

*In the opinion of Nixon Peabody LLP, Bond Counsel, under existing law and assuming compliance with the tax covenants described herein, and the accuracy of certain representations and certifications made by the Issuer and the Borrower described herein, interest on the Series 2017A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Bond Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Bond Counsel is further of the opinion that interest on the Series 2017A Bonds is exempt from personal income taxation imposed by the State of New York or any political subdivision thereof including The City of New York. Interest on the Series 2017B Bonds is not excluded from gross income for federal income tax purposes under the Code and is not exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York). See "TAX MATTERS" herein regarding certain other tax considerations.*

**TOWN OF HEMPSTEAD LOCAL DEVELOPMENT CORPORATION**  
**\$35,900,000 TAX-EXEMPT EDUCATION REVENUE BONDS**  
**(THE ACADEMY CHARTER SCHOOL PROJECT), SERIES 2017A**  
**\$2,685,000 TAXABLE EDUCATION REVENUE BONDS**  
**(THE ACADEMY CHARTER SCHOOL PROJECT), SERIES 2017B**

Dated: Date of Delivery

Due: as shown on inside cover

The Town of Hempstead Local Development Corporation (the "Issuer"), a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York (the "State") at the direction of the Town Supervisor of the Town of Hempstead, is issuing its Tax-Exempt Education Revenue Bonds (The Academy Charter School Project), Series 2017A in the aggregate principal amount of \$35,900,000 (the "Series 2017A Bonds") and its Taxable Education Revenue Bonds (The Academy Charter School Project), Series 2017B in the aggregate principal amount of \$2,685,000 (the "Series 2017B Bonds," and collectively with the Series 2017A Bonds, the "Series 2017 Bonds") pursuant to an Indenture of Trust, dated August 1, 2017 (the "Indenture"), between the Issuer and Manufacturers and Traders Trust Company, Buffalo, New York, as trustee (the "Trustee") The Series 2017A Bonds will be dated their date of delivery, will be in authorized denominations of \$25,000 or \$25,000 plus integral multiples of \$5,000; provided however, if at such time that the Borrower has delivered to the Issuer and the Trustee written evidence that a Rating Agency has assigned to the Series 2017A Bonds an investment grade rating of not less than "BBB-", then the minimum authorized denomination of the Series 2017A Bonds authorized and issued under the Indenture is \$5,000 The Series 2017A Bonds will mature on February 1 of the years as shown on the front inside cover hereof The Series 2017B Bonds will be dated their date of delivery, will be in authorized denominations of \$5,000 and any integral multiple thereof, and will mature on February of the years as shown on the front inside cover hereof The Series 2017 Bonds will bear interest payable semi-annually on February 1 and August 1 of each year, commencing February 1, 2018, until maturity or earlier redemption

The Series 2017A Bonds are subject to optional redemption prior to maturity, and all of the Series 2017 Bonds are subject to mandatory sinking fund redemption and extraordinary redemption prior to maturity. See "THE SERIES 2017 BONDS – Prior Redemption"

The Issuer will loan the proceeds of the Series 2017 Bonds to The Academy Charter School, an education corporation ("the Borrower") organized and existing under the laws of the State and an organization described in Section 501(c)(3) of the Code, pursuant to the terms of a Loan Agreement, dated as of August 1, 2017 (the "Loan Agreement"), by and between the Issuer and the Borrower and used for the following purposes: (A) the acquisition, construction, equipping and furnishing of an approximately 112,500 square foot building (five-story plus a basement), including, but not limited to, approximately 77,215 square feet for use as high school classrooms, administrative areas, auditorium, gymnasium and cafeteria and the remaining approximately 35,000 square feet will be used as a new garage and parking area located in the lower level (the "High School Equipment" and the "High School Improvements"), and with the use of the Series 2017B Bonds only, the construction and equipping of an approximately 4,654 square foot addition to a previously existing elementary school for use as four (4) elementary school classrooms and teachers' restrooms (the "Elementary School Equipment"), and together with the High School Equipment, the "Equipment" and the "Elementary School Improvements" and together with the High School Improvements (the "Improvements"), all located on an approximately 1.7 acres of land (the "Land"), which Land is owned by the School and located at Tax Parcel Number 34-291 00-088, consisting of 127 North Franklin Street and 117 North Franklin Street in the Village of Hempstead, Nassau County, New York (collectively, the Improvements, the Equipment and the Land, the "Facility", the High School Equipment, the High School Improvements and the Land, the "High School Facility" and the Elementary School Equipment, Elementary School Improvements and the Land, the "Elementary School Expansion"), (B) paying capitalized interest on the Series 2017 Bonds during the construction period, (C) funding a debt service reserve, if required, for the Series 2017A Bonds, and (D) paying certain costs of issuance of the Series 2017 Bonds (the "Project") See "PLAN OF FINANCE" and "SOURCES AND USES OF FUNDS"

