Borrower's obligations hereunder by reason of (1) failure of the Issuer to comply with any request of the Borrower to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof, (2) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or (3) any agreement or stipulation by the Issuer extending the time of payment or otherwise modifying or supplementing the terms of this Mortgage or any of the other Financing Documents. The Issuer may resort for the payment of the Mortgage Indebtedness to any other security held by the Issuer pursuant to the Financing Documents in such order and manner as the Issuer, in its discretion, may elect. The Issuer may take action to recover the Mortgage Indebtedness, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of the Issuer thereafter to foreclose this Mortgage. The rights of the Issuer under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of the Issuer shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. No waiver of any right of the Issuer shall be effective unless it is in a writing signed by an officer of the Issuer.

SECTION 6.09. REPAYMENT AND SECURING OF EXPENSES PAID BY THE ISSUER. In the event the Issuer shall pay any premiums on any policies of insurance required to be maintained or procured by Section 4.02 hereof, or in the event the Issuer shall expend any funds for the payment of any unpaid taxes or assessments upon the Mortgaged Property, or expend any funds in payment of any unpaid installments under any applicable agreement for payments in lieu of taxes with any Taxing Entity, or pay or perform any other obligation of either the Issuer or the Borrower under any of the Financing Documents, then in any such event such payment shall be deemed to be secured by this Mortgage and

shall be payable to the Issuer in the manner provided and with interest as provided herein, or if not so provided herein, shall be payable on demand with interest at the Default Interest Rate.

SECTION 6.10. OTHER ACTIONS BY THE ISSUER. Regardless of the happening of an Event of Default, the Issuer may institute and maintain such suits and proceedings as it shall deem necessary or expedient to prevent any impairment of the security under this Mortgage by any acts which may be unlawful or in violation of this Mortgage or to preserve or protect the interests of the Issuer.

SECTION 6.11. REPAYMENT AND SECURING OF COLLECTION COSTS INCURRED BY THE ISSUER. (A) In the event this Mortgage or the Bonds or any of the other Financing Documents or all of the foregoing are placed in the hands of an attorney (1) for collection of any sum payable hereunder or thereunder, (2) for the foreclosure of this Mortgage, or (3) for the enforcement of any of the terms, conditions and obligations of this Mortgage, the Borrower agrees to pay all reasonable costs of collection (including reasonable counsel fees and expenses) incurred by the Issuer, together with interest thereon at the Default Interest Rate. All such costs as incurred shall be deemed to be secured by this Mortgage and collectible out of the proceeds of this Mortgage in any manner permitted by law or by this Mortgage.

(B) In addition to and not in limitation of the foregoing, in any action or proceeding to foreclose this Mortgage, or to recover or collect the debt secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall also apply. The reasonable expenses of pursuing, searching for, retaking, receiving, holding, storing, safe-guarding, any environmental testing and cleanup, insuring, accounting for, advertising, preparing for sale or lease, selling, leasing and the like, plus attorney's fees, fees for certified public accountants, fees for auctioneers, fees for brokers and/or appraisers, fees for security guards, fees for environmental auditors and engineers, fees for hazard insurance premiums, or any other costs or disbursements whatsoever incurred by or contracted for by the Issuer in connection with the disposition of the Mortgaged Property after an Event of Default (including any of the foregoing incurred or contracted for by the Issuer in connection with any bankruptcy or insolvency proceedings involving the Borrower) shall all be chargeable to the Borrower and shall be secured by this Mortgage, and the Borrower will also be responsible for any deficiency.

ARTICLE IV
MISCELLANEOUS

SECTION 7.01. LIMITATION OF RIGHTS. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Mortgage or the other Financing Documents is intended or shall be construed to give to any Person, other than the parties hereto or thereto, and their successors and assigns, any right, remedy or claim under or with respect to this Mortgage or any covenants, conditions and provisions herein contained. This Mortgage and all of the covenants, conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto and their successors and assigns as herein provided.

SECTION 7.02. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE ISSUER:

Town of Amherst Development Corporation
4287 Main Street
Amherst, New York 14226
Attention: Chief Executive Officer

WITH A COPY TO:

Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, New York 14202
Attention: Joseph M. Reynolds, Esq.

AND:

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: Christopher C. Canada, Esq.

IF TO THE BORROWER:

Daemen College
4380 Main Street
Amherst, New York 14226
Attention: President

WITH A COPY TO:

Hodgson Russ LLP
140 Pearl Street
Buffalo, New York 14202
Attention: Terrence M. Gilbride, Esq.

IF TO THE TRUSTEE:

The Bank of New York Mellon, as Trustee
101 Barclay Street, 7 East
New York, New York 10286
Attention: Christopher Spinelli, Vice President

WITH A COPY TO:

Buchanan Ingersoll & Rooney PC
640 Fifth Avenue, 9th Floor
New York, New York 10019
Attention: David Fernandez, Esq.

(C) A duplicate copy of each notice, certificate and other communication given hereunder by the Issuer or the Borrower to the other shall also be given to the Trustee.

(D) The Issuer, the Borrower and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

(E) Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person or Persons entitled to receive such notice.

SECTION 7.03. COUNTERPARTS; AMENDMENTS. (A) This Mortgage may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(B) This Mortgage may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 7.04. APPLICABLE LAW. This Mortgage shall be governed exclusively by the applicable laws of the State.

SECTION 7.05. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The table of contents and the headings of the several articles and sections of this Mortgage have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Mortgage.

SECTION 7.06. SEVERABILITY. (A) If any provision of this Mortgage shall, for any reason, be held or shall, in fact, be inoperative or unenforceable in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance or render any other provision herein contained inoperative or unenforceable.

(B) The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections in this Mortgage shall not affect the remaining portions of this Mortgage or any part thereof.

SECTION 7.07. COVENANTS RUN WITH THE LAND. All of the grants, covenants, terms, provisions and conditions herein shall run with the Land and shall apply to, bind and inure to the benefit of the parties hereto and their successors and assigns.

SECTION 7.08. USURY. Notwithstanding anything to the contrary contained herein, in no event shall the total of all charges payable hereunder or under any of the Financing Documents which are or could be held to be in the nature of interest exceed the maximum rate permitted to be charged under applicable law. Should the Issuer receive any payment which is or would be in excess of that permitted to be charged under any applicable law, such payment shall have been, and shall be deemed to have been, made in error and shall automatically be applied to reduce the Mortgage Indebtedness.

SECTION 7.09. TAX LAWS. If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on this Mortgage, the Borrower will pay, or cause to be paid, such tax, with interest and penalties thereon, if any.

SECTION 7.10. REVENUE STAMPS. If at any time any Governmental Authority shall require revenue or other stamps to be affixed to this Mortgage, the Borrower will pay, or cause to be paid, the same, with interest and penalties thereon, if any.

SECTION 7.11. FURTHER ASSURANCE. The Borrower will execute and procure for the Issuer and cause to be done any further conveyances, instruments or acts of further assurance as the Issuer shall reasonably require to perfect the security of the Issuer in the Mortgaged Property intended now or hereafter to be covered by this Mortgage or otherwise for carrying out the intention of facilitating the performance of the terms of this Mortgage.

SECTION 7.12. SATISFACTION OF MORTGAGE. Upon the payment in full of all of the amounts due under the Bonds, if (A) there is no Event of Default under the Indenture, (B) the Issuer and the Borrower have performed and observed all the covenants to be performed and observed hereunder and have performed all obligations under the Indenture, the Loan Agreement and the other Financing Documents to which they are parties and (C) the Borrower has paid or caused to be paid to the Issuer all sums of money due or to become due to it in accordance with the terms and provisions hereof and of the other Financing Documents to which it is a party, including, without limitation all amounts owed under the Loan Agreement and all indemnification provisions, and (D) the Borrower has paid or caused to be paid to all sums of money due or to become due to it in accordance with the terms and provisions hereof and of the other Financing Documents to which it is a party, including, without limitation all amounts owed under all indemnification provisions, then the Issuer, by acceptance of this Mortgage, agrees to execute and deliver (after the expiration of the preference period under federal bankruptcy law and any similar period under any similar statute affecting creditors' rights), any and all instruments necessary and/or appropriate to discharge the Lien of this Mortgage of record and to terminate the UCC-1 Financing Statements filed in connection with this Mortgage and the other Financing Documents.

SECTION 7.13. LIEN LAW. The Borrower will receive the advances to be made hereunder subject to the trust provisions of Section 13 of the Lien Law of the State of New York, and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of constructing the improvements to the Land and will apply the same first to such payment before using any part of the same for any other purpose, but nothing herein shall be construed to impose upon the Issuer any obligation to see to the proper allocation of such advances by the Borrower.

SECTION 7.14. RECOVERY OF SUMS REQUIRED TO BE PAID. The Issuer shall have the right from time to time to take action to recover any sum or sums which constitute a part of the indebtedness secured by this Mortgage as the same become due, without regard to whether or not the balance of such indebtedness shall be due, and without prejudice to the right of the Issuer thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Borrower existing at the time such earlier action was commenced.

SECTION 7.15. ABSOLUTE AND UNCONDITIONAL OBLIGATION. The Borrower acknowledges that the Borrower's obligation to pay the indebtedness secured hereby in accordance with the provisions of this Mortgage and the other Financing Documents is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Mortgage or the other Financing Documents or the obligation of the Borrower thereunder to pay the indebtedness secured hereby or the obligations of any other person relating to the Bonds or this Mortgage or the obligations of the Borrower under this Mortgage or the other Financing Documents or otherwise with respect to the indebtedness secured hereby, and the Borrower absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligation of the Borrower to pay such indebtedness in accordance with the provisions of this Mortgage and the other Financing Documents or the obligations of any other person relating to this Mortgage or the other Financing Documents or the obligations of the Borrower under this Mortgage or the other Financing Documents or otherwise with respect to the indebtedness secured hereby in any action or proceeding brought by the Issuer to collect such indebtedness, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by this Mortgage or any other Financing Document, in whole or in part.

SECTION 7.16. CHANGES IN LAWS REGARDING TAXATION. In the event of the passage after the date of this Mortgage of any law of the State deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage or the indebtedness secured hereby, the Borrower shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within thirty (30) days after demand by the Issuer, whichever is less, provided, however, that if, in the opinion of the attorneys for the Issuer, the Borrower is not permitted by law to pay such taxes, the Issuer shall have the right, at its option, to declare the indebtedness secured hereby due and payable on a date specified in a prior notice to the Borrower of not less than thirty (30) days.

SECTION 7.17. NO CREDITS ON ACCOUNT OF THE DEBT. The Borrower will not claim or demand or be entitled to any credit or credits on account of the indebtedness secured hereby for any part of the taxes assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the indebtedness secured hereby. If at any time this Mortgage shall secure less than all of the principal amount of the indebtedness secured hereby, it is expressly agreed that any repayment of the principal amount of such indebtedness shall not reduce the amount of the lien of this Mortgage until the lien amount shall equal the outstanding principal amount of such indebtedness.

SECTION 7.18. OFFSETS, COUNTERCLAIMS AND DEFENSES. Any assignee of this Mortgage shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which the Borrower may have against any assignor of this Mortgage, and no such offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon this Mortgage and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

SECTION 7.19. NON-RESIDENTIAL PROPERTY. This Mortgage does not cover real property principally improved by one or more structures containing in the aggregate six (6) or less residential dwelling units having their own separate cooling facilities.

SECTION 7.20. WAIVER OF TRIAL BY JURY. The Borrower hereby irrevocably and unconditionally waives, and the Issuer by its acceptance of this Mortgage irrevocably and unconditionally waives, any and all rights to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this Mortgage or any other Financing Document.

SECTION 7.21. WAIVER OF STATUTORY RIGHTS. The Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws to the full extent that the Borrower may do so under applicable law. The Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien of this Mortgage and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. The Borrower hereby waives for itself and all who may claim through or under it, and to the full extent the Borrower may do so under applicable law, any and all rights of redemption from sale under any order of decree of foreclosure of this Mortgage or granted under any statute now existing or hereafter enacted.

SECTION 7.22. INDEMNITY. (A) Anything in this Mortgage or the other Financing Documents to the contrary notwithstanding, the Borrower shall indemnify and hold the Issuer harmless and defend the Issuer and its officers, directors, shareholders, agents and employees (collectively, the "Indemnified Parties") at the Borrower's sole cost and expense against any loss or liability, cost or expense (including, without limitation, title insurance premiums and charges and reasonable attorneys' fees and disbursements of the Indemnified Parties' respective counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with (1) any ongoing matters arising out of the transaction contemplated hereby, the indebtedness secured hereby, this Mortgage or any other document or instrument now or hereafter executed and/or delivered in connection with the indebtedness secured hereby and/or the Mortgaged Property, including, but not limited to, all costs of reappraisal of the Mortgaged Property or any part thereof, whether required by law, regulation, or any governmental or quasi-governmental authority, (2) any amendment to, or restructuring of, the Bonds and this Mortgage or any of the other Financing Documents requested by the Borrower, and (3) any and all lawful action that may be taken by any of the Indemnified Parties in connection with the enforcement of the provisions of this Mortgage or any of the other Financing Documents requested by the Borrower, whether or not suit is filed in connection with the same, or in connection with the Borrower, any guarantor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding. All reasonable sums expended by any of the Indemnified Parties shall be payable on demand and, until reimbursed by the Borrower pursuant hereto, shall be deemed additional principal of the indebtedness secured hereby and shall bear interest at the Default Interest Rate. The obligations of the Borrower under this section shall, notwithstanding any exculpatory or other provisions of any nature whatsoever set forth in the Financing Documents, constitute the personal recourse undertakings, obligations and liabilities of the Borrower, but not its officers, directors, employees, agents or representatives.

(B) The obligations and liabilities of the Borrower under this Section 7.22 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Bonds have been paid in full and irrespective of any foreclosure of this Mortgage, sale of the Mortgaged Property pursuant to the provisions of this Mortgage or acceptance by

the Issuer, its nominee or affiliate of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

SECTION 7.23. ENFORCEABILITY. This Mortgage was negotiated in the State, and made by the Borrower and accepted by the Issuer in the State, and the proceeds of the Bonds and other indebtedness secured hereby were disbursed from the State, which State the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, this Mortgage and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State applicable to contracts made and performed in the State and any applicable laws of the United State of America. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be unenforceable or prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Mortgage.

SECTION 7.24. PAYMENT OF COSTS AND EXPENSES OF THE ISSUER. The Borrower shall promptly pay upon demand, with interest thereon at the Default Interest Rate, all expenses and costs incurred by the Issuer, including reasonable attorney's fees and expenses in connection with (A) any action, proceeding, litigation or claim instituted or asserted by or against the Issuer or in which the Issuer becomes engaged, wherein it becomes necessary in the opinion of the Issuer to defend or uphold the Lien of this Mortgage, or the validity or effectiveness of any assignment or any claim, award, payment, property damage insurance policy or any other right or property conveyed, encumbered or assigned by the Borrower to the Issuer hereunder, or the priority of any of the same, and (B) the exercise or enforcement of any other rights or remedies of the Issuer hereunder and all such expenses and costs, and interest thereon, may be added to and become part of the principal indebtedness of the Borrower hereunder, bear interest at the Default Interest Rate, and be secured in all respects hereby as if part of the principal indebtedness of the Borrower hereunder.

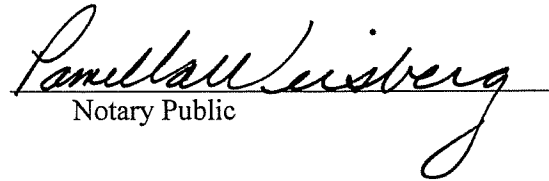
IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be executed in its name by a duly authorized officer of the Borrower and has caused this Mortgage to be dated as of the day and year first above written.

DAEMEN COLLEGE

BY: Yoni Arida
Authorized Officer

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 13th day of June, in the year 2018, before me, the undersigned, personally appeared LISA ARIDA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument


Notary Public

Pamella Weisberg
Notary Public, State of New York
Qualified in Rensselaer County
No. 01WE4943734
Commission Expires October 31, 2018

APPENDIX A

SCHEDULE OF DEFINITIONS

The following words and terms used in the document to which this Appendix is attached shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

“Account” means, with respect to any Series of Bonds, an account created within any Fund designated and created pursuant to Section 401 of the Indenture.