Simultaneously with the issuance of the Series 2017 Bonds, the Borrower will execute and deliver to the Issuer (i) a promissory note evidencing the loan by the Issuer to the Borrower of the proceeds of the Series 2017A Bonds, which promissory note will be endorsed by the Issuer, without recourse, to the Trustee for the benefit of the Holders of the Series 2017 Bonds and (ii) a promissory note evidencing the loan by the Issuer to the Borrower of the proceeds of the Series 2017B Bonds, which promissory note will be endorsed by the Issuer, without recourse, to the Trustee for the benefit of the Holders of the Series 2017 Bonds (collectively, the "Promissory Note") See "PLAN OF FINANCE"

The Series 2017 Bonds shall be equally and ratably secured under the Indenture with the Issuer's (i) Tax-Exempt Education Revenue Bonds (The Academy Charter School Project), Series 2011A, originally issued in the aggregate principal amount of \$10,505,000 (the "Series 2011 Bonds") which were issued pursuant to an Indenture of Trust, dated March 1, 2011 (the "2011 Indenture"), between the Issuer and Manufacturers and Traders Trust Company, Buffalo, New York, as trustee (the "2011 Trustee") and (ii) Tax-Exempt Education Revenue Bonds (The Academy Charter School Project), Series 2013A, originally issued in the aggregate principal amount of \$12,970,000 and Taxable Education Revenue Bonds (The Academy Charter School Project), Series 2013B, originally issued in the aggregate principal amount of \$545,000 (collectively, the "Series 2013 Bonds" and together with the Series 2011 Bonds, the "Prior Bonds") which were issued pursuant to an Indenture of Trust, dated December 1, 2013 (the "2013 Indenture"), between the Issuer and Manufacturers and Traders Trust Company, Buffalo, New York, as trustee (the "2013 Trustee")

In order to further secure the payment of the Series 2017 Bonds, the Borrower will grant mortgage liens on and security interests in the Facility to the Issuer pursuant to (i) a Building Loan Mortgage and Security Agreement (the "Building Loan Mortgage"), and (ii) a Project Loan Mortgage and Security Agreement (the "Project Loan Mortgage"), each dated as of August 1, 2017 (collectively, the "Mortgages"), and each from the Borrower to the Issuer The Mortgages will each be assigned by the Issuer to the Trustee pursuant to an Assignment of Building Loan Mortgage and Security Agreement and an Assignment of Project Loan Mortgage, each dated August 10, 2017 (collectively, the "Assignments"), each from the Issuer to the Trustee See "APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE MORTGAGE"

The Issuer has previously issued its Series 2011 Bonds pursuant to an Indenture of Trust, dated as of March 1, 2011 (the "Series 2011 Indenture"), between the Issuer and Manufacturers and Traders Trust Company, as 2011 Trustee (the "2011 Trustee") Contemporaneously with the execution of the Series 2011 Indenture, the Issuer loaned the proceeds of the Series 2011 Bonds to the Borrower for paying the costs of the acquisition, construction, renovation, equipping and furnishing of the Borrower's facilities located at 117 North Franklin Street, Hempstead, New York (the "2011 Facility") pursuant to a certain Loan Agreement, dated as of March 1, 2011 (the "Series 2011 Loan Agreement") by and between the Issuer and the Borrower The Issuer has previously issued its Series 2013 Bonds pursuant to an Indenture of Trust, dated as of December 1, 2013, (the "Series 2013 Indenture"), between the Issuer and Manufacturers and Traders Trust Company, as 2013 Trustee (the "2013 Trustee") Contemporaneously with the execution of the Series 2013 Indenture, the Issuer loaned the proceeds of the Series 2013 Bonds to the Borrower for paying the costs of the acquisition, construction, renovation, equipping and furnishing of the Borrower's facilities located at 159 N. Franklin Street, Hempstead, New York (the "2013 Facility") pursuant to a certain Loan Agreement, dated as of December 1, 2013 (the "2013 Loan Agreement" and, together with the 2011 Loan agreement and the Loan Agreement, the "Loan Agreements") by and between the Issuer and the Borrower