“Accountant” means an independent certified public accountant or a firm of independent certified public accountants selected by the Borrower.

“Act” means the Enabling Act.

“Additional Bonds” means any bonds issued by the Issuer pursuant to Section 214 of the Indenture.

“Additional Equipment” means, in connection with any Additional Project, any additional materials, machinery, equipment, fixtures or furnishings intended to be acquired with the proceeds of a related Series of Additional Bonds, or intended to be acquired with any payment which the Borrower incurred in anticipation of the issuance of such Series of Additional Bonds and for which the Borrower will be reimbursed from the proceeds of such Series of Additional Bonds, and such substitutions and replacements therefor and additions thereto as may be made from time to time pursuant to the Loan Agreement.

“Additional Facility” means, in connection with any Additional Project, any buildings, improvements, structures, and other related facilities (A) located on the Land or the Additional Land, (B) financed or refinanced with the proceeds of the sale of a Series of Additional Bonds or any payment made by the Borrower pursuant to Section 3.5 of the Loan Agreement or any payment which the Borrower incurred in anticipation of the issuance of such Series of Additional Bonds and for which the Borrower will be reimbursed from the proceeds of such Series of Additional Bonds, and (C) not constituting a part of the Additional Equipment, all as they may exist from time to time.

“Additional Land” means, with respect to any Series of Additional Bonds, any real estate which will be the site of an Additional Project Facility intended to be financed with the proceeds of such Series of Additional Bonds.

“Additional Project” means the purposes for which any Series of Additional Bonds may be issued.

“Additional Project Facility” means any Additional Land, Additional Facility or Additional Equipment acquired by the Issuer in connection with the issuance of any Series of Additional Bonds.

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules,

regulations, directions and requirements to be determined both as if the Issuer were the owner of the Project Facility and as if the Borrower and not the Issuer were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Arbitrage Certificate” means (A) with respect to the Initial Bonds, the Initial Arbitrage Certificate and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar document executed by the Issuer in connection with the issuance and sale of such Series of Additional Bonds.

“Authorized Denominations” means: (A) with respect to the Initial Bonds, \$5,000 and any integral multiple of \$5,000 in excess thereof, except that, if as a result of a redemption, partially redeemed Initial Bonds cannot be issued in such denominations, such partially redeemed Initial Bonds shall be reissued in such other denominations to the extent required to effect such redemption; and (B) with respect to any Series of Additional Bonds, the authorized denominations for such Series of Additional Bonds as set forth in the supplemental indenture relating thereto.

“Authorized Investments” means any of the following: (A) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America; (B) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (1) U.S. Export-Import Bank (“Eximbank”), (2) Farmers Home Administration (“FmHA”), (3) Federal Financing Bank, (4) Federal Housing Administration Debentures (“FHA”), (5) General Services Administration, (6) Government National Mortgage Association (“GNMA” or “Ginnie Mae”), (7) U.S. Maritime Administration, and (8) U.S. Department of Housing and Urban Development (“HUD”); (C) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself): (1) Federal Home Loan Bank System, (2) Federal Home Loan Mortgage Corporation (“FHLMC” or “Freddie Mac”), (3) Federal National Mortgage Association (“FNMA” or “Fannie Mae”), (4) Student Loan Marketing Association (“SLMA” or “Sallie Mae”), (5) Resolution Funding Corp. (“REFCORP”) obligations, and (6) Farm Credit System; (D) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by Standard & Poor’s of “AAAm-G”, “AAA-m”; or “AA-m” and if rated by Moody’s rated “Aaa”, “Aa1” or “Aa2”; (E) certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral; (F) certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF; (G) investment agreements, including GIC’s, Forward Purchase Agreements and Reserve Fund Put Agreements acceptable to the Trustee; (H) commercial paper rated, at the time of purchase, “Prime - 1” by Moody’s and “A-1” or better by Standard & Poor’s; (I) bonds or notes issued by any state or municipality which are rated by Moody’s and Standard & Poor’s in one of the two highest rating categories assigned by such agencies; (J) federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime - 1” or “A3” or better by Moody’s and “A-1” or “A” or better by Standard & Poor’s; and (K) repurchase

agreements for 30 days or less must follow the following criteria. The criteria is described as follows: (1) Repos must be between the municipal entity and a dealer bank or securities firm (a) primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor's Corporation and Moody's Investor Services, or (b) banks rated "A" or above by Standard & Poor's Corporation and Moody's Investor Services; (2) the written repo contract must include the following: (a) securities which are acceptable for transfer are: (i) direct U.S. governments, or (ii) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC), (b) the term of the repo may be up to 30 days, (c) the collateral must be delivered to the municipal entity, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities), (d) valuation of collateral - the securities must be valued weekly, marked-to-market at current market price plus accrued interest. The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%, and (3) legal opinion which must be delivered to the municipal entity: (a) repo meets guidelines under state law for legal investment of public funds.

"Authorized Representative" means the Person or Persons at the time designated to act on behalf of the Issuer or the Borrower, as the case may be, by written certificate furnished to the Trustee containing the specimen signature of each such Person and signed on behalf of (A) the Issuer by its Chairman, Vice-Chairman or Chief Executive Officer, or such other person as may be authorized by resolution of the Issuer to act on behalf of the Issuer, (B) the Borrower by its President, Chief Executive Officer or Chief Financial Officer, or such other person as may be authorized by the board of trustees of the Borrower to act on behalf of the Borrower and (C) the Trustee by any Vice President, Assistant Vice President or Trust Officer, or such other person as may be authorized by the board of directors of the Trustee to act on behalf of the Trustee.

"Available Moneys" means any moneys on deposit with the Trustee for the benefit of the Bondholders which are (A) proceeds of the Bonds, or of any bonds issued for the purpose of refunding the Bonds, (B) amounts on deposit for a period of 124 consecutive days during which no petition in bankruptcy under the Bankruptcy Code has been filed against the entity which paid such money, and no similar proceedings have been instituted under state insolvency or other laws affecting creditors' rights generally, or (C) any moneys with respect to which an unqualified opinion from nationally recognized counsel has been received stating that such payments to Bondholders would not constitute voidable preferences under Section 547 of the Bankruptcy Code, or similar state or federal laws with voidable preferences in the event of the filing of a petition for relief under the Bankruptcy Code, or similar state or federal laws with voidable preference provisions by or against the entity from which the money is received.

"Bankruptcy Code" means the United States Bankruptcy Code, constituting Title 11 of the United States Code, as amended from time to time, and any successor statute.

"Beneficial Owner" means, with respect to a Bond, a Person owning a Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

"Beneficial Ownership Interest" means the beneficial right to receive payments and notices with respect to the Bonds which are held by the Depository under a Book Entry System.

"Bond" or "Bonds" means, collectively, (A) the Initial Bonds and (B) any Additional Bonds.

“Bond Counsel” means the law firm of Hodgson Russ LLP, Albany, New York or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who are acceptable to the Issuer.

“Bond Fund” means the fund so designated established pursuant to Section 401(A)(3) of the Indenture.

“Bondholder” or “Holder” or “Owner of the Bonds” means the registered owner of any Bond, as indicated on the bond register maintained by the Bond Registrar, except that wherever appropriate the term “Owners” shall mean the owners of the Bonds for federal income tax purposes.

“Bond Payment Date” means each Interest Payment Date and each date on which principal or interest or premium, if any, or a Sinking Fund Payment, shall be payable on the Bonds according to their terms and the terms of the Indenture, including without limitation scheduled mandatory Redemption Dates, unscheduled mandatory Redemption Dates, dates of acceleration of the Bonds pursuant to Section 602 of the Indenture, optional Redemption Dates and Stated Maturity, so long as any Bonds shall be Outstanding.

“Bond Proceeds” means (A) with respect to the Initial Bonds, the proceeds of the sale of the Initial Bonds, including any accrued interest, paid to the Trustee on behalf of the Issuer by the Underwriter as the purchase price of the Initial Bonds, and (B) with respect to any Series of Additional Bonds, the proceeds of the sale of such Series of Additional Bonds, including any accrued interest, paid to the Trustee on behalf of the Issuer by the purchasers of such Series of Additional Bonds as the purchase price of such Series of Additional Bonds.

“Bond Purchase Agreement” means (A) with respect to the Initial Bonds, the Initial Bond Purchase Agreement, and (B) with respect to any Series of Additional Bonds, any similar document executed by the Issuer and/or the Borrower in connection with the issuance and sale of such Series of Additional Bonds.

“Bond Rate” means, with respect to any Bond, the applicable rate of interest on such Bond, as set forth in such Bond.

“Bond Register” means the register maintained by the Bond Registrar in which, subject to such reasonable regulations as the Issuer, the Trustee or the Bond Registrar may prescribe, shall provide for the registration of the Bonds and for the registration of transfers of the Bonds.

“Bond Registrar” means the Trustee, acting in its capacity as bond registrar under the Indenture, and its successors and assigns as bond registrar under the Indenture.

“Bond Resolution” means (A) with respect to the Initial Bonds, the Initial Bond Resolution and (B) with respect to any Series of Additional Bonds, any resolution adopted by the members of the board of directors of the Issuer authorizing the issuance of such Series of Additional Bonds.

“Bond Year” (A) with respect to the Initial Bonds, means each one (1) year period ending on the anniversary of the Closing Date relating to the Initial Bonds, or such other bond year as the Borrower and the Issuer may select from time to time in a manner complying with the Code, and (B) with respect to any Series of Additional Bonds issued as Tax-Exempt Bonds, shall have the meaning set forth in the supplemental indenture related to such Series of Additional Bonds.

“Book Entry Bonds” means Bonds held in Book Entry Form with respect to which the provisions of Section 213 of the Indenture shall apply.

“Book Entry Form” or “Book Entry System” means, with respect to the Bonds, a form or system, as applicable, under which (A) the Beneficial Ownership Interests may be transferred only through a book entry and (B) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Bondholder, with the physical Bond certificates “immobilized” in the custody of the Depository or a custodian on behalf of the Depository. The Book Entry System which is maintained by and the responsibility of the Depository (and which is not maintained by or the responsibility of the Issuer or the Trustee) is the record that identifies, and records the transfer of the interests of, the Owners of book entry interests in the Bonds.

“Borrower” means Daemen College, a not-for-profit education corporation organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted by Section 8.4 of the Loan Agreement.

“Business Day” means any day of the year other than (A) a Saturday or Sunday, (B) a day on which the New York Stock Exchange is closed or (C) a day on which commercial banks in New York, New York, or the city or cities in which the Office of the Trustee is located, are authorized or required by law, regulation or executive order to close.

“Certificate of Authentication” means the certificate of authentication in substantially the form attached to the form of the Initial Bonds attached as Schedule I to the Indenture.

“Certificate of Determination” means, (A) with respect to the Initial Bonds, the certificate of determination executed by the Chairman, Vice Chairman or Chief Executive Officer of the Issuer relating to the Initial Bonds, and (B) with respect to any Series of Additional Bonds, the document by which the Issuer evidences its approval of the terms of such Series of Additional Bonds.

“Closing Date” means (A) with respect to the Initial Bonds, the date on which authenticated Initial Bonds are delivered to or upon the order of the Underwriter and payment is received therefor by the Trustee on behalf of the Issuer, and (B) with respect to any Series of Additional Bonds, the date on which such Additional Bonds of such Series are authenticated and delivered to the purchaser thereof and payment therefor is received by the Trustee on behalf of the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of said Code, and the applicable regulations (whether proposed, temporary or final) of the United States Treasury Department promulgated under said Code and the statutory predecessor of said Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“Completion Date” means (A) with respect to the Initial Project, the date of substantial completion of the undertaking of the Initial Project, as evidenced in the manner provided in Section 3.4 of the Loan Agreement and (B) with respect to any Additional Project, the date of substantial completion of the undertaking of such Additional Project, as evidenced in the manner provided in Section 3.4 of the Loan Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

“Construction Period” means, with respect to the 2018 Project Facility and Initial Project or any Additional Project, as the case may be, the period (A) beginning on the earlier of the Inducement Date or the Official Action Date relating thereto and (B) ending on the Completion Date relating thereto.

“Continuing Disclosure Agreement” means (A) with respect to the Initial Bonds, the Initial Continuing Disclosure Agreement and (B) with respect to any Series of Additional Bonds, any similar document executed by the Borrower in connection with the issuance of such Series of Additional Bonds.

“Cost of the Project” means (A) with respect to the Initial Project, all those costs and items of expense relating thereto enumerated in Section 3.3(A) of the Loan Agreement incurred subsequent to the Inducement Date, including costs which the Borrower incurred prior to the Inducement Date with respect to the Initial Project in anticipation of the issuance of the Initial Bonds and for which the Borrower may be reimbursed from proceeds of the Initial Bonds pursuant to the provisions of the Initial Tax Regulatory Agreement, and (B) with respect to any Additional Project, all those costs and items of expense relating thereto enumerated in Section 3.3 of the Loan Agreement, including costs which the Borrower incurred with respect to such Additional Project in anticipation of the issuance of the related Series of Additional Bonds and for which the Borrower will be reimbursed from proceeds of the related Series of Additional Bonds.

“Debt Service Coverage Ratio” means the ratio of the Net Revenues Available for Debt Service for a Fiscal Year to Maximum Annual Debt Service (expressed as the number of times covered).

“Debt Service Payment” means, with respect to any Bond Payment Date, (A) the interest payable on the Bonds on such Bond Payment Date, plus (B) the principal, if any, payable on the Bonds on such Bond Payment Date, plus (C) the premium, if any, payable on the Bonds on such Bond Payment Date, plus (D) the Sinking Fund Payments, if any, payable on the Bonds on such Bond Payment Date.

“Default Interest Rate” means the rate of interest equal to 9% per annum, or the maximum permitted by law, whichever is less.

“Defaulted Payment” shall have the meaning ascribed to such term in Section 207(C) of the Indenture.

“Defeasance Obligations” means (A) cash, or (B) direct obligations of the United States of America or of any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States, including, but not limited to, United States Treasury obligations.

“Depository” means, initially, The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State, or its nominee, or any other securities depository designated in any supplemental resolution of the Issuer to serve as securities depository for the Bonds that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a Book Entry System to record ownership of book entry interests in Bonds, and to effect transfers of book entry interests in Book Entry Bonds.

“Depository Letter” means (A) with respect to the Initial Bonds, the Initial Depository Letter, and (B) with respect to any Series of Additional Bonds issued as Book Entry Bonds, any letter of representations by and among the Issuer, the Trustee and the Depository relating to such Series of Additional Bonds, and any amendments or supplements thereto entered into with respect thereto.

“Direct Participant” means a Participant as defined in the Depository Letter.

“Equipment” means, collectively, the Initial Equipment and any Additional Equipment.

“Enabling Act” means Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended.

“Event of Default” means (A) with respect to the Indenture, any of those events defined as an Event of Default by the terms of Article VI of the Indenture, (B) with respect to the Loan Agreement, any of those events defined as an Event of Default by the terms of Article X of the Loan Agreement, and (C) with respect to any other Financing Document, any of those events defined as an Event of Default by the terms thereof.

“Event of Taxability” means, with respect to any Series of Tax-Exempt Bonds, (A) the enactment of a statute or promulgation of a regulation eliminating, in whole or in part, the applicable exemption, as such exists on the Closing Date, from gross income for federal income tax purposes for interest payable under such Series of Tax-Exempt Bonds, (B) a “final determination by decision or ruling by a duly constituted administrative authority” to the effect that such exemption for interest payable under such Series of Tax-Exempt Bonds is not available, is no longer available or is contrary to law, (C) the expiration of the right to further administrative review of any determination, decision or ruling to the effect that such exemption for interest payable under such Series of Tax-Exempt Bonds is not available, is no longer available or is contrary to law, or (D) receipt by the Trustee of a written opinion of Bond Counsel that there is no longer a basis for the Holders of such Series of Tax-Exempt Bonds (or any former Holder, other than a Holder who is or was a Substantial User of the Project Facility or a Related Person thereto) to claim that any interest paid and payable on such Series of Tax-Exempt Bonds is not excluded from gross income for federal income tax purposes. For the purposes of clause (B) above, a “final determination by decision or ruling by a duly constituted administrative authority” shall mean (1) the issuance of a ruling (including, but not limited to, a revenue ruling or a letter ruling) by the IRS or any successor thereto, or (2) the issuance of a preliminary notice of proposed deficiency (“30-Day Letter”), a statutory notice of deficiency (“90-Day Letter”), or other written order or directive of similar force and effect by the IRS, or any other United States Governmental Authority having jurisdiction therein. Notwithstanding the foregoing, nothing in this definition of “Event of Taxability” shall be construed (x) to mean or include consideration of the interest payable on a Series of the Tax-Exempt Bonds for purposes of calculating the interest expense which may be deducted by a bank or other Financial Borrower, or (y) to mean that the any Holder of such Series of the Tax-Exempt Bonds shall have any obligation to contest or appeal any assertion or decision that any interest payable under such Series of the Tax-Exempt Bonds is subject to taxation, or (z) to mean or include the imposition of an alternative minimum tax or preference tax or environmental tax or branch profits tax on any Holder of a Series of the Tax-Exempt Bonds, in the calculation of which is included the interest paid or payable under the Tax-Exempt Bonds.

“Excluded Facility” means, collectively, Rosary Hall, the Business & Commerce Building, the Existing Equipment, the 2018 Project Facility and related Land.

“Extraordinary Services” and “Extraordinary Expenses” means all reasonable services rendered and all reasonable expenses incurred by the Trustee or any paying agent under the Indenture, other than Ordinary Services and Ordinary Expenses, including, but not limited to, reasonable attorneys fees and any services rendered and any expenses incurred with respect to an Event of Default or with respect to the occurrence of an event which upon the giving of notice or the passage of time would ripen into an Event of Default under any of the Financing Documents.

“Facility” means the Initial Facility and any Additional Facilities.

“Final Maturity” means, with respect to any particular Bond, the final Stated Maturity of the principal due on such Bond, unless such Bond is called for redemption in whole prior to such date, in which case any such term shall mean the Redemption Date relating to such Bond.

“Financing Documents” means (A) with respect to the Initial Bonds, the Initial Financing Documents and (B) with respect to any Series of Additional Bonds, any similar documents executed by the Borrower and/or the Issuer in connection with the issuance of such Series of Additional Bonds.

“Financing Statements” means any and all financing statements (including continuation statements) or other instruments filed or recorded from time to time to perfect the security interests created in the Financing Documents.

“Fiscal Year” means (i) the period of twelve (12) months beginning June 1 of each year, or (ii) such other consecutive twelve (12) month period selected by the Borrower as its fiscal year for accounting purposes.

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

“Fund” means any Fund designated and created pursuant to Section 401 of the Indenture.

“Government Obligations” means (A) cash, (B) direct obligations of the United States of America, (C) obligations unconditionally guaranteed by the United States of America and (D) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in (B) or (C).

“Governmental Authority” means the United States of America, the State, any political subdivision thereof, any other state and any agency, department, commission, board, bureau or instrumentality of any of them.

“Gross Bond Proceeds” means “gross proceeds” as defined in Section 148(f)(6)(B) of the Code, presently including, without limitation, the original proceeds of the Bonds, investment proceeds, amounts held in a sinking fund, amounts invested in a reasonably required reserve or replacement fund, certain investment-type property pledged as security for the Bonds by the Borrower or by the Issuer, amounts received with respect to the Loan Agreement, any amounts used to pay Debt Service Payments on the Bonds, and any amounts received as a result of investing any of the foregoing.

“Gross Proceeds” means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance claim or Condemnation award.

“Guaranty” means the guaranty dated as of June 1, 2018 from the Borrower to the Trustee, as said guaranty may be amended or supplemented from time to time.

“Holder” or “holder”, when used with respect to a Bond, means Bondholder.

“Immediate Notice” means notice transmitted through a time-sharing terminal, if operative as between any two parties, or if not operative, same-day notice by telephone, telecopy or telex, followed by prompt written confirmation sent by overnight delivery.

“Indebtedness” means (A) the payment of the Debt Service Payments on the Bonds according to their tenor and effect, (B) all other payments due from the Borrower or the Issuer to the Trustee pursuant to any Financing Document, (C) the performance and observance by the Issuer and the Borrower of all of the covenants, agreements, representations and warranties made for the benefit of the Trustee pursuant to any Financing Document, (D) the monetary obligations of the Borrower to the Issuer and its members, directors, officers, agents, servants and employees under the Loan Agreement and the other Financing Documents, and (E) all interest, penalties and late charges accruing on any of the foregoing.

“Indemnified Parties” shall mean the Trustee, the Issuer, the Underwriter and the payee and holder of any Initial Bond.

“Indenture” means the trust indenture dated as of June 1, 2018 by and between the Issuer and the Trustee, as said trust indenture may be amended or supplemented from time to time.

“Independent Counsel” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not a full-time employee of the Borrower or the Issuer.

“Indirect Participant” means a Person utilizing the Book Entry System of the Depository by, directly or indirectly, clearing through or maintaining a custodial relationship with a Direct Participant.

“Inducement Date” means (A) with respect to the Initial Project, the date which is sixty (60) days prior to the earlier of (1) May 18, 2018 or (2) the date on which the Borrower declared its official intent to reimburse expenditures made with respect to the Initial Project with proceeds of borrowed money, and (B) with respect to any Additional Project, the date which is sixty (60) days prior to the earlier of (1) the date on which the Issuer adopts an inducement resolution with respect to such Additional Project or (2) the date on which the Borrower declares its official intent to reimburse expenditures made with respect to such Additional Project with proceeds of borrowed money.

“Initial Arbitrage Certificate” means the certificate dated the Closing Date for the Initial Bonds executed by the Issuer and relating to certain requirements set forth in Section 148 of the Code applicable to the Initial Bonds and the Initial Project.

“Initial Bond Purchase Agreement” means the bond purchase agreement dated June 7, 2018 by and among the Underwriter, the Issuer and the Borrower relating to the purchase of the Initial Bonds by the Underwriter, as said bond purchase agreement may be amended or supplemented from time to time.

“Initial Bond Resolution” means the resolution of the members of the board of directors of the Issuer duly adopted on May 18, 2018 authorizing the Issuer to undertake the Initial Project, to issue and sell the Initial Bonds and to execute and deliver the Initial Financing Documents to which the Issuer is a party.

“Initial Bonds” means the Issuer’s Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000, issued pursuant to the Initial Bond Resolution and Article II of the Indenture and sold to the Underwriter pursuant to the provisions of the Initial Bond Purchase Agreement, in substantially the form attached to the Indenture as Schedule I thereto, and any Initial Bonds issued in exchange or substitution therefor.

“Initial Continuing Disclosure Agreement” means the continuing disclosure agreement dated as of June 14, 2018 by and between the Borrower and the Trustee relating to the Initial Bonds, as said continuing disclosure agreement may be amended or supplemented from time to time.

“Initial Depository Letter” means any letter of representations by and among the Issuer and the Depository relating to the Initial Bonds, and any amendments or supplements thereto entered into with respect thereto.

“Initial Equipment” means all materials, machinery, equipment, fixtures or furnishings intended to be acquired with the proceeds of the Initial Bonds, or acquired with any payment which the Borrower incurred in anticipation of the issuance of the Initial Bonds and for which the Borrower will be reimbursed from the proceeds of the Initial Bonds, and such substitutions and replacements therefor and additions thereto as may be made from time to time pursuant to the Loan Agreement, including, without limitation, all of the Property described in Exhibit B attached to the Loan Agreement.

“Initial Facility” means all buildings (or portions thereof), improvements, structures and other related facilities, and improvements thereto, (A) located on the Initial Land, (B) financed or refinanced with the proceeds of the sale of the Initial Bonds or any payment which the Borrower incurred in anticipation of the issuance of the Initial Bonds and for which the Borrower will be reimbursed from the proceeds of the Initial Bonds or any payment made by the Borrower pursuant to Section 3.5 of the Loan Agreement, and (C) not constituting a part of the Initial Equipment, all as they may exist from time to time.

“Initial Financing Documents” means the Initial Bonds, the Indenture, the Loan Agreement, the Pledge and Assignment, the Guaranty, the Initial Tax Documents, the Initial Underwriter Documents and any other document now or hereafter executed by the Issuer or the Borrower in favor of the Holders of the Initial Bonds or the Trustee which affects the rights of the Holders of the Initial Bonds or the Trustee in or to the Initial Project Facility, in whole or in part, or which secures or guarantees any sum due under the Initial Bonds or any other Initial Financing Document, each as amended from time to time, and all documents related thereto and executed in connection therewith.

“Initial Land” means the real estate described on Exhibit A attached to the Loan Agreement, which is the site of the Initial Project.

“Initial Official Statement” means the official statement delivered in connection with the sale of the Initial Bonds by the Underwriter.

“Initial Preliminary Official Statement” means the preliminary official statement delivered in connection with the sale of the Initial Bonds by the Underwriter.

“Initial Project” shall have the meaning assigned to such term in the fourth recital clause to the Indenture and the Loan Agreement.

“Initial Project Facility” means, collectively, the Initial Land, the Initial Facility and the Initial Equipment.

“Initial Tax Documents” means, collectively, the Initial Arbitrage Certificate and the Initial Tax Regulatory Agreement.

“Initial Tax Regulatory Agreement” means the tax regulatory agreement dated the Closing Date for the Initial Bonds executed by the Borrower in favor of the Issuer and the Trustee regarding, among other things, the restrictions prescribed by the Code in order for interest on the Initial Bonds to be and remain excludable from the gross income of the Holders thereof for federal income tax purposes.

“Initial Underwriter Documents” means the Initial Bond Purchase Agreement, the Initial Letter of Representation, the Initial Continuing Disclosure Agreement, the Initial Preliminary Official Statement, the Initial Official Statement and any other document now or hereafter executed by the Issuer or the Borrower in connection with the sale of the Initial Bonds by the Underwriter.

“Insurance and Condemnation Fund” means the fund so designated established pursuant to Section 401(A)(3) of the Indenture.

“Interest Payment Date” means (A) with respect to the Initial Bonds, April 1 and October 1 of each year, commencing October 1, 2018, and (B) with respect to any Additional Bonds, the Stated Maturity of each installment of interest on such Additional Bonds, as set forth in the supplemental Indenture authorizing the issuance of such Series of Additional Bonds. In any case, the final Interest Payment Date of any Series of the Bonds shall be the Maturity Date relating thereto.

“Issuer” means (A) the Town of Amherst Development Corporation and its successors and assigns, and (B) any public instrumentality or political subdivision resulting from or surviving any consolidation or merger to which Town of Amherst Development Corporation or its successors or assigns may be a party.

“Land” means the Initial Land and any Additional Land.

“Letter of Instructions” means the letter of instructions dated June 14, 2018 by and among the Prior Issuer, the Prior Trustee and the Borrower, as acknowledged by the Trustee and the Issuer.

“Letter of Representation” means the Initial Letter of Representation.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes hereof, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Loan” means the loan by the Issuer of the proceeds received from the sale of the Bonds to the Borrower pursuant to the provisions of the Loan Agreement.

“Loan Agreement” means the loan agreement dated as of June 1, 2018 by and between the Issuer and the Borrower, as said loan agreement may be amended or supplemented from time to time.

“Loan Payments” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 5.1 of the Loan Agreement.

“Long-Term Indebtedness” means Indebtedness having an original maturity of greater than one (1) year or Indebtedness on which the Borrower has an option to extend the maturity thereof for a period of greater than one (1) year beyond the date of the original incurrence thereof.

“Maturity Date” means, with respect to any Bond, the final Stated Maturity of the principal of such Bond.

“Maximum Annual Debt Service” means on any date, when used with respect to any Long-Term Indebtedness, the greatest amount required in the then current or any future Bond Year to pay the sum of: (1) interest on such Long-Term Indebtedness payable in such Bond Year, excluding accrued interest received upon the issuance of such Long-Term Indebtedness and capitalized interest financed by the issuance of such Long-Term Indebtedness; and (2) the principal and the Sinking Fund Payments due on such Long-Term Indebtedness in such Bond Year.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of the Borrower.

“Mortgage” means the mortgage and security agreement dated as of June 1, 2018 from the Borrower to the Issuer, which, among other things, (a) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Initial Project Facility, excluding the Excluded Facility and (b) assigns to the Issuer the rents, issues and profits of the Initial Project Facility, excluding the Excluded Facility, as said mortgage and security agreement may be amended or supplemented from time to time.

“Mortgage Assignment” means the assignment of mortgage dated as of June 1, 2018 from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee, as said assignment of mortgage may be amended or supplemented from time to time.

“Mortgaged Property” means all Property which may from time to time be subject to the Lien of the Mortgage.

“Net Proceeds” means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such Gross Proceeds.

“Net Revenues Available For Debt Service” means the amount of unrestricted revenues, gains and other support less unrestricted expenses and losses (excluding from such revenues and expenses unrealized capital gains or losses, the receipt of insurance proceeds (except business interruption insurance), and extraordinary items and further excluding from such expenses depreciation, interest on long-term indebtedness, all as determined in accordance with generally accepted accounting principles.

“Nonexempt Entity” means any Person other than (A) a state or local governmental entity or (B) a Person described in Section 501(c)(3) of the Code which has been recognized in writing by the Internal Revenue Service as being exempt from taxation under Sections 501(a) and Section 501(c)(3) of the Code.

“Office of the Trustee” means the corporate trust office of the Trustee specified in Section 1103 of the Indenture, or such other address as the Trustee shall designate pursuant to Section 1103 of the Indenture.

“Official Statement” means (A) with respect to the Initial Bonds, the Initial Official Statement, and (B) with respect to any Series of Additional Bonds, any similar document approved by the Issuer and the Borrower in connection with the sale by the Underwriter of the related Series of Additional Bonds.

“Ordinary Services” and “Ordinary Expenses” means those reasonable services normally rendered with those reasonable expenses, including reasonable attorneys’ fees, normally incurred by a trustee or a paying agent, as the case may be, under instruments similar to the Indenture.

“Outstanding” means, when used with reference to the Bonds as of any date, all Bonds which have been duly authenticated and delivered by the Trustee under the Indenture, except:

(A) Bonds theretofore cancelled or deemed cancelled by the Trustee or theretofore delivered to the Trustee for cancellation;

(B) Bonds for the payment or redemption of which moneys or Defeasance Obligations shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or Redemption Date of any such Bonds) in accordance with the Indenture (whether upon or prior to the maturity or Redemption Date of any such Bonds); provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form and substance to the Trustee shall have been filed with the Trustee; and

(C) Bonds in lieu of or in substitution for which other Bonds have been authenticated and delivered under the Indenture.

In determining whether the Owners of a requisite aggregate principal amount of Bonds Outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions hereof, Bonds which are held by or on behalf of the Borrower (unless all of the outstanding Bonds are then owned by the Borrower) shall be disregarded for the purpose of any such determination. If the Indenture shall be discharged pursuant to Article X of the Indenture, no Bonds shall be deemed to be Outstanding within the meaning of this definition.

“Owner” or “owner”, when used with respect to a Bond, means the Registered Owner of such Bond, except that wherever appropriate the term “Owner” shall mean the owner of such Bond for federal income tax purposes.

“Participant” shall have the meaning assigned to such term in Section 213(B) of the Indenture.

“Paying Agent” means the Trustee, acting as such, and any additional paying agent for the Bonds appointed pursuant to Article VII of the Indenture, their respective successors and any other corporation that may at any time be substituted in their respective places pursuant to the Indenture.

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens, (C) Liens for taxes, assessments and utility charges (1) to the extent permitted by Section 6.2(B) of the Loan Agreement, or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Financing Document, (E) any Lien on the Project Facility in favor of the Trustee, (F) the Conveyance Documents, and (G) any Lien on the Project Facility approved or granted by the Borrower.