As collateral for the Borrower's payment obligations under the Loan Agreement, the 2011 Loan Agreement and the 2013 Loan Agreement, the Borrower will grant mortgage liens on and security interests in the Facility, the 2011 Facility and the 2013 Facility to the Issuer pursuant to (i) a Series 2011 Collateral Mortgage and Security Agreement (the "Series 2011 Collateral Mortgage"), (ii) a Series 2013 Collateral Mortgage and Security Agreement (the "Series 2013 Collateral Mortgage"), and (iii) a Series 2017 Collateral Mortgage and Security Agreement (the "Series 2017 Collateral Mortgage"), each, together with the Series 2011 Collateral Mortgage and the Series 2013 Collateral Mortgage, the "Collateral Mortgages", each dated as of August 1, 2017 and each from the Borrower to the Issuer The Collateral Mortgages will each be assigned by the Issuer to the Trustee, the 2013 Trustee and the 2011 Trustee pursuant to a Series 2011 Assignment of Collateral Mortgage and Security Agreement (the "Series 2011 Assignment of Collateral Mortgage"), a Series 2013 Assignment of Collateral Mortgage and Security Agreement (the "Series 2013 Assignment of Collateral Mortgage"), and a Series 2017 Assignment of Collateral Mortgage and Security Agreement (the "Series 2017 Assignment of Collateral Mortgage"), and together with the Series 2011 Assignment of Collateral Mortgage and the Series 2013 Assignment of Collateral Mortgage, the "Assignment of Collateral Mortgages", each dated August 10, 2017 and each from the Issuer to the Trustee, the 2011 Trustee and the 2013 Trustee, respectively See "SECURITY FOR THE SERIES 2017 BONDS"

Under the First Supplemental Intercreditor Agreement, dated as of August 1, 2017 (the "Intercreditor Agreement") by and among the Borrower, the Custodian, the 2011 Trustee, the 2013 Trustee and the Trustee, the Series 2017 Bonds will be secured equally, ratably and on a parity basis with the Series 2011 Bonds and the 2013 Bonds with respect to the lien on Pledged Revenues under the Loan Agreements and the security provided under the Mortgages See "SECURITY FOR THE SERIES 2017 BONDS – Parity Status, Intercreditor Agreement"

The Bonds are issuable only in fully registered form, without coupons, and when issued, will be registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC") Purchases of beneficial interests in the Series 2017A Bonds will be made in book-entry only form, in the denomination of \$25,000 or \$25,000 plus integral multiples of \$5,000 Purchases of beneficial interests in the Series 2017B Bonds will be made in book-entry only form, in the denomination of \$5,000 or any integral multiple thereof Purchasers of beneficial interests will not receive certificates representing their interest in the Bonds So long as Cede & Co. is the bondowner, as nominee of DTC, references herein to the bondowners or registered owners shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners (as defined herein) of the Bonds. See "THE SERIES 2017 BONDS – Book-Entry Only System" herein

THE SERIES 2017 BONDS ARE SPECIAL OBLIGATIONS OF THE ISSUER AND NEITHER THE STATE OF NEW YORK, NOR ANY POLITICAL SUBDIVISION THEREOF (INCLUDING WITHOUT LIMITATION, THE TOWN OF HEMPSTEAD, NEW YORK) IS OBLIGATED TO PAY, AND NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING AUTHORITY OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF (INCLUDING THE TOWN OF HEMPSTEAD, NEW YORK) IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2017 BONDS THE SERIES 2017 BONDS ARE PAYABLE SOLELY FROM AND ARE SECURED BY REVENUES OF THE ISSUER UNDER THE LOAN AGREEMENT AND OTHER MONIES AVAILABLE THEREFOR AS DESCRIBED HEREIN THE ISSUER HAS NO TAXING AUTHORITY AND THE BORROWER MAY NOT CHARGE TUITION SEE "SECURITY FOR THE SERIES 2017 BONDS" HEREIN.