“Person” means an individual, partnership, corporation, limited liability company, trust, unincorporated organization or Governmental Authority.

“Plans and Specifications” means: (A) with respect to the Initial Project, the description of the Initial Project Facility appearing in the fourth recital clause to the Indenture and the Loan Agreement; and (B) with respect to any Additional Project, (1) as to the Issuer, the description of such Additional Project appearing in the Issuer’s preliminary inducement resolution relating thereto, and (2) as to the Trustee, the plans and specifications for such Additional Project prepared by the Borrower, and all amendments and modifications thereof made by approved change orders; and, if an item for the construction of the Additional Facility is not specifically detailed in the aforementioned plans and specifications, but rather is described by way of manufacturer’s or supplier’s or contractor’s shop drawings, catalog references or similar descriptions, the term also includes such shop drawings, catalog references and descriptions.

“Pledge and Assignment” means the pledge and assignment dated as of June 1, 2018 from the Issuer to the Trustee, and acknowledged by the Borrower, pursuant to which the Issuer has assigned to the Trustee its rights under the Loan Agreement (except the Unassigned Rights), as said pledge and assignment may be amended or supplemented from time to time.

“Predecessor Bonds” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by such particular Bond; and, for purposes of this definition, any Bond authenticated and delivered under Section 205 of the Indenture in lieu of a lost, destroyed or stolen Bond shall be deemed to evidence the same debt as the lost, destroyed or stolen Bond.

“Preliminary Official Statement” means (A) with respect to the Initial Bonds, the Initial Preliminary Official Statement, and (B) with respect to any Series of Additional Bonds, any similar document approved by the Issuer and the Borrower for use in connection with the issuance of the related Series of Additional Bonds.

“Principal Payment Date” means (A) with respect to the Initial Bonds, each Interest Payment Date on which a Sinking Fund Payment is due on the Bonds, and the Maturity Date of each of the Initial Bonds, and (B) with respect to any Additional Bonds, the Stated Maturity of each installment of principal due on such Additional Bonds.

“Prior Bonds” means, collectively, the (i) Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006A and (ii) the Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006B.

“Prior Indenture” means the trust indenture dated as of June 1, 2006 by and between the Prior Issuer and the Prior Trustee, as amended and supplemented by a first supplemental indenture dated as of February 1, 2008 by and between the Prior Issuer and the Prior Trustee, as amended and supplemented by the second supplemental indenture dated as of February 25, 2010 by and between the Prior Issuer and the Prior Trustee, and as further amended and supplemented by the First Omnibus Amendment to the Indenture and Related Financing Documents dated as of December 1, 2017 by and among the Prior Issuer, the Prior Trustee, the Borrower, Manufacturers and Traders Trust Company, as credit facility issuer, and Assured Guaranty Corp., as successor to Radian Asset Assurance Inc.

“Prior Issuer” means the Town of Amherst Industrial Development Agency.

“Prior Project Facility” shall have the meaning assigned to such term in the 4th WHEREAS clause of the Indenture.

“Prior Reserve Fund” means the reserve fund held by the Prior Trustee with respect to the Prior Bonds.

“Prior Trustee” means Manufacturers and Traders Trust Company, a banking corporation constituting a trust company organized and existing under the laws of the State of New York, acting as trustee under the Prior Indenture.

“Project” means (A) with respect to the Initial Bonds, the Initial Project, and (B) with respect to any Series of Additional Bonds, the Additional Project with respect to which such Series of Additional Bonds were issued.

“Project Costs” means Costs of the Project.

“Project Facility” means, collectively, the Initial Project Facility and all Additional Project Facilities.

“Project Fund” means the fund so designated established pursuant to Section 401(A)(1) of the Indenture.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Rating Agency” means Fitch, if the Bonds are rated by Fitch at the time, Moody’s, if the Bonds are rated by Moody’s at the time, and Standard & Poor’s, if the Bonds are rated by Standard & Poor’s at the time, and their successors and assigns.

“Rebate Amount” shall have the meaning assigned to such term in the Tax Documents.

“Rebate Fund” means the fund so designated established pursuant to Section 401(A)(4) of the Indenture.

“Rebate Fund Earnings Account” means the special account so designated within the Rebate Fund established pursuant to Section 401(A)(4)(b) of the Indenture.

“Rebate Fund Principal Account” means the account so designated within the Rebate Fund established pursuant to Section 401(A)(4)(a) of the Indenture.

“Record Date” means either a Regular Record Date or a Special Record Date.

“Redemption Date” means, when used with respect to a Bond, the date upon which a Bond is scheduled to be redeemed pursuant to the Indenture.

“Redemption Price” means, when used with respect to a Bond, the principal amount thereof plus the applicable premium, if any, payable upon the prior redemption thereof pursuant to the provisions of the Indenture and such Bond.

“Regular Record Date” means, with respect to the interest and any Sinking Fund Payment or principal payment due on the Bonds on or prior to maturity payable on any Bond on any Interest Payment Date, the fifteenth (15th) day (whether or not a Business Day) of the calendar month preceding the calendar month in which such Interest Payment Date occurs.

“Request for Disbursement” means a request from the Borrower, as agent of the Issuer, signed by an Authorized Representative of the Borrower, stating the amount of the disbursement sought and

containing the statements, representations and other items required by Article IV of the Indenture and by Section 3.3 of the Loan Agreement, which Request for Disbursement shall be in substantially the form of Exhibit A attached to the Indenture.

“Requirement” or “Local Requirement” means any law, ordinance, order, rule or regulation of a Governmental Authority.

“Securities Laws” means the Securities Act of 1933, as amended, and all other securities laws of the United States of America or the State to the extent that such laws may now or hereafter be applicable to or affect the issuance, sale and delivery of the Bonds and any transfer or resale thereof.

“Security Documents” shall have the meaning assigned to such term in Section 4.1 of the loan Agreement.

“Series” or “Series of Bonds” means all of the Bonds of a single series authenticated and delivered pursuant to the Indenture.

“SEQRA” means Article 8 of the Environmental Conservation Law of the State and the statewide and local regulations thereunder.

“Series 2018 Project Account” means the account so designated within the Project Fund established pursuant to Section 401(A)(1)(a) of the Indenture.

“Sinking Fund Payments” means (A) with respect to the Initial Bonds, the sinking fund redemption payments due on the Initial Bonds pursuant to Section 301(C) of the Indenture and (B) with respect to any Additional Bonds, the sinking fund redemption payments (if any) required pursuant to the supplemental Indenture authorizing issuance of such Additional Bonds.

“Special Record Date” means a date for the payment of any Defaulted Payment on the Bonds fixed by the Trustee pursuant to Section 207(C) of the Indenture.

“Standard & Poor’s” means Standard & Poor’s Ratings Services, a division of the McGraw-Hill Companies, Inc., and its successors and assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, with the consent of the Borrower.

“State” means the State of New York.

“Stated Maturity” means, when used with respect to any Bond or any installment of interest thereon, the date specified in such Bond as the fixed date on which the principal of such Bond or such installment of interest on such Bond is due and payable.

“Substantial User” means any Person constituting a “substantial user” within the meaning ascribed to such term in Section 147(a) of the Code.

“Supplemental Indenture” means any indenture supplemental to or amendatory of the Indenture executed by the Issuer in accordance with Article VIII of the Indenture.

“Tax Documents” means, collectively, (A) with respect to the Initial Bonds, the Initial Tax Documents and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt

Bonds, any similar documents executed by the Issuer and/or the Borrower in connection with the issuance of such Series of Additional Bonds.

“Tax-Exempt Bond” means any Bond issued as an obligation of the Issuer, the interest on which is intended to be excluded from the gross income of the Holder thereof for federal income tax purposes pursuant to Section 103 and Section 145 of the Code, including but not limited to the Initial Bonds.

“Tax Regulatory Agreement” means (A) with respect to the Initial Bonds, the Initial Tax Regulatory Agreement and (B) with respect to any Series of Additional Bonds intended to be issued as Tax-Exempt Bonds, any similar document executed by the Borrower in connection with the issuance and sale of such Series of Additional Bonds.

“Term Bonds” means Bonds having a single stated maturity for which Sinking Fund Installments are specified in Section 301(C) of the Indenture (or, if such Bonds are Additional Bonds, in the supplemental indenture authorizing the issuance of such Bonds).

“Termination of Loan Agreement” means a termination of Loan Agreement by and between the Borrower, as borrower, and the Issuer, as lender, intended to evidence the termination of the Loan Agreement, substantially in the form attached as Exhibit C to the Loan Agreement.

“Trust Estate” means all Property which may from time to time be subject to a Lien in favor of the Trustee created by the Indenture or any other Financing Document.

“Trust Revenues” means (A) all payments of loan payments made or to be made by or on behalf of the Borrower under the Loan Agreement (except payments made with respect to the Unassigned Rights), (B) all other amounts pledged to the Trustee by the Issuer or the Borrower to secure the Bonds or performance of their respective obligations under the Loan Agreement and the Indenture, (C) the Net Proceeds (except proceeds with respect to the Unassigned Rights) of insurance settlements and Condemnation awards with respect to the Project Facility, (D) moneys and investments held from time to time in each fund and account established under the Indenture and all investment income thereon, except (1) moneys and investments held in the Rebate Fund, (2) moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, (3) unclaimed funds held under Section 410 of the Indenture, and (4) as specifically otherwise provided, and (E) all other moneys received or held by the Trustee for the benefit of the Bondholders pursuant to the Indenture. Notwithstanding anything to the contrary, amounts held in the Rebate Fund shall not be considered Trust Revenues and shall not be subject to the Lien of the Indenture, and amounts held therein shall not secure any amount payable on the Bonds.

“Trustee” means The Bank of New York Mellon, a banking corporation organized and existing under the laws of the State of New York, or any successor trustee or co-trustee acting as trustee under the Indenture.

“Unassigned Rights” means (A) the rights of the Issuer granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 3.8, 4.4, 5.1(B)(2), 5.1(C), 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.11, 8.14, 8.16, 8.17, 8.18, 9.1, 9.2, 11.1, 11.4, 11.8 and 11.10 of the Loan Agreement, (B) the moneys due and to become due to the Issuer for its own account or the members, directors, officers, agents (other than the Borrower), servants and employees of the Issuer for their own account pursuant to Sections 2.2, 5.1(B)(2), 5.1(C), 6.4(B), 8.2, 10.2 and 10.4 of the Loan Agreement, and (C) the right to enforce the foregoing pursuant to Article X of the Loan Agreement. Notwithstanding the preceding sentence, to the extent the obligations of the Borrower under the Sections of the Loan Agreement listed in (A), (B) and (C) above do not relate to the payment of moneys to the Issuer for its own account or to the members,

officers, directors, agents (other than the Borrower), servants and employees of the Issuer for their own account, such obligations, upon assignment of the Loan Agreement by the Issuer to the Trustee pursuant to the Pledge and Assignment, shall be deemed to and shall constitute obligations of the Borrower to the Issuer and the Trustee, jointly and severally, and either the Issuer or the Trustee may commence an action to enforce the Borrower's obligations under the Loan Agreement.

"Underwriter" means (A) with respect to the Initial Bonds, Janney Montgomery Scott LLC, as original purchaser of the Initial Bonds on the Closing Date relating thereto, and (B) with respect to any Series of Additional Bonds, the original purchaser of such Series of Additional Bonds on the Closing Date relating thereto.

"Underwriter Documents" means, collectively, (A) with respect to the Initial Bonds, the Initial Underwriter Documents and (B) with respect to any Additional Bonds, any similar documents executed by the Issuer and/or the Borrower in connection with the issuance of such Additional Bonds.

"Yield", when used with respect to the Initial Bonds, shall have the meaning assigned to such term in the Initial Tax Regulatory Agreement.

"2001 Project Facility" shall have the meaning assigned to such term in the 4th WHEREAS clause of the Indenture.

"2006 Project Facility" shall have the meaning assigned to such term in the 4th WHEREAS clause of the Indenture.

"2018 Project Facility" shall have the meaning assigned to such term in the 4th WHEREAS clause of the Indenture.

EXHIBIT A
DESCRIPTION OF THE MORTGAGED LAND

See attached.

EXHIBIT A

DESCRIPTION OF THE LAND

PARCEL I

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, and State of New York, being parts of Lots Nos. 14 and 15, Township 12, Range 7 of the Holland Land Company's Survey and being more particularly described as follows:

BEGINNING at a point in the northerly line of Main Street (99 feet wide) distant 114.78 feet westerly of its intersection with the westerly line of a certain subdivision entitled "Campus of Snyder" as filed in the Erie County Clerk's Office under Map Cover No. 1684; thence westerly along the northerly line of Main Street a distance of 544.93 feet; thence northerly along a line at an interior angle of 90° 00' 00" a distance of 258.01 feet; thence easterly along a line at an interior angle of 90° 00' 00" a distance of 42.23 feet to a point in the southwest corner of the existing Marian Library building; thence along the existing outside building wall line of said Marian Library building the following courses and distances:

- (1) easterly 10.7 feet;
- (2) northerly 2.8 feet;
- (3) easterly 54.0 feet;
- (4) southerly 2.8 feet;
- (5) easterly 3.3 feet;
- (6) southerly 8.35 feet;
- (7) easterly 24.5 feet;
- (8) northerly 1.9 feet;
- (9) westerly 1.7 feet;
- (10) northerly 30.2 feet;
- (11) easterly 20.45 feet;
- (12) southerly 0.65 feet;
- (13) easterly 25.0 feet;
- (14) northerly 10.7 feet;
- (15) westerly 3.3 feet;
- (16) northerly 32.8 feet;
- (17) westerly 4.8 feet;
- (18) northerly 28.0 feet to a point on the existing outside building wall line of the Duns Scotus Hall building;

thence continuing along the existing outside building wall line of said Duns Scotus Hall building the following courses and distances:

- (19) easterly 208.0 feet;
- (20) southerly 29.25 feet to a point on the existing outside building wall line of the Athletic Facility (Gymnasium) building;

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thence continuing along the existing outside building wall line of said Athletic Facility (Gymnasium) building the following courses and distances:

- (21) westerly 10.5 feet;
- (22) southerly 20.0 feet;
- (23) easterly 3.7 feet;
- (24) southeasterly 28.0 feet;
- (25) southerly 3.7 feet;
- (26) easterly 9.5 feet;
- (27) southerly 84.3 feet;
- (28) easterly 25.5 feet;
- (29) southerly 24.5 feet;
- (30) easterly 118.1 feet to the southeast corner of said Athletic Facility (Gymnasium) building;

thence southerly along a line perpendicular to the northerly line of Main Street a distance of 169.05 feet to the point or place of beginning, containing 3.42 acres, more or less.

TOGETHER WITH a non-exclusive easement for ingress and egress over the following described lands:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, and State of New York, being part of Lot No. 15, Township 12, Range 7 of the Holland Land Company's Survey and being more particularly described as follows:

BEGINNING at a point in the northerly line of Main Street (99 feet wide) distant 659.71 feet westerly of its intersection with the westerly line of a certain subdivision entitled "Campus of Snyder" as filed in the Erie County Clerk's Office under Map Cover No. 1684; thence westerly along the northerly line of Main Street a distance of 84.54 feet; thence northerly along a line at an interior angle of 90° 00' 00" a distance of 258.01 feet; thence easterly along a line at an interior angle of 90° 00' 00" a distance of 84.54 feet; thence southerly along a line at an interior angle of 90° 00' 00" a distance of 258.01 feet to the point or place of beginning, containing 21,812.17 square feet, more or less.