This cover page contains certain information for quick reference only. It is not a summary of this issue. Purchase of the Series 2017 Bonds involves a high degree of risk and the Series 2017 Bonds are a speculative investment. Investors must read this entire Official Statement to obtain information essential to the making of an informed investment decision, and should give particular attention to the material under the caption "RISK FACTORS."

The Series 2017 Bonds are offered when, as and if issued by the Issuer and received and accepted by the Underwriter and subject to the approval of legality by Nixon Peabody LLP Bond Counsel. Certain legal matters will be passed upon by Ryan, Brennan & Donnelly LLP, Floral Park, New York, as counsel to the Issuer, by Rivkin Radler, LLP, Uniondale, New York, as counsel to the Borrower; and by Harris Beach PLLC, New York, New York, as counsel to the Underwriter Buck Financial Advisors LLC, Englewood, Colorado, is serving as financial advisor to the Borrower It is expected that the Series 2017 Bonds will be available for delivery through the facilities of DTC on or about August 10, 2017

**BAIRD**

**MATURITY SCHEDULE**

**TOWN OF HEMPSTEAD LOCAL DEVELOPMENT CORPORATION**

**\$35,900,000**

**TAX-EXEMPT EDUCATION REVENUE BONDS  
(THE ACADEMY CHARTER SCHOOL PROJECT), SERIES 2017A**

\$2,880,000	Term Bond due February 1, 2027;	Rate: 5.450%;	Yield: 5.450%;	CUSIP: 424685AE5*
\$4,995,000	Term Bond due February 1, 2032;	Rate: 5.890%;	Yield: 5.890%;	CUSIP: 424685AF2*
\$28,025,000	Term Bond due February 1, 2047;	Rate: 6.240%;	Yield: 6.240%;	CUSIP: 424685AG0*

**\$2,685,000**

**TAXABLE EDUCATION REVENUE BONDS  
(THE ACADEMY CHARTER SCHOOL PROJECT), SERIES 2017B**

\$2,685,000	Term Bond due February 1, 2024;	Rate: 6.590%;	Yield: 6.590%;	CUSIP: 424685AH8*
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\* The above-referenced CUSIP numbers have been assigned by an independent company not affiliated with the Issuer, the Borrower, the Trustee or the Underwriter and are included solely for the convenience of the Holders of the Series 2017 Bonds. None of the Issuer, the Borrower, the Trustee or the Underwriter is responsible for the selection or uses of such CUSIP numbers, and no representation is made as to their correctness on the Series 2017 Bonds or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2017 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities.

## NOTICE TO INVESTORS OF THE SERIES 2017 Bonds

Each purchaser, by its purchase of the Series 2017 Bonds or any interest therein, will be deemed to have represented and agreed, to and with the Issuer, the Borrower, the Underwriter and the Trustee as set forth below:

- (i) The Purchaser has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of taxable and tax-exempt obligations, and is capable of evaluating the merits and risks of its investment in the Series 2017 Bonds.
- (ii) The Purchaser understands that the Series 2017 Bonds have not been registered under the Securities Act or under any state securities laws. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Series 2017 Bonds by it, and further acknowledges that any current exemption from registration of the Series 2017 Bonds does not affect or diminish such requirements.
- (iii) The Purchaser is familiar with the conditions, financial and otherwise, of the Borrower, and understands that Borrower may not charge tuition and has no taxing authority, and further understands that the Borrower's primary source of revenue is Education Aid payments provided by the State to charter schools for educating students.
- (iv) The Purchaser understands that the Series 2017 Bonds are special obligations of the Issuer and neither the State of New York, nor any political subdivision thereof (including without limitation, the Town of Hempstead, New York) is obligated to pay, and neither the full faith and credit nor the taxing authority of the State of New York or any political subdivision thereof (including the Town of Hempstead, New York) is pledged to the payment of principal of, premium, if any, or interest on the Series 2017 Bonds. The Purchaser further understands that the Series 2017 Bonds are payable solely from and are secured by revenues of the Issuer under the Loan Agreement and other monies available therefor as described herein.
- (v) The Purchaser acknowledges that it must review this entire Official Statement and the Appendices hereto, including the information relating to the sources of repayment of the Series 2017 Bonds, the Borrower (including financial and operating data) and the Facility. The Purchaser acknowledges that this Official Statement is not guaranteed as to its accuracy or completeness, and does not constitute a representation by the Underwriter.
- (vi) The Purchaser acknowledges that neither the Issuer nor any commissioner, officer or employee thereof takes any responsibility for, and the Purchaser must not rely upon any of such parties, with respect to information appearing anywhere in this Official Statement, other than the information under the captions "THE ISSUER," and "LEGAL MATTERS – Pending And Threatened Litigation – No Proceedings Against the Issuer" (the "Issuer's Portion" of the Official Statement). None of such parties have participated in the preparation of this Official Statement except with respect to the Issuer's Portion of the Official Statement.
- (vii) The Purchaser acknowledges that the purchase of the Series 2017 Bonds involves a high degree of risk and the Series 2017 Bonds are a speculative investment. The Series 2017 Bonds are unrated. The value of the Series 2017 Bonds may fluctuate significantly in the short-term and have a less liquid resale market. The Series 2017 Bonds are also considered predominately speculative with respect to the obligor's continuing ability to make principal and interest payments. See also "RISK FACTORS – Speculative Investment" below. The Series 2017 Bonds should not be purchased by any potential investor who, because of financial condition, investment policies or otherwise, does not desire to assume, or have the ability to bear, the risks inherent in an investment in the Series 2017 Bonds.

*No dealer, salesman, or other person has been authorized to give any information or to make any representation, other than the information contained in this Official Statement, in connection with the offering of the Series 2017 Bonds, and, if given or made, such information or representation must not be relied upon as having been authorized by the Issuer, the Borrower, the Trustee or the Underwriter. The information in this Official Statement is subject to change without notice, and neither the delivery of this Official Statement nor any sale hereunder will, under any circumstances, create any implication that there has been no change in the affairs of the Issuer, the Borrower, the Trustee or the Underwriter since the date hereof. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation*

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## REGARDING USE OF THIS OFFICIAL STATEMENT

This Official Statement is being provided in connection with the sale of the Series 2017 Bonds as referred to herein and may not be reproduced for use, in whole or in part, for any other purpose. The information set forth herein under the captions "THE ISSUER," and "LEGAL MATTERS – Pending And Threatened Litigation – No Proceedings Against the Issuer" has been obtained from the Town of Hempstead Local Development Corporation (the "Issuer"). All other information set forth herein has been obtained from The Academy Charter School (the "Borrower"), The Depository Trust Company, New York, New York ("DTC") and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances or at any time, create any implication that information herein is correct as of any time subsequent to the date of this Official Statement.

No dealer, salesman, or other person has been authorized to give any information or to make any representation, other than the information contained in this Official Statement, in connection with the offering of the Series 2017 Bonds, and, if given or made, such information or representation must not be relied upon as having been authorized by the Issuer, the Borrower, or the Underwriter. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which any person making such offer or solicitation is not qualified to do so, or to any person to whom it is unlawful to make such offer or solicitation.