PARCEL II

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 14, Township 12, Range 7 of the Holland Land Company's Survey and further distinguished as being Subdivision Lots Nos. 36 to 41 inclusive as shown on map filed in Erie County Clerk's Office under Cover No. 1684, being further bounded and described as follows:

BEGINNING at a point of curve in the east line of Campus Drive distant 171 feet east, measured at right angles, from a point in the east line of land conveyed to Horace A. Bates by deed recorded in Erie County Clerk's Office in Liber 521 of Deeds at page 574 distant 445 feet North

7° 30' East from a concrete monument located on the north line of Main Street at the southwest corner of land subdivided on said Map Cover 1684, said point of beginning being distant 75 feet South 7° 30' West of the northwest corner of Subdivision Lot No. 36; thence North 7° 30' East along the east line of Campus Drive 575 feet to the northwest corner of Subdivision Lot No. 41; thence South 82° 30' East along the north line of Subdivision Lot No. 41, 105 feet to the northeast corner of Subdivision Lot No. 41; thence South 7° 30' West along the east line of Subdivision Lots Nos. 41, 40, 39 and 38, 400 feet to the southeast corner of Subdivision Lot No. 38; thence South 13° 12' 38" West along the east line of Subdivision Lot No. 37, 100.50 feet to the southeast corner of Subdivision Lot No. 37; thence South 82° 30' East 94.75 feet to the northeast corner of Subdivision Lot No. 36, said point being in the west line of Campus Drive East; thence southwesterly along the northwest line of Campus Drive East, being a line curving to the southwest having a radius of 149 feet, an arc length of 22.32 feet to a point of tangent; thence South 46° 18' 17" West along the northwest line of Campus Drive East, tangent to the last described curved line, a distance of 119 feet to a point of curve; thence southwesterly and northwesterly along a line curving to the west and northwest, having a radius of 57.63 feet and tangent to the last described course, an arc length of 142.02 feet to the point of beginning.

BEARINGS refer to Magnetic North.

PARCEL III

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 14, Township 12, Range 7 of the Holland Land Company's Survey and further distinguished as being Subdivision Lots Nos. 5 to 14 inclusive as shown on map filed in Erie County Clerk's Office under Cover No. 1684, being further bounded and described as follows:

BEGINNING at the southwest corner of Subdivision Lot No. 5 as shown on said Map Cover No. 1684, said southwest corner of Subdivision Lot No. 5 being in the east line of land conveyed to Horace A. Bates by deed recorded in Erie County Clerk's Office in Liber 521 of Deeds at page 574 and distant 370 feet North 7° 30' East from a concrete monument located on the north line of Main Street at the southwest corner of land situated on said Map Cover No. 1684; thence North 7° 30' East along the west line of Subdivision Lots Nos. 5 to 14 inclusive 930 feet to the northwest corner of Subdivision Lot No. 14; thence South 82° 30' East 111 feet to the northeast corner of Subdivision Lot No. 14 on the west line of Campus Drive; thence South 7° 30' West along the west line of Campus Drive 855 feet to a point of curve located in the east line of Subdivision Lot No. 5 distant 20 feet South 7° 30' West of the northeast corner of Subdivision Lot No. 5; thence southeasterly along the southwest line of Campus Drive, being a line curving to the east, having a radius of 134.64 feet and tangent to the last described course, an arc length of 79.55 feet to the southeast corner of Subdivision Lot No. 5; thence North 82° 30' West 133.82 feet to the point of beginning.

BEARINGS refer to Magnetic North.

PARCEL IV

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 14, Township 12, Range 7 of the Holland Land Company's Survey and further distinguished as being Subdivision Lots Nos. 30 to 35 inclusive and Subdivision Lot No. 42 as shown on a map filed in Erie County Clerk's Office under Cover No. 1684, being further bounded and described as follows:

BEGINNING at a point in the east line of Campus Drive distant 171 feet east, measured at right angles, from a point in the east line of and conveyed to Horace A. Bates by deed recorded in Erie County Clerk's Office in Liber 521 of Deeds, page 574 distant 1020 feet North 7° 30' East from a concrete monument located on the north line of Main Street at the southwest corner of land subdivided on said Map Cover No. 1684, said point of beginning being at the southwest corner of Subdivision Lot No. 42; thence North 7° 30' East along the east line of Campus Drive 80 feet to a point of curve; thence northeasterly along a line curving to the east having a radius of 20 feet and tangent to the east line of Campus Drive an arc length of 31.42 feet to a point of tangent in the south line of Eton Lane; thence South 82° 30' East along the south line of Eton Lane, being the north line of Subdivision Lots Nos. 42 and 30, a distance of 170 feet to a point of curve; thence southeasterly along a line curving to the south, having a radius of 20 feet and tangent to the south line of Eton Lane, an arc length of 31.42 feet to a point of tangent in the west line of Campus Drive East; thence South 7° 30' West along the west line of Campus Drive East 505 feet to a point of curve, distant 25 feet South 7° 30' West of the northeast corner of Subdivision Lot No. 35; thence southwesterly along the northwest line of Campus Drive East, being a line curving to the west, having a radius of 149 feet and tangent to the last described course, an arc length of 78.59 feet to the southeast corner of Subdivision Lot No. 35; thence North 82° 30' West along the south line of Subdivision Lot No. 35, 94.75 feet to the southwest corner of Subdivision Lot No. 35; thence North 13° 12' 38" East along the west line of Subdivision Lot No. 35, 100.50 feet to the northwest corner of Subdivision Lot No. 35; thence North 7° 30' East along the west line of Subdivision Lots Nos. 34, 33, 32 and 31, 400 feet to the southeast corner of Subdivision Lot No. 42; thence North 82° 30' West along the south line of Subdivision Lot No. 42, 105 feet to the point of beginning.

BEARINGS refer to Magnetic North.

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EXHIBIT B

DESCRIPTION OF THE EQUIPMENT

All articles of personal property and all appurtenances acquired with the proceeds of the Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 (the "Initial Bonds") issued by Town of Amherst Development Corporation (the "Issuer") or any payment made by Daemen College (the "Borrower") pursuant to Section 3.5 of the Loan Agreement dated as of June 1, 2018 (the "Loan Agreement") by and between the Issuer and the Borrower and now or hereafter attached to, contained in or used in connection with the Land (as defined in the Mortgage dated as of June 1, 2018 from the Borrower to the Issuer) or placed on any part thereof, though not attached thereto, and all other machinery, equipment, furniture and fixtures now or hereafter attached to, contained in or used in connection with the Land, whether or not acquired with the proceeds of the Initial Bonds, now owned or hereafter acquired, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery and motor vehicles;

(2) See attached list of any specific equipment not covered by the previous description and intended to be funded or refunded with proceeds of the Initial Bonds; and

(3) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

Excluding, however, each item constituting part of the "Excluded Facility" as defined in the above referenced Loan Agreement.

LIST OF SPECIFIC EQUIPMENT

Additional equipment to be installed in the science facilities in Duns Scotus Hall, including but not limited to, desks, chairs, laboratory benches, laboratory equipment, lighting fixtures, A/V equipment, computers and related software and other miscellaneous equipment necessary in connection with the improvements to the science facilities.

EXHIBIT C

DESCRIPTION OF ADDITIONAL PERMITTED ENCUMBRANCES

THE FOLLOWING MATTERS AFFECT PARCEL I ONLY:

1. Easement made by Rosary Hill College to New York Telephone Company dated December 18, 1958 and recorded January 6, 1959 in Liber 6380 of Deeds at page 311.
2. Easement for ingress and egress over a 16 foot wide drive contained in Indenture of Mortgage made by Rosary Hill College to The Marine Trust Company of Western New York, as Trustee dated April 1, 1960 and recorded September 29, 1960 in Liber 6140 of Mortgages at page 107.

THE FOLLOWING MATTERS AFFECT PARCELS II, III AND IV ONLY:

1. Easement made by Edith Sidway Gardner to Town Board of the Town of Amherst, Erie County, New York acting as Commissioners of Sewer District No. 1 dated August 31, 1941 and recorded December 31, 1941 in Liber 3197 of Deeds at page 550.2
2. Easement for a sewer granted in Deed made by Joseph C. Troidl to George J. Heldmann dated April 1, 1948 and recorded April 1, 1948 in Liber 4298 of Deeds at page 226.
3. Easement made by Joseph C. Troidl to Western New York Water Company dated April 13, 1948 and recorded April 15, 1948 in Liber 4305 of Deeds at page 323.
4. Easement Agreement made between Lee Ella Waite and Joseph C. Troidl dated April 12, 1948 and recorded April 15, 1948 in Liber 4305 of Deeds at page 317.
5. Easement made by The Campus of Snyder, Inc. to New York Telephone Company and Buffalo Niagara Electric Corporation dated August 20, 1948 and recorded October 15, 1948 in Liber 4416 of Deeds at page 56.
6. Agreement made between Rosary Hill College and Iroquois Gas Corporation dated July 11, 1966 and recorded August 10, 1966 in Liber 7264 of Deeds at page 569.
7. Easement Agreement made by Daemen College to New York Telephone Company dated June 19, 1989 and recorded January 10, 1990 in Liber 10127 of Deeds at page 473.
8. Right of Way made by Daemen College F/K/A Rosary Hill College to National Fuel Gas Distribution Corporation dated March 13, 1992 and recorded April 29, 1992 in Liber 10435 of Deeds at page 639.
9. Easement made by Daemen College to New York Telephone Company dated September 1, 1992 and recorded October 27, 1992 in Liber 10539 of Deeds at page 755.
10. Right of Way made by Daemen College, formerly known as Rosary Hill College to National Fuel Gas Distribution Corporation dated February 15, 2001 and recorded February 27, 2001 in Liber 10977 of Deeds at page 4317.

11. Utility Easement made by Daemen College to Niagara Mohawk Power Corporation and Verizon New York, Inc. dated February 9, 2001 and recorded February 13, 2001 in Liber 10978 of Deeds at page 596.



County Clerk's Recording Page

Return to:
BOX 74

Book Type: M Book: 13859 Page: 3433
Page Count: 10
Doc Type: ASSIGN-MTG
Rec Date: 06/18/2018
Rec Time: 09:51:30 AM
Control #: 2018119054
UserID: Donna G
Trans #: 18110720
Document Sequence Number

Party 1:
TOWN OF AMHERST DEVELOPMENT
AGENCY

Party 2:
BANK OF NEW YORK MELLON (THE) TR

Recording Fees:

Consideration Amount:

| | |
|-----------------------|---------|
| RECORDING | \$70.00 |
| COE CO \$1 RET | \$1.00 |
| COE STATE \$14.25 GEN | \$14.25 |
| COE STATE \$4.75 RM | \$4.75 |
| MARKOFF FEE | \$0.50 |

| | |
|--------------|--------|
| BASIC MT | \$0.00 |
| SONYMA MT | \$0.00 |
| ADDL MT/NFTA | \$0.00 |
| SP MT/M-RAIL | \$0.00 |
| NY STATE TT | \$0.00 |
| ROAD FUND TT | \$0.00 |

Total: \$90.50

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Michael P. Kearns
Erie County Clerk

CLOSING ITEM NO.: A-6

TOWN OF AMHERST
DEVELOPMENT CORPORATION,
AS ISSUER

TO

THE BANK OF NEW YORK MELLON,
AS TRUSTEE

ASSIGNMENT OF MORTGAGE

DATED AS OF JUNE 1, 2018

RELATING TO THE REVENUE BONDS (DAEMEN COLLEGE
PROJECT), SERIES 2018 IN THE AGGREGATE PRINCIPAL AMOUNT
OF \$28,600,000 ISSUED BY TOWN OF AMHERST DEVELOPMENT
CORPORATION.

ASSIGNMENT OF MORTGAGE

THIS ASSIGNMENT OF MORTGAGE (this "Mortgage Assignment") dated as of June 1, 2018 is from TOWN OF AMHERST DEVELOPMENT CORPORATION (the "Issuer"), a not-for-profit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4287 Main Street, Amherst, New York, as assignor (the "Assignor"), to THE BANK OF NEW YORK MELLON, a banking corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 101 Barclay Street, 7 East, New York, New York, as trustee (the "Trustee") for the holders of (1) the Issuer's Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 (the "Initial Bonds"), and (2) any additional bonds issued by the Issuer pursuant to the Trust Indenture dated as of June 1, 2018 by and between the Issuer and the Trustee (the "Additional Bonds", and collectively with the Initial Bonds, the "Bonds"), as assignee (the "Assignee").

Daemen College a not-for-profit education corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4380 Main Street, Amherst, New York, as mortgagor (the "Mortgagor"), entered into a certain mortgage dated as of June 1, 2018, granting to the Assignor, as mortgagee, a mortgage and security interest in the Mortgaged Property, as defined therein, and covering the premises more particularly described on Exhibit A annexed hereto and made a part hereof, which Mortgage was recorded in the Erie County Clerk's Office on June __, 2018 in Liber ____ of Mortgages, page _____.

NOW THEREFORE, for value received, the receipt and sufficiency of which is hereby acknowledged, the Assignor hereby assigns, transfers and sets over to the Assignee all of the Assignor's right, title and interest in and to the Mortgage.

The Assignee is not acting as a nominee of the Mortgagor named in the Mortgage, and the Mortgage continues to secure a bona fide obligation.

TO HAVE AND TO HOLD the same unto the Assignee and to the successors, legal representatives and assigns of the Assignee forever, WITHOUT RECOURSE, REPRESENTATION OR WARRANTY OF ANY KIND BY THE ASSIGNOR OR ANY RESPONSIBILITY OR LIABILITY WHATSOEVER ON BEHALF OF THE ASSIGNOR.

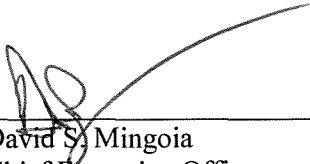
This Mortgage Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

This Mortgage Assignment shall be governed by and construed in accordance with the laws of the State of New York.

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IN WITNESS WHEREOF, the Assignor has caused this Mortgage Assignment to be executed in its name by a duly authorized officer of the Assignor and has caused this Mortgage Assignment to be dated as of the day and year first above written.

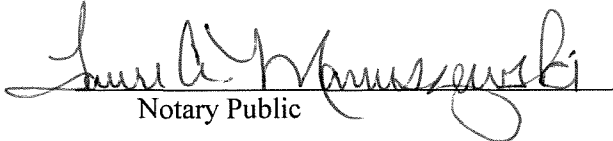
TOWN OF AMHERST
DEVELOPMENT CORPORATION

BY: 

David S. Mingoia
Chief Executive Officer

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 7 day of June, in the year 2018, before me, the undersigned, personally appeared DAVID S. MINGOIA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

LAURE A. MANUSZEWSKI
Notary Public, State of New York
No. 01MA5034933
Qualified in Erie County 2018
Commission Expires October 24, 2018

EXHIBIT A
DESCRIPTION OF THE MORTGAGED LAND

EXHIBIT A

DESCRIPTION OF THE LAND

PARCEL I

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, and State of New York, being parts of Lots Nos. 14 and 15, Township 12, Range 7 of the Holland Land Company's Survey and being more particularly described as follows:

BEGINNING at a point in the northerly line of Main Street (99 feet wide) distant 114.78 feet westerly of its intersection with the westerly line of a certain subdivision entitled "Campus of Snyder" as filed in the Erie County Clerk's Office under Map Cover No. 1684; thence westerly along the northerly line of Main Street a distance of 544.93 feet; thence northerly along a line at an interior angle of 90° 00' 00" a distance of 258.01 feet; thence easterly along a line at an interior angle of 90° 00' 00" a distance of 42.23 feet to a point in the southwest corner of the existing Marian Library building; thence along the existing outside building wall line of said Marian Library building the following courses and distances:

- (1) easterly 10.7 feet;
- (2) northerly 2.8 feet;
- (3) easterly 54.0 feet;
- (4) southerly 2.8 feet;
- (5) easterly 3.3 feet;
- (6) southerly 8.35 feet;
- (7) easterly 24.5 feet;
- (8) northerly 1.9 feet;
- (9) westerly 1.7 feet;
- (10) northerly 30.2 feet;
- (11) easterly 20.45 feet;
- (12) southerly 0.65 feet;
- (13) easterly 25.0 feet;
- (14) northerly 10.7 feet;
- (15) westerly 3.3 feet;
- (16) northerly 32.8 feet;
- (17) westerly 4.8 feet;
- (18) northerly 28.0 feet to a point on the existing outside building wall line of the Duns Scotus Hall building;

thence continuing along the existing outside building wall line of said Duns Scotus Hall building the following courses and distances:

- (19) easterly 208.0 feet;
- (20) southerly 29.25 feet to a point on the existing outside building wall line of the Athletic Facility (Gymnasium) building;

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thence continuing along the existing outside building wall line of said Athletic Facility (Gymnasium) building the following courses and distances:

- (21) westerly 10.5 feet;
- (22) southerly 20.0 feet;
- (23) easterly 3.7 feet;
- (24) southeasterly 28.0 feet;
- (25) southerly 3.7 feet;
- (26) easterly 9.5 feet;
- (27) southerly 84.3 feet;
- (28) easterly 25.5 feet;
- (29) southerly 24.5 feet;
- (30) easterly 118.1 feet to the southeast corner of said Athletic Facility (Gymnasium) building;

thence southerly along a line perpendicular to the northerly line of Main Street a distance of 169.05 feet to the point or place of beginning, containing 3.42 acres, more or less.