The Series 2017 Bonds are not being registered with the Securities and Exchange Commission in reliance upon an exemption from the Securities Act of 1933, as amended, nor has the Indenture been qualified under the Trust Indenture Act of 1939, as amended, in reliance upon exemptions contained in such acts. The registration or qualification of the Series 2017 Bonds in accordance with applicable provisions of securities laws of the states in which the Series 2017 Bonds have been registered or qualified and the exemption from registration or qualification in other states cannot be regarded as a recommendation thereof. Neither these states nor any of their agencies have passed upon the merits of the Series 2017 Bonds or the accuracy or completeness of this Official Statement. Any representation to the contrary may be a criminal offense.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER, THE BORROWER, AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY ISSUER. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THESE DOCUMENTS. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2017 Bonds AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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

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## **TOWN OF HEMPSTEAD LOCAL DEVELOPMENT CORPORATION**

\$35,900,000  
TAX-EXEMPT EDUCATION REVENUE BONDS  
(THE ACADEMY CHARTER SCHOOL PROJECT), SERIES 2017A

\$2,685,000  
TAXABLE EDUCATION REVENUE BONDS  
(THE ACADEMY CHARTER SCHOOL PROJECT), SERIES 2017B

### **INTRODUCTION**

#### **General**

The purpose of this Official Statement is to provide certain information concerning the issuance and sale by the Town of Hempstead Local Development Corporation (the “Issuer”) of its \$35,900,000 aggregate principal amount of Tax-Exempt Education Revenue Bonds (The Academy Charter School Project), Series 2017A (the “Series 2017A Bonds”) and its \$2,685,000 aggregate principal amount of Taxable Education Revenue Bonds (The Academy Charter School Project), Series 2017B (the “Series 2017B Bonds” and collectively with the Series 2017A Bonds, the “Series 2017 Bonds”) (the Series 2017 Bonds and any Additional Bonds are referred to collectively as the “Bonds”). The Series 2017 Bonds will be issued pursuant to an Indenture of Trust, dated as of August 1, 2017 (the “Indenture”), by and between the Issuer and Manufacturers and Traders Trust Company, Buffalo, New York, as trustee (the “Trustee”). The Issuer will loan the proceeds of the Series 2017 Bonds to The Academy Charter School, an education corporation (the “Borrower”) organized and existing under the laws of the State of New York (the “State”) and an organization described in Section 501(c)(3) of the Code, pursuant to the terms of a Loan Agreement, dated as of August 1, 2017 (the “Loan Agreement”), by and between the Issuer and the Borrower. Simultaneously with the issuance of the Series 2017 Bonds, the Borrower will execute and deliver to the Issuer (i) a promissory note evidencing the loan by the Issuer to the Borrower of the proceeds of the Series 2017A Bonds, which promissory note will be endorsed by the Issuer, without recourse, to the Trustee for the benefit of the Holders of the Series 2017 Bonds and (ii) a promissory note evidencing the loan by the Issuer to the Borrower of the proceeds of the Series 2017B Bonds, which promissory note will be endorsed by the Issuer, without recourse, to the Trustee for the benefit of the Holders of the Series 2017 Bonds (collectively, the “Promissory Note”).

The offering of the Series 2017 Bonds is made only by way of this Official Statement, that supersedes any other information or materials used in connection with the offer or sale of the Series 2017 Bonds. This Official Statement speaks only as of its date and the information contained herein is subject to change. Capitalized terms used but not defined in this Official Statement have the meanings provided in the Indenture and the Loan Agreement, as summarized in “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS.”

#### **Forward-Looking Statements**

This Official Statement contains statements relating to future results that are forward-looking statements of the type defined in the Private Litigation Reform Act of 1995. When used in this Official Statement, the words “estimate,” “expect,” “project,” “intend,” “anticipate,” “believe,” “may,” “will,” “continue” and similar expressions identify forward-looking statements. Any forward-looking statement is subject to uncertainty and risks that could cause actual results to differ, possibly materially, from those contemplated in such forward-looking statements. Inevitably, some assumptions used to develop forward-looking statements will not be realized or unanticipated events and circumstances may occur. Therefore, investors should be aware that there are likely to be differences between forward-looking statements and actual results, and that those differences could be material.

### **THE ISSUER**

The Issuer was created pursuant to and in accordance with the provisions of the New York Membership Corporation Law as in effect in 1966, as a local development corporation as superseded by Section 1411 of Not-for-Profit Corporation Law of the State of New York (“Act”) for the purpose of promoting the economic welfare of the inhabitants of the Town of Hempstead and promoting, attracting, encouraging and developing economically sound

commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration. The Town of Hempstead, New York (the "Town") is the sole member of the Issuer and the Town as the sole member of the Issuer, acting through the Town Board, appoints the Board of Directors of the Issuer.

As provided in the Act, the Issuer is authorized and empowered to make a loan to the Borrower pursuant to the Loan Agreement; to issue, execute and deliver the Series 2017 Bonds; to secure the Series 2017 Bonds by a pledge of the moneys payable by the Borrower under the Loan Agreement and the Custody Agreement; and to enter into the Bond Documents.

By the Inducement Resolution adopted on May 18, 2017, the Issuer took official action relating to the issuance of the Series 2017 Bonds and determined that, based upon the review by the Issuer of the materials submitted and the representations made by the Borrower relating to the issuance of the Series 2017 Bonds and the Project, the issuance of the Series 2017 Bonds and the Project would not have a "significant impact" or "significant effect" on the environment, within the meaning of the SEQRA Act. The Issuer has held the required public hearings, in compliance with the provisions of the Code, with respect to the issuance of the Series 2017 Bonds, following the timely publication of notice of the hearing. By a resolution adopted on June 22, 2017, and as amended and restated by a resolution adopted July 27, 2017, the Issuer authorized and approved the issuance of the Series 2017 Bonds and the Project. By a Certificate of Approval executed on July 14, 2017 by the Applicable Elected Representative (as defined in the Code), the Supervisor of the Town of Hempstead, New York has approved the issuance of the Series 2017 Bonds and, based upon a review of the materials submitted and the representations made by the Borrower relating to the Project, and has concurred in the Issuer's determination under the SEQRA Act.

The Board of Directors of the Issuer is presently composed of members appointed by the Town of Hempstead. The names and positions of the current members of the Issuer are as follows:

<b>Name*</b>	<b>Position</b>
Arthur Nastre	Chairman
William Hendrick	Vice Chairman
Florestano Girardi	Treasurer
Eric C. Mallette	Secretary
John Ferretti Jr.	Member
Gerilyn Smith	Member

\* There is currently one vacancy on the Board.

The Executive Director and Chief Executive Officer and the Deputy Executive Director and Chief Financial Officer of the Issuer are appointed by the Board of Directors of the Issuer. The Executive Director and Chief Executive Officer of the Issuer is Frederick E. Parola, Esq. and the Deputy Executive Director and Chief Financial Officer of the Issuer is Edith M. Longo.

No covenant or agreement contained in the Indenture, the Loan Agreement or the Series 2017 Bonds shall be deemed to be a covenant or agreement of any member, officer, director, agent, attorney or employee of the Issuer, nor shall any member, officer, director, agent, attorney or employee be liable personally on the Series 2017 Bonds or any other of the aforementioned documents. Moreover, the Issuer has relied on representations of the Borrower regarding the Project and will not independently monitor the Project. Except for information concerning the Issuer in the sections of this Official Statement under the captions "THE ISSUER," and "LEGAL MATTERS – Pending and Threatened Litigation – No Proceedings Against the Issuer," none of the information in this Official Statement has been supplied or verified by the Issuer and the Issuer makes no representation or warranty, express or implied, as to the accuracy or completeness of such information.

The Series 2017 Bonds are special obligations of the Issuer and neither the State of New York, nor any political subdivision thereof (including without limitation, the Town of Hempstead, New York) is obligated to pay and neither the full faith and credit nor the taxing authority of the State of New York or any political subdivision thereof (including the Town of Hempstead, New York) is pledged to the payment of principal of, premium, if any, or interest on the Series 2017 Bonds. The Series 2017 Bonds are payable solely from and are secured by revenues of the Issuer under the Loan Agreement and other monies available therefor as described herein. The Issuer has no taxing authority and the Borrower may not charge tuition. See "SECURITY FOR THE SERIES 2017 Bonds."

## THE BORROWER

The Academy Charter School (the "Borrower") is a New York education corporation, incorporated on February 23, 2009 by the Board of Regents of the University of the State of New York (the "Board of Regents") under Article 56 of the New York Education Law, for the purpose of operating a charter school.