TOGETHER WITH a non-exclusive easement for ingress and egress over the following described lands:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, and State of New York, being part of Lot No. 15, Township 12, Range 7 of the Holland Land Company's Survey and being more particularly described as follows:

BEGINNING at a point in the northerly line of Main Street (99 feet wide) distant 659.71 feet westerly of its intersection with the westerly line of a certain subdivision entitled "Campus of Snyder" as filed in the Erie County Clerk's Office under Map Cover No. 1684; thence westerly along the northerly line of Main Street a distance of 84.54 feet; thence northerly along a line at an interior angle of $90^{\circ} 00' 00''$ a distance of 258.01 feet; thence easterly along a line at an interior angle of $90^{\circ} 00' 00''$ a distance of 84.54 feet; thence southerly along a line at an interior angle of $90^{\circ} 00' 00''$ a distance of 258.01 feet to the point or place of beginning, containing 21,812.17 square feet, more or less.

PARCEL II

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 14, Township 12, Range 7 of the Holland Land Company's Survey and further distinguished as being Subdivision Lots Nos. 36 to 41 inclusive as shown on map filed in Erie County Clerk's Office under Cover No. 1684, being further bounded and described as follows:

BEGINNING at a point of curve in the east line of Campus Drive distant 171 feet east, measured at right angles, from a point in the east line of land conveyed to Horace A. Bates by deed recorded in Erie County Clerk's Office in Liber 521 of Deeds at page 574 distant 445 feet North

7° 30' East from a concrete monument located on the north line of Main Street at the southwest corner of land subdivided on said Map Cover 1684, said point of beginning being distant 75 feet South 7° 30' West of the northwest corner of Subdivision Lot No. 36; thence North 7° 30' East along the east line of Campus Drive 575 feet to the northwest corner of Subdivision Lot No. 41; thence South 82° 30' East along the north line of Subdivision Lot No. 41, 105 feet to the northeast corner of Subdivision Lot No. 41; thence South 7° 30' West along the east line of Subdivision Lots Nos. 41, 40, 39 and 38, 400 feet to the southeast corner of Subdivision Lot No. 38; thence South 13° 12' 38" West along the east line of Subdivision Lot No. 37, 100.50 feet to the southeast corner of Subdivision Lot No. 37; thence South 82° 30' East 94.75 feet to the northeast corner of Subdivision Lot No. 36, said point being in the west line of Campus Drive East; thence southwesterly along the northwest line of Campus Drive East, being a line curving to the southwest having a radius of 149 feet, an arc length of 22.32 feet to a point of tangent; thence South 46° 18' 17" West along the northwest line of Campus Drive East, tangent to the last described curved line, a distance of 119 feet to a point of curve; thence southwesterly and northwesterly along a line curving to the west and northwest, having a radius of 57.63 feet and tangent to the last described course, an arc length of 142.02 feet to the point of beginning.

BEARINGS refer to Magnetic North.

PARCEL III

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 14, Township 12, Range 7 of the Holland Land Company's Survey and further distinguished as being Subdivision Lots Nos. 5 to 14 inclusive as shown on map filed in Erie County Clerk's Office under Cover No. 1684, being further bounded and described as follows:

BEGINNING at the southwest corner of Subdivision Lot No. 5 as shown on said Map Cover No. 1684, said southwest corner of Subdivision Lot No. 5 being in the east line of land conveyed to Horace A. Bates by deed recorded in Erie County Clerk's Office in Liber 521 of Deeds at page 574 and distant 370 feet North 7° 30' East from a concrete monument located on the north line of Main Street at the southwest corner of land situated on said Map Cover No. 1684; thence North 7° 30' East along the west line of Subdivision Lots Nos. 5 to 14 inclusive 930 feet to the northwest corner of Subdivision Lot No. 14; thence South 82° 30' East 111 feet to the northeast corner of Subdivision Lot No. 14 on the west line of Campus Drive; thence South 7° 30' West along the west line of Campus Drive 855 feet to a point of curve located in the east line of Subdivision Lot No. 5 distant 20 feet South 7° 30' West of the northeast corner of Subdivision Lot No. 5; thence southeasterly along the southwest line of Campus Drive, being a line curving to the east, having a radius of 134.64 feet and tangent to the last described course, an arc length of 79.55 feet to the southeast corner of Subdivision Lot No. 5; thence North 82° 30' West 133.82 feet to the point of beginning.

BEARINGS refer to Magnetic North.

PARCEL IV

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 14, Township 12, Range 7 of the Holland Land Company's Survey and further distinguished as being Subdivision Lots Nos. 30 to 35 inclusive and Subdivision Lot No. 42 as shown on a map filed in Erie County Clerk's Office under Cover No. 1684, being further bounded and described as follows:

BEGINNING at a point in the east line of Campus Drive distant 171 feet east, measured at right angles, from a point in the east line of and conveyed to Horace A. Bates by deed recorded in Erie County Clerk's Office in Liber 521 of Deeds, page 574 distant 1020 feet North 7° 30' East from a concrete monument located on the north line of Main Street at the southwest corner of land subdivided on said Map Cover No. 1684, said point of beginning being at the southwest corner of Subdivision Lot No. 42; thence North 7° 30' East along the east line of Campus Drive 80 feet to a point of curve; thence northeasterly along a line curving to the east having a radius of 20 feet and tangent to the east line of Campus Drive an arc length of 31.42 feet to a point of tangent in the south line of Eton Lane; thence South 82° 30' East along the south line of Eton Lane, being the north line of Subdivision Lots Nos. 42 and 30, a distance of 170 feet to a point of curve; thence southeasterly along a line curving to the south, having a radius of 20 feet and tangent to the south line of Eton Lane, an arc length of 31.42 feet to a point of tangent in the west line of Campus Drive East; thence South 7° 30' West along the west line of Campus Drive East 505 feet to a point of curve, distant 25 feet South 7° 30' West of the northeast corner of Subdivision Lot No. 35; thence southwesterly along the northwest line of Campus Drive East, being a line curving to the west, having a radius of 149 feet and tangent to the last described course, an arc length of 78.59 feet to the southeast corner of Subdivision Lot No. 35; thence North 82° 30' West along the south line of Subdivision Lot No. 35, 94.75 feet to the southwest corner of Subdivision Lot No. 35; thence North 13° 12' 38" East along the west line of Subdivision Lot No. 35, 100.50 feet to the northwest corner of Subdivision Lot No. 35; thence North 7° 30' East along the west line of Subdivision Lots Nos. 34, 33, 32 and 31, 400 feet to the southeast corner of Subdivision Lot No. 42; thence North 82° 30' West along the south line of Subdivision Lot No. 42, 105 feet to the point of beginning.

BEARINGS refer to Magnetic North.

808588

CLOSING ITEM NO.: A-7

DAEMEN COLLEGE

TO

THE BANK OF NEW YORK MELLON,
AS TRUSTEE

GUARANTY

DATED AS OF JUNE 1, 2018

RELATING TO THE REVENUE BONDS (DAEMEN COLLEGE
PROJECT), SERIES 2018 IN THE AGGREGATE PRINCIPAL AMOUNT
OF \$28,600,000 ISSUED BY TOWN OF AMHERST DEVELOPMENT
CORPORATION.

TABLE OF CONTENTS

(This table of contents is not part of the Guaranty
and is for convenience of reference only.)

| | <u>PAGE</u> |
|---------------|-------------|
| PARTIES..... | 1 |
| RECITALS..... | 1 |

ARTICLE I

DEFINITIONS

| | |
|---|---|
| Section 1.1. Definitions..... | 6 |
| Section 1.2. Accounting Principles | 6 |
| Section 1.3. Directly or Indirectly | 6 |
| Section 1.4. Governing Law..... | 6 |

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE BORROWER

| | |
|---|---|
| Section 2.1. Authority of the Borrower..... | 7 |
| Section 2.2. No Violation of Restrictions | 7 |
| Section 2.3. Governmental Consents | 7 |
| Section 2.4. Property | 7 |
| Section 2.5. Pending Litigation..... | 7 |
| Section 2.6. No Defaults | 7 |
| Section 2.7. Taxes | 8 |
| Section 2.8. Compliance with Law | 8 |

ARTICLE III

COVENANTS AND AGREEMENTS OF THE BORROWER

| | |
|---|----|
| Section 3.1. Guaranty of Payment..... | 9 |
| Section 3.2. Obligations Unconditional | 9 |
| Section 3.3. Waiver by the Borrower | 11 |
| Section 3.4. Discharge of Borrower's Obligations and Termination of this Guaranty | 11 |
| Section 3.5. Other Security | 11 |
| Section 3.6. No Set-Off by the Borrower..... | 11 |
| Section 3.7. Notice and Service of Process; Venue; Waiver of Jury Trial..... | 11 |
| Section 3.8. Nature of Guaranty | 11 |
| Section 3.9. Additional Covenants | 12 |

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1. Events of Default Defined..... 13
Section 4.2. Remedies on Default 13
Section 4.3. Waiver and Notice..... 13

ARTICLE V

MISCELLANEOUS

Section 5.1. Obligations Arise on the Sale of the Initial Bonds..... 15
Section 5.2. Survival 15
Section 5.3. Successors and Assigns..... 15
Section 5.4. Notices..... 15
Section 5.5. Entire Understanding; Counterparts..... 16
Section 5.6. Amendments 16
Section 5.7. Partial Invalidity 16
Section 5.8. Section Headings Not Controlling 17

TESTIMONIUM..... 18

SIGNATURES 18

ACKNOWLEDGMENTS 19

SCHEDULE A - Pending Litigation affecting the Borrower..... A-1

SCHEDULE B - List of Unpaid Taxes, Assessments, Fees and other Governmental
Charges affecting the Borrower..... B-1

SCHEDULE C - Additional Covenants C-1

GUARANTY

THIS GUARANTY dated as of June 1, 2018 (the “Guaranty”) from DAEMEN COLLEGE (the “Borrower”), a not-for-profit education corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 4380 Main Street, Amherst, New York 14426, to THE BANK OF NEW YORK MELLON, a banking corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 101 Barclay Street, 7 East, New York, New York, as trustee (the “Trustee”) for the holders of (1) the Issuer’s Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 (the “Initial Bonds”), and (2) any additional bonds (the “Additional Bonds”, and collectively with the Initial Bonds, the “Bonds”) issued by Town of Amherst Development Corporation (the “Issuer”) pursuant to a certain trust indenture dated as of June 1, 2018 (the “Indenture”) by and between the Issuer and the Trustee;

WITNESSETH:

WHEREAS, Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) (A) authorizes any county to cause a not-for-profit local development corporation to be incorporated by public officers for, among other things, the public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government and acting in the public interest, (B) declares that in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, such corporations will be performing essential governmental functions, and (C) authorizes each such corporation to acquire real and personal property, to borrow money and issue negotiable bonds, notes and other obligations therefore, and to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine and otherwise carry out its corporate purposes in the territory in which the operations of such corporation are principally to be conducted; and

WHEREAS, pursuant to the provisions of the Enabling Act and Revenue Ruling 57-187 and Private Letter Ruling 200936012, the Town Board of the Town of Amherst, New York (the “Town Board”) adopted a resolution on October 5, 2009 (the “Sponsor Resolution”) (A) authorizing the reincorporation of the Town of Amherst Development Corporation (the “Issuer”) under the Enabling Act and (B) appointing the initial members of the board of directors of the Issuer, who serve at the pleasure of the Town of Amherst, New York; and

WHEREAS, on February 3, 2010, a certificate of reincorporation was filed with the New York Secretary of State’s Office (the “Certificate of Reincorporation”) creating the Issuer pursuant to the Enabling Act as a public instrumentality of the Town of Amherst, New York; and

WHEREAS, in April, 2018, the Borrower presented an application (the “Application”) to the Issuer, which Application requested that the Issuer consider undertaking a project (the “Initial Project”) for the benefit of the Borrower, said Initial Project to consist of the following: (A) the refinancing, in whole or in part, of the Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006A issued on June 30, 2006 in the original aggregate principal amount of \$20,925,000 (the “Series 2006A Bonds”), which Series 2006A Bonds financed the following project (the “Series 2006A Project”): (1) the refinancing of the Town of Amherst Industrial Development Agency Civic Facility Revenue Bonds (Daemen College Project), Series 2001A (the “Series 2001A Bonds”) used to finance (a) the acquisition by the Town of Amherst Industrial Development Agency (the “Prior Issuer”) of a leasehold interest in an approximately 5.7 acre parcel of

land (the “Student Housing Land”) located on the campus of the Borrower at 4380 Main Street in the Town of Amherst, Erie County, New York (the “Campus”) on which is located Rosary Hall and the Business & Commerce Building (the “Other Land” and, together with the Student Housing Land, the “Land”), (b) the acquisition by the Prior Issuer of an interest in the existing buildings located on the Student Housing Land containing 23 existing student housing units (the “Existing Student Housing”) and of an interest in Rosary Hall and an interest in the Business & Commerce Building, both of which are located on the Other Land (the Existing Student Housing, Rosary Hall and the Business & Commerce Building being collectively referred to as the “Existing Facility”), (c) the demolition of the Existing Student Housing, (d) the construction on the Student Housing Land of 7 new apartment style housing units with a total of approximately 384 beds (the “New Housing Facility”) and (e) the acquisition and installation by the Prior Issuer of an interest in certain existing furniture and fixtures located in Rosary Hall and in the Business and Commerce Building (the “Existing Equipment”) (the Land, the Existing Facility, the New Housing Facility and the Existing Equipment being collectively referred to as the “2001 Project Facility”); and (2) paying a portion of the costs incidental to the issuance of the Series 2006A Bonds, including issuance costs of the Series 2006A Bonds and a debt service reserve fund to secure the Series 2006A Bonds; (B) the refinancing, in whole or in part, of the Town of Amherst Industrial Development Agency Multi-Mode Civic Facility Revenue Bonds (Daemen College Project), Series 2006B issued on June 30, 2006 in the original aggregate principal amount of \$17,075,000 (the “Series 2006B Bonds” and, together with the Series 2006A Bonds, the “Prior Bonds”), which Series 2006B Bonds financed the following project: (the “Series 2006B Project” and, together with the Series 2006A Project, the “Prior Project”): (1) the acquisition of an interest or interests in portions of the Land; (2) the construction of a new library and information center on the Land to contain approximately 47,200 gross square feet of space (the “Library Facility” and together with the Existing Facility, the “Facility”); (3) the acquisition of an interest in and installation of equipment and fixtures to be located in or attached to the Library Facility (the “Library Equipment” and, together with the Existing Equipment, the “Equipment”) (the Library Facility and the Library Equipment being collectively referred to as the “2006 Project Facility”); and (4) paying a portion of the costs incidental to the issuance of the Series 2006B Bonds, including issuance costs of the Series 2006B Bonds and a debt service reserve fund to secure the Series 2006B Bonds; (C) (1) the renovation of and improvements to the science facilities in Duns Scotus Hall, all on the Land, and (2) the undertaking of various deferred maintenance improvements to Campus facilities, all on the Land (collectively, the “2018 Project Facility” and, together with the Facility, the “Project Facility”); (D) the financing of all or a portion of the costs of the foregoing by the issuance of revenue bonds of the Issuer in one or more issues or Series in an aggregate principal amount sufficient to pay the cost of undertaking the Initial Project, together with necessary incidental costs in connection therewith, in an amount then estimated to be approximately \$35,000,000 and in any event not to exceed \$37,000,000 (the “Obligations”); and (E) paying a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations, any hedge termination fees and any reserve funds as may be necessary to secure the Obligations; and