The Borrower initially received its charter contract (as revised or renewed from time-to-time, the "Charter") from the Board of Regents for and on behalf of the New York State Education Department ("NYSED") on February 23, 2009 which expired on February 22, 2014. Prior to the initial charter expiration, the Borrower applied for and received a revision to the Charter to include grade six and to expand maximum allowable enrollment. Pursuant to the Charter revision, the Borrower commenced operation of grade six with the 2013-14 school year. The Borrower applied for renewal of the Charter on August 15, 2013 which was approved on January 27, 2014 and issued on March 3, 2014. In January 2016, the Charter School Institute approved the High School expansion. Currently the Charter is effective through June 30, 2019 and it authorizes the Borrower to operate grades K-12 with a maximum enrollment of 1,550 students. See "APPENDIX B – THE BORROWER – Charter."

The Borrower's authorizer, the State University of New York's Charter Schools Institute ("CSI") issued a letter of good standing for the Borrower, dated July 21, 2017. The good standing Letter provides as follows:

(a) The State University of New York Trustees have not placed the Borrower on probation pursuant to Education Law subdivision 2855(3), or on corrective action pursuant to its Charter Agreement with the State University of New York Trustees. In addition, the State University of New York Trustees are not in the process of revoking the Borrower's charter pursuant to section 2855 of the Education Law.

(b) The Charter Schools Institute's opinion of the Borrower is that as of the date of the Letter of Good Standing, the Borrower is a legally formed New York not-for-profit education corporation in good standing, with all of the rights, powers and obligations of any other duly incorporated New York charter school and is permitted to instruct students in the grades and numbers set forth in its charter agreement.

The Borrower is an organization described under Section 501(c)(3) of Code that is exempt from federal income taxation under Section 501(a) of the Code (except with respect to "unrelated business taxable income" within the meaning of Section 512(a) of the Code) and (b) that is not a "private foundation" as defined in Section 509(a) of the Code. The Borrower operates as a New York not-for-profit corporation and as such is governed by the law applicable to such entities and its articles of incorporation and bylaws. The Borrower's bylaws provide that the Borrower is managed and controlled by a Board of Trustees. For more information see "APPENDIX B – THE BORROWER – Governance and Management."

In addition, the Borrower contracts with Victory Schools, Inc., d/ba Victory Education Partners, New York, New York ("Victory") for services including the management of educational services in all grades offered, budgeting and financial management services, and certain other support-related services. Victory has provided these services to the Borrower since June 2009. For more information, see "APPENDIX B – THE BORROWER – Services Provider."

The Borrower began operating grades K-2 in the 2009-10 school year with 165 students, residing primarily in twelve school districts in Nassau County, New York, the largest of which is the Hempstead School District.

For the 2016-17 school year, there were ten, non-charter public schools serving students in the Hempstead School District that serves the Village of Hempstead within the Town of Hempstead. Of these schools, all served at least one or more grades of grades K-9, with the Borrower being one of the only two charter schools in the Hempstead School District.

Since the 2010-11 school year, the Borrower added a grade in each of the subsequent years as well as expanded classes for existing grades, for a total billable enrollment for the 2016-17 school year of 940 students in grades K-9 and a wait list of 980 students. As part of its current expansion plan consisting of the new High School Facility, the Borrower expects to add grade 10 in the 2017-18 school year, grade 11 in the 2018-19 school year and grade 12 in the 2019-20 school year with grades 9 through 11 to first occupy the new High School Facility in school

year 2018, for a total expected billable enrollment of 1134, 1296 and 1458, in such subsequent school years respectively. For more information, see “APPENDIX B – THE BORROWER – Enrollment.”

## **PLAN OF FINANCE**

The Borrower will use the proceeds of the Series 2017 Bonds for the following purposes: (A) the acquisition, construction, equipping and furnishing of an approximately 112,500 square foot building (five-story plus a basement), including, but not limited to, approximately 77,215 square feet for use as high school classrooms, administrative areas, auditorium, gymnasium and cafeteria and the remaining approximately 35,000 square feet will be used as a new garage and parking area located in the lower level (the “High School Equipment” and the “High School Improvements”); and with the use of the Series 2017B Bonds only, the construction and equipping of an approximately 4,654 square foot addition to a previously existing elementary