WHEREAS, the Chief Executive Officer of the Issuer (A) caused notice of a public hearing of the Issuer (the “Public Hearing”) pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”) and, as provided in the Certificate of Reincorporation, pursuant to the applicable provisions of Section 859-a and Section 859-b of the General Municipal Law of the State of New York (the “GML”), to hear all persons interested in the Initial Project and the financial assistance being contemplated by the Issuer with respect to the Initial Project, to be published on April 18, 2018 in The Amherst Bee, a newspaper of general circulation available to the residents of the Town of Amherst, New York, (B) caused notice of the Public Hearing to be posted on April 17, 2018 at the Town Clerk’s Office located at 5583 Main Street, Amherst, New York, (C) caused notice of the Public Hearing to be mailed on April 13, 2018 to the chief executive officers of the county and of each city, town, village and school district in which the Initial Project Facility is (or will be) located, (D) conducted the Public Hearing on May 4, 2018 at 8:30 a.m., local time at 4287 Main Street, Amherst, New York, and (E) prepared a report

of the Public Hearing (the “Public Hearing Report”) which fairly summarized the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the board of directors of the Issuer and to the Town Board of the Town of Amherst, New York (the “Town Board”); and

WHEREAS, by a resolution adopted by the Town Board on May 16, 2018 (the “Public Approval”), the Town Board approved the issuance of the Obligations for purposes of Section 147(f) of the Code; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the board of directors of the Issuer on May 18, 2018 (the “SEQR Resolution”), the Issuer determined that the Initial Project constituted a “Type II action” (as such quoted term is defined under SEQRA), and therefore that no further action with respect to the Initial Project was required under SEQRA; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on May 18, 2018 (the “Inducement Resolution”), the board of directors of the Issuer determined, following a review of the Public Hearing Report, to proceed with the Initial Project and to enter into a preliminary agreement with the Borrower (the “Preliminary Agreement”) relating to the Initial Project; and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on May 18, 2018 (the “Initial Bond Resolution”), the board of directors of the Issuer (A) authorized the issuance of the Issuer’s Revenue Bonds (Daemen College Project), Series 2018 in the aggregate principal amount of \$28,600,000 (the “Initial Bonds”) for the purpose of financing a portion of the costs of the Initial Project, (B) authorized the circulation of a preliminary official statement (the “Initial Preliminary Official Statement”) in connection with the marketing of the Initial Bonds and (C) delegated to the Chairman, Vice Chairman and Chief Executive Officer of the Issuer authority to determine the final details of the Initial Bonds (the “Bond Details”) once the marketing of the Initial Bonds is completed and the Borrower has agreed to the Bond Details; and

WHEREAS, the Issuer will now issue the Initial Bonds under the Initial Bond Resolution, a certificate of determination dated June 14, 2018 (the “Certificate of Determination”) executed by the Chairman, Vice Chairman or Chief Executive Officer of the Issuer and a trust indenture dated as of June 1, 2018 (the “Indenture”) by and between the Issuer and the Trustee for the holders of the Initial Bonds and any additional bonds issued by the Issuer under the Indenture (the “Additional Bonds”, and collectively with the Initial Bonds, the “Bonds”); and

WHEREAS, prior to or simultaneously with the issuance of the Initial Bonds, the Issuer and the Borrower will execute and deliver a loan agreement dated as of June 1, 2018 (the “Loan Agreement”) by and between the Issuer, as lender, and the Borrower, as borrower, pursuant to the terms of which Loan Agreement (A) the Issuer will agree (1) to issue the Initial Bonds, and (2) to make a loan to the Borrower of the proceeds of the Initial Bonds (the “Loan”) for the purpose of assisting in financing the Initial Project, and (B) in consideration of the Loan, the Borrower will agree (1) to cause the Initial Project to be undertaken and completed, (2) to use the proceeds of the Loan disbursed under the Indenture to pay (or reimburse the Borrower for the payment of) the costs of the Initial Project, and (3) to make payments in amounts sufficient to pay when due all amounts due with respect to the Initial Bonds (the “Loan Payments”) to or upon the order of the Issuer in repayment of the Loan, which Loan Payments shall

include amounts equal to the Debt Service Payments (as defined in the Indenture) due on the Initial Bonds; and

WHEREAS, pursuant to the terms of the Indenture, the net proceeds of the sale of the Initial Bonds (the “Bond Proceeds”) will be deposited into various trust funds held by the Trustee under the Indenture and will be disbursed by the Trustee from time to time to pay the costs of the Initial Project, but only upon satisfaction of the requirements for making such disbursements set forth in the Indenture and in the Loan Agreement; and

WHEREAS, as security for the Initial Bonds, the Issuer will execute and deliver to the Trustee a pledge and assignment dated as of June 1, 2018 (the “Pledge and Assignment”) from the Issuer to the Trustee, and acknowledged by the Borrower, which Pledge and Assignment will assign to the Trustee certain of the Issuer’s rights under the Loan Agreement; and

WHEREAS, pursuant to the Pledge and Assignment, basic Loan Payments made by the Borrower under the Loan Agreement are to be paid directly to the Trustee; and

WHEREAS, as additional security for the Initial Bonds, (A) the Borrower will execute and deliver to the Issuer a mortgage and security agreement dated as of June 1, 2018 (the “Mortgage”) from the Borrower to the Issuer, which Mortgage among other things, (1) grants to the Issuer a first mortgage lien on, and a security interest in, among other things, the Initial Project Facility, excluding the Excluded Facility (as defined in the Indenture) and (2) assigns to the Issuer the rents, issues and profits of the Initial Project Facility, excluding the Excluded Facility and (B) the Issuer will execute and deliver to the Trustee an assignment of mortgage dated as of June 1, 2018 (the “Mortgage Assignment”) from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee; and

WHEREAS, the (A) Borrower’s obligation (1) to make all Loan Payments under the Loan Agreement and (2) to perform all obligations related thereto and (B) Issuer’s obligation to pay the Initial Bonds will be further secured by this Guaranty; and

WHEREAS, (A) the Initial Bonds will be initially purchased by Janney Montgomery Scott LLC, acting as underwriter for the Initial Bonds (the “Underwriter”) pursuant to a bond purchase agreement dated as of June 7, 2018 (the “Initial Bond Purchase Agreement”) by and among the Underwriter, the Issuer and the Borrower, (B) the Underwriter will utilize the Initial Preliminary Official Statement and a final official statement (the “Initial Official Statement”) in connection with the initial offering of the Initial Bonds, and (C) the Underwriter also intends to obtain a rating of the Initial Bonds from one or more securities rating agencies (each such rating agency that provides a rating of the Initial Bonds, a “Rating Agency”); and

WHEREAS, to assure compliance with the continuing disclosure requirements imposed by the Securities and Exchange Commission, the Borrower will execute and deliver to the Underwriter and the Trustee a continuing disclosure agreement dated as of June 14, 2018 (the “Initial Continuing Disclosure Agreement”) relating to the Initial Bonds; and

WHEREAS, the Initial Bonds will be issued as “book-entry-only” obligations to be held by The Depository Trust Company, as depository (the “Depository”) for the Initial Bonds, and, to comply with the requirements of the Depository, the Issuer and the Trustee will execute and deliver to the Depository a letter of representations (the “Initial Depository Letter”) relating to the Initial Bonds; and

WHEREAS, to demonstrate compliance with the provisions of the Code relating to the issuance of tax-exempt obligations, (A) the Issuer will (1) execute an arbitrage certificate dated the date of delivery

of the Initial Bonds (the “Initial Arbitrage Certificate”) relating to certain requirements set forth in Section 148 of the Code relating to the Initial Bonds, (2) execute a completed Internal Revenue Service Form 8038 (Information Return for Private Activity Bonds) relating to the Initial Bonds (the “Information Return”) pursuant to Section 149(e) of the Code, and (3) file the Information Return with the Internal Revenue Service, (B) the Borrower will execute a tax regulatory agreement dated the date of delivery of the Initial Bonds (the “Initial Tax Regulatory Agreement”) relating to the requirements in Sections 145 through 150 of the Code relating to the Initial Bonds and (C) the Underwriter will execute a letter (the “Issue Price Letter”) confirming the issue price of the Initial Bonds for purposes of Section 148 of the Code; and

WHEREAS, simultaneously with the issuance of the Initial Bonds, the Prior Issuer, Manufacturers and Traders Trust Company, as trustee for the Prior Bonds (the “Prior Trustee”) and the Borrower will execute and deliver a letter of instructions, as acknowledged by the Issuer and the Trustee (the “Letter of Instructions”), pursuant to which (A) a deposit will be made with the Prior Trustee in an amount sufficient to enable the Prior Trustee to redeem the Prior Bonds in full on June 14, 2018 and (B) the Prior Trustee will deliver to the Issuer and the Borrower various termination documents terminating and discharging the Prior Trustee’s interest in the Prior Project (collectively, the “Termination Documents”); and

WHEREAS, the Borrower’s obligation to make all loan payments due under the Loan Agreement, and to perform all obligations related thereto, will be further secured by this Guaranty; and

WHEREAS, the Borrower is desirous that the Issuer issue the Bonds and that the Trustee enter into the Indenture and is willing to enter into this Guaranty in order to enhance the marketability of the Bonds and thereby achieve interest cost and other savings to the Borrower;

NOW, THEREFORE, in consideration of the premises herein contained and in order to enhance the marketability of the Bonds and thereby achieve interest cost savings to the Borrower, the Borrower does hereby, subject to the terms hereof, covenant and agree with the Trustee for the benefit of the holders from time to time of the Bonds (the “Holders”), as follows:

ARTICLE I
DEFINITIONS

SECTION 1.1. DEFINITIONS. Capitalized terms used herein and not otherwise defined herein shall have the same meanings assigned to such terms in the Indenture.

SECTION 1.2. ACCOUNTING PRINCIPLES. Where the character or amount of any asset or liability or item of income or expense is required to be determined or consolidated or other accounting computation is required to be made for the purposes of this Guaranty, such determination, consolidation or computation shall be made in accordance with generally accepted accounting principles at the time in effect, to the extent applicable, except where such principles are inconsistent with the requirements of this Guaranty.

SECTION 1.3. DIRECTLY OR INDIRECTLY. Where any provision of this Guaranty refers to action to be taken by any Person, or which provision prohibits any Person from taking certain action, such provision shall be applicable whether such action is to be taken or is not to be taken directly or indirectly by such Person.

SECTION 1.4. GOVERNING LAW. This Guaranty shall be governed by, and construed in accordance with, the laws of the State.

ARTICLE II
REPRESENTATIONS AND WARRANTIES
OF THE BORROWER

SECTION 2.1. AUTHORITY OF THE BORROWER. The Borrower:

(A) is duly organized and validly existing as a not-for-profit education corporation organized and existing under the laws of the State of New York and is duly authorized to do business in the State;

(B) has all requisite power and authority and all necessary licenses and permits to own its Property and to carry on its business as now conducted and as presently proposed to be conducted;

(C) is duly qualified and authorized to do business in each other jurisdiction where the character of its property and facilities or the nature of its activities makes such qualifications necessary; and

(D) has the lawful authority to enter into this Guaranty and by proper approval by the Board of Trustees of the Borrower has been duly authorized to execute, deliver and perform this Guaranty.

SECTION 2.2. NO VIOLATION OF RESTRICTIONS. Neither the execution and delivery of this Guaranty, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Guaranty will conflict with or result in a breach of any of the terms, conditions or provisions of the Borrower's charter or its by-laws, or any agreement, judgment or order to which the Borrower is a party or by which the Borrower is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature whatsoever upon any of the Property of the Borrower under the terms of any such instrument or agreement, except for donor imposed restrictions on assets gifted to the Borrower and disclosed on financial statements of the Borrower attached to the Official Statement as Appendix B.

SECTION 2.3. GOVERNMENTAL CONSENT. No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority on the part of the Borrower is required as a condition to its execution, delivery or performance of this Guaranty by the Borrower.

SECTION 2.4. PROPERTY. The Borrower has good title to all its Property and assets.

SECTION 2.5. PENDING LITIGATION. Other than as set forth in Schedule A to this Guaranty, there are no proceedings pending or, to the knowledge of the Borrower, threatened against, or affecting, the Borrower in any court or before any Governmental Authority or arbitration board or tribunal which involve the possibility of materially and adversely affecting the Property, facilities, businesses, prospects, profits or condition (financial or otherwise) of the Borrower or the ability of the Borrower to execute, deliver or perform this Guaranty. The Borrower is not in default with respect to any order of any court, Governmental Authority or arbitration board or tribunal.

SECTION 2.6. NO DEFAULTS. No event has occurred and no condition exists which, upon the execution of this Guaranty, would constitute an Event of Default under Article IV hereof. The Borrower is not in violation in any material respect of any term of any material agreement, charter, by-law or other instrument to which the Borrower is a party or by which the Borrower may be bound which would have a material adverse effect on the financial condition of the Borrower.

SECTION 2.7. TAXES. All tax returns required to be filed by the Borrower in all jurisdictions have in fact been filed. All taxes, assessments, fees and other governmental charges imposed upon the Borrower or any Property, income or franchises of the Borrower which are due and payable have been paid, except for certain taxes, assessments, fees and other governmental charges listed on Schedule B to this Guaranty, which the Borrower may be contesting in good faith, the nonpayment of which will not materially adversely affect the Property, business, prospects, profits or condition (financial or otherwise) of the Borrower or the ability of the Borrower to execute, deliver or perform this Guaranty. The Borrower does not know of any proposed additional tax assessment against it.

SECTION 2.8. COMPLIANCE WITH LAW. The Borrower:

(A) is not in violation in any material respect of any laws, ordinances or governmental rules and regulations to which the Borrower is subject, which violation would have a material adverse effect on the financial condition of the Borrower; and

(B) has not failed to obtain any material licenses, permits, franchises or other governmental authorizations necessary to the ownership of its Property or to the conduct of its businesses which violation or failure to obtain might materially adversely affect such Property or businesses (financial or otherwise).

ARTICLE III
COVENANTS AND AGREEMENTS
OF THE BORROWER

SECTION 3.1. GUARANTY OF PAYMENT. (A) The Borrower hereby irrevocably and unconditionally guarantees to the Trustee (1) the full and prompt payment of moneys sufficient to pay, or to provide for the payment of, (a) the outstanding principal on the Bonds when and as the same becomes due, (b) any and all interest on the Bonds when and as the same becomes due, (c) any premium or redemption payment payable on the Bonds when and as the same becomes due, (d) the Redemption Price of the Bonds, when and as the same becomes due, and (e) any other sum payable by the Issuer or the Borrower under the Financing Documents, when and as the same shall become due, whether at the stated maturity thereof, by acceleration or upon prepayment or otherwise, and (2) the performance by the Borrower of its obligations under the Financing Documents. The Borrower hereby irrevocably and unconditionally agrees that, upon the occurrence of an Event of Default and the acceleration of the principal balance of the Bonds then Outstanding and all accrued but unpaid interest and any premium on the Bonds by the Trustee, the Borrower will promptly pay the same.

(B) This Guaranty is intended by the Borrower to be an evidence of indebtedness of the Borrower to the Trustee within the meaning of 12 U.S.C. 24(7) and a primary obligation of the Borrower to pay the Bonds and the other sums payable by the Borrower or the Issuer under the Financing Documents (the Bonds and such other sums being sometimes collectively referred to as the "Debt") in accordance with the terms thereof, whether by acceleration or otherwise.

(C) All payments by the Borrower shall be made in lawful money of the United States of America.

(D) Each and every default in payment of the Debt Service Payments on the Bonds or of any sum payable by the Issuer or the Borrower under the Financing Documents shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the Trustee as each cause of action arises.

(E) The Borrower shall pay to the Trustee all fees and reasonable costs and expenses (including legal fees and expenses) incurred by the Trustee in the protection of its rights or in the pursuance of its remedies in respect of this Guaranty.

SECTION 3.2. OBLIGATIONS UNCONDITIONAL. The obligations of the Borrower under this Guaranty shall be absolute and unconditional and shall remain in full force and effect until the entire Debt shall have been irrevocably paid in full, and, to the extent permitted by law, such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to or the consent of the Borrower:

(A) the invalidity, irregularity, illegality or unenforceability of, or any defect in, (1) any of the Bonds, (2) any other Financing Document, or (3) any collateral security for any thereof;

(B) any present or future law or order of any government (de jure or de facto) or of any agency thereof purporting to reduce, amend or otherwise affect the Bonds or any other obligation of the Issuer or any other obligor, or to vary any terms of payment;

(C) any claim of immunity on behalf of the Issuer or any other obligor or with respect to any Property of the Issuer or any other obligor;

(D) the happening of any event described in Section 8.4 or in Article X of the Loan agreement;

(E) the waiver, compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of (1) the Issuer under the Bonds or any of the other Financing Documents, or (2) the Borrower under any of the Financing Documents, or (3) the Borrower under this Guaranty;

(F) the failure to give notice to the Borrower of the occurrence of an Event of Default under any Financing Document;

(G) the transfer, assignment or mortgaging, or the purported or attempted transfer, assignment or mortgaging, of all or any part of the interest of the Issuer or the Borrower in the Project Facility, or any failure of or defect in the title with respect to the Issuer's or the Borrower's interest in the Project Facility, or the termination of the Loan agreement;

(H) the release, sale, exchange, surrender or other change in any security for payment of the Bonds;

(I) the extension of the time for payment of any principal of or interest or premium on the Bonds owing or payable on the Bonds or under this Guaranty or of the time for performance of any other obligations, covenants or agreements under or arising out of the other Financing Documents;

(J) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Bonds or any other Financing Document;

(K) the taking of, or the omission to take, any of the actions referred to in the Financing Documents;

(L) any failure, omission or delay on the part of the Issuer, any Holder of any of the Bonds, the Trustee or any other Person to enforce, assert or exercise any right, power or remedy conferred on the Issuer, the Trustee or such other Person in this Guaranty or any other Financing Document;

(M) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceedings affecting the Borrower or the Issuer or any of the assets of any of them, or any allegation or any contest of the validity of the Financing Documents in any such proceedings;

(N) to the extent permitted by law, any event or action that would, in the absence of this Section 3.2, result in the release or discharge of the Borrower from the performance or observance of any obligation, covenant or agreement contained in this Guaranty;

(O) the default or failure of the Borrower fully to perform any of its obligations set forth in this Guaranty; or

(P) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a surety or a guarantor.

SECTION 3.3. WAIVER BY THE BORROWER. The Borrower hereby waives, with respect to the Bonds, the other Financing Documents and this Guaranty, and the indebtedness evidenced hereby and thereby, the following: diligence; presentment; demand for payment; filing of claims with a court in the event of bankruptcy of the Issuer or any other Person liable in respect of the Bonds; any right to require a proceeding first against the Issuer or any other Person; protest; notice of dishonor or nonpayment of any such liabilities; and any other notice and all demands whatsoever. The Borrower hereby waives notice from the Issuer and the Trustee of (A) the issuance of the Bonds and (B) the acceptance of, or notice and proof of reliance on, the benefits of this Guaranty.

SECTION 3.4. DISCHARGE OF BORROWER'S OBLIGATIONS AND TERMINATION OF THIS GUARANTY. This Guaranty shall terminate and the obligations of the Borrower created hereunder shall be discharged upon the irrevocable payment in full of the Bonds. On the date of such discharge, the Borrower shall be released from any and all conditions, terms, covenants or restrictions created or placed upon it by this Guaranty and the Borrower shall not have any further obligation or liability hereunder.

SECTION 3.5. OTHER SECURITY. The Trustee may pursue its rights and remedies under this Guaranty notwithstanding (A) any other guaranty of or security for the Debt, and (B) any action taken or omitted to be taken by the Trustee or any other Person to enforce any of the rights or remedies under such other guaranty or with respect to any other security.

SECTION 3.6. NO SET-OFF BY THE BORROWER. No set-off, counterclaim, reduction or diminution of an obligation, or any defense of any kind or nature (other than full performance by the Borrower of the obligations hereunder) which the Borrower has or may have against the Trustee or any other Person, shall be available hereunder to the Borrower with respect to a claim under this Guaranty. The Borrower acknowledges that no oral or other agreements, understandings, representations or warranties exist with respect to this Guaranty or with respect to the obligations of the Borrower under this Guaranty, except as specifically set forth in this Guaranty.

SECTION 3.7. NOTICE AND SERVICE OF PROCESS; VENUE; WAIVER OF JURY TRIAL. (A) The Borrower will remain subject to service of process in the State, and any notice, process, pleading or other papers may be served upon the Borrower at such address as is specified in or pursuant to Section 5.4 of this Guaranty.

(B) The Borrower hereby irrevocably agrees that any suit, action or other legal proceeding arising out of this Guaranty may be brought in the courts of the State located in Erie County, New York or the courts of the United States located within the State.

(C) Each of the Trustee and the Borrower knowingly, voluntarily, intentionally and irrevocably waives each right it may have to a trial by jury with respect to, and each right to assert any claim for special exemplary or punitive damages in addition to actual and consequential damages in, any action or other legal proceeding arising out of this Guaranty.

SECTION 3.8. NATURE OF GUARANTY. (A) This Guaranty is a guaranty of payment and not of collection, and the Borrower hereby waives any right to require that any action be brought against any other Person or to require that resort be had to any security or to any balance of any fund or credit held by the Trustee in favor of the Issuer, the Borrower or any other Person prior to the Trustee proceeding under this Guaranty. If at any time any payment of the principal of, premium, if any, or interest on the Bonds or any other amount payable by the Issuer or the Borrower and guaranteed by the Borrower pursuant to Section 3.1 hereof is rescinded or is otherwise required to be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower, the Issuer or otherwise, the Borrower's obligations

hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

(B) All of the rights and remedies of this Guaranty shall inure to the benefit of the Trustee.

(C) The Borrower agrees that this Guaranty is executed in part to induce the purchase of the Bonds by the Holders and Beneficial Owners from time to time of the Bonds. Accordingly, all representations, covenants and agreements on the part of the Borrower set forth in this Guaranty are hereby declared to be for the benefit of the Trustee and the Holders and Beneficial Owners from time to time of the Bonds.

SECTION 3.9. ADDITIONAL COVENANTS. The Borrower shall comply with the additional covenants, if any, contained in Schedule C attached hereto (the "Additional Covenants"), which Additional Covenants are by this reference incorporated into this Guaranty.

ARTICLE IV

EVENTS OF DEFAULT

SECTION 4.1. EVENTS OF DEFAULT DEFINED. An “Event of Default” shall exist if any of the following occurs.

(A) COVENANTS FOR THE PAYMENT OF MONEY - the Borrower fails to perform or observe any covenant for the payment of money contained in Article III herein on demand, after written notice with respect thereto is given by the Trustee to the Borrower;

(B) OTHER DEFAULTS - the Borrower fails to comply with any other provision of this Guaranty other than paragraphs (A), (C), (D), (E), (F) and (G) of this Section 4.1, and such failure continues for more than thirty (30) days after written notice of such failure has been given to the Borrower;

(C) WARRANTIES OR REPRESENTATIONS - any warranty, representation or other statement by or on behalf of the Borrower contained in this Guaranty is false or misleading in any material respect when made;

(D) INVOLUNTARY BANKRUPTCY PROCEEDINGS - a receiver, liquidator or trustee of the Borrower or of any of its Property is appointed by court order, and such order remains in effect for more than sixty (60) days; or the Borrower is adjudicated bankrupt or insolvent; or any of the Property of the Borrower is sequestered by court order and such order remains in effect for more than sixty (60) days; or a petition is filed against the Borrower under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within sixty (60) days after such filing;

(E) VOLUNTARY PETITIONS - the Borrower files a petition in voluntary bankruptcy or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under such law;

(F) ASSIGNMENTS FOR BENEFIT OF CREDITORS - the Borrower makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of all or any part of its Property; or

(G) DEFAULTS UNDER FINANCING DOCUMENTS - the occurrence and continuance of an “Event of Default” under any other Financing Document.

SECTION 4.2. REMEDIES ON DEFAULT. If an Event of Default exists and continues, the Trustee may proceed to enforce the provisions hereof and to exercise any other rights, powers and remedies available to the Trustee. The Trustee, in its sole discretion, shall have the right to proceed first and directly against the Borrower under this Guaranty without proceeding against or exhausting any other remedies which it may have and without resorting to any other security held by the Issuer or the Trustee.

SECTION 4.3. WAIVER AND NOTICE. (A) No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty now or hereafter existing at law or in equity or by statute.

(B) No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) In order to entitle the Trustee to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Guaranty.

(D) In the event any provision contained in this Guaranty shall be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(E) No waiver, amendment, change, alteration, release, discharge, modification or termination of this Guaranty shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.1. OBLIGATIONS ARISE ON THE SALE OF THE INITIAL BONDS. The obligations of the Borrower hereunder shall arise absolutely and unconditionally when the Issuer shall have issued and delivered the Initial Bonds.

SECTION 5.2. SURVIVAL. All warranties, representations and covenants made by the Borrower herein shall be deemed to have been relied upon by the Trustee and shall survive the delivery to the Trustee of this Guaranty, regardless of any investigation made by the Trustee.

SECTION 5.3. SUCCESSORS AND ASSIGNS. This Guaranty shall inure to the benefit of and be binding upon the successors and assigns of each of the parties, provided, however, that the obligations of the Borrower hereunder may not be assigned. The provisions of this Guaranty are intended to be for the benefit of the Trustee.

SECTION 5.4. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE ISSUER:

Town of Amherst Development Corporation
4287 Main Street
Amherst, New York 14226
Attention: Chief Executive Officer

WITH A COPY TO:

Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, New York 14202
Attention: Joseph M. Reynolds, Esq.

AND:

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: Christopher C. Canada, Esq.

IF TO THE BORROWER:

Daemen College
4380 Main Street
Amherst, New York 14226
Attention: President

WITH A COPY TO:

Hodgson Russ LLP
140 Pearl Street
Buffalo, New York 14202
Attention: Terrence M. Gilbride, Esq.

IF TO THE TRUSTEE:

The Bank of New York Mellon, as Trustee
101 Barclay Street, 7 East
New York, New York 10286
Attention: Transaction Management Group

WITH A COPY TO:

Buchanan Ingersoll & Rooney PC
640 Fifth Avenue, 9th Floor
New York, New York 10019
Attention: David Fernandez, Esq.

(C) A duplicate copy of each notice, certificate and other communication given hereunder by the Trustee or the Borrower shall also be given to the Issuer.

(D) The Issuer, the Borrower and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificate or other communications shall be sent.

SECTION 5.5. ENTIRE UNDERSTANDING; COUNTERPARTS. This Guaranty constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 5.6. AMENDMENTS. No waiver, amendment, change, modification, release, discharge, alteration or termination of this Guaranty shall be made except upon the written consent of the Borrower and the Trustee.

SECTION 5.7. PARTIAL INVALIDITY. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty or any part thereof.

SECTION 5.8. SECTION HEADINGS NOT CONTROLLING. The headings of the several sections of this Guaranty have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Guaranty.

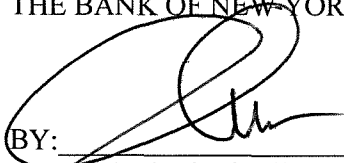
IN WITNESS WHEREOF, the Borrower has caused this Guaranty to be duly executed in its name by an authorized officer of the Borrower and to be dated as of the day and year first above written.

DAEMEN COLLEGE

BY: Yoni Arida
Authorized Officer

Accepted:

THE BANK OF NEW YORK MELLON, as Trustee

BY: 
Authorized Officer
Christopher Spinelli
Vice President

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

On the 13th day of June, in the year 2018, before me, the undersigned, personally appeared LISA ARIDA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Pamella Weisberg
Notary Public, State of New York
Qualified in Rensselaer County
No. 01WE4943734
Commission Expires October 31, 2018

SCHEDULE A
PENDING LITIGATION

- NONE -

SCHEDULE B

UNPAID TAXES, ASSESSMENTS AND
OTHER GOVERNMENTAL CHARGES

- NONE -

SCHEDULE C

ADDITIONAL COVENANTS

1. Definitions. The following words and terms used in this Schedule C shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

“Consultant” means a firm or firms which is not, and no member, stockholder, director, officer, trustee or employee of which is, an officer, director, trustee or employee of the Borrower, or any affiliate thereof, and which is a professional consultant of national repute for having the skill and experience necessary to render the particular report, advice, or documentation required by the provision of the Loan Agreement or the Guaranty in which such requirement appears.

“Debt Service Coverage Ratio” means the ratio of the Net Revenues Available for Debt Service for a Fiscal Year to Maximum Annual Debt Service (expressed as the number of times covered).

“Fiscal Year” means (i) the period of twelve (12) months beginning June 1 of each year, or (ii) such other consecutive twelve (12) month period selected by the Borrower as its fiscal year for accounting purposes.

“Maximum Annual Debt Service” means on any date, when used with respect to any Series of the Bonds, the greatest amount required in the then current or any future Bond Year to pay the sum of: (1) interest on such Series of the Bonds payable in such Bond Year, excluding accrued interest received upon the issuance of such Series of the Bonds and capitalized interest financed by the issuance of such Series of the Bonds; and (2) the principal and the Sinking Fund Payments due on such Series of the Bonds in such Bond Year.

“Net Revenues Available For Debt Service” shall mean, for any period, the sum of (a) the increase in unrestricted net assets from operations of the Borrower for such period, exclusive of (i) any realized or unrealized gain or loss on investments for such period and (ii) any losses from the early extinguishment of indebtedness allocable to such period, plus (b) the amount of depreciation expense, interest expense, amortization expense and any other non-cash operating expenses or charges of the Borrower for such period, all as determined in accordance with Generally Accepted Accounting Principles.

2. Debt Service Coverage Ratio.

(a) The Borrower shall maintain a Debt Service Coverage Ratio of 1.10:1.00 or higher for its fiscal years ending May 31, 2019 and May 31, 2020 and 1.20:1.00 or higher for its fiscal year ending May 31, 2021 and each fiscal year thereafter.

(b) Within 165 days after the close of each fiscal year, the Borrower shall file with the Issuer and the Trustee a certificate of an Authorized Representative stating whether the Debt Service Coverage Ratio covenant is satisfied for the immediately preceding Fiscal Year and setting forth the calculation upon which such statement is based.

(c) If the certificate required by the preceding paragraph shows that the required Debt Service Coverage Ratio is not satisfied for two (2) consecutive fiscal years, the Borrower shall timely retain within five (5) Business Days after the certificate required by the preceding paragraph is filed with the Issuer and the Trustee a Consultant to make recommendations to achieve the required Debt Service

Coverage Ratio in the following Fiscal Year. Any Consultant so retained shall be required to submit such recommendations to the Issuer and the Trustee within forty-five (45) days after being so retained. The Borrower agrees that it shall, to the maximum extent permitted by law, follow the reasonable recommendations of the Consultant. So long as the Borrower retains a Consultant and follows the Consultant's recommendations to the extent required by this paragraph and permitted by law, the Debt Service Coverage Ratio covenant described above shall be deemed to have been complied with even if the Debt Service Coverage Ratio for any such Fiscal Year was below the required level.

3. Additional Indebtedness.

The Borrower may issue, incur or assume additional long-term indebtedness, provided the Borrower provides to the Trustee a certificate of an Authorized Representative of the Borrower containing pro forma calculations demonstrating a Debt Service Coverage Ratio of 1.20:1.00 or higher for the preceding Fiscal Year for which Audited Financial Statements are available and 1.30:1.00 or higher for the next succeeding Fiscal Year taking into account the additional long-term indebtedness proposed to be issued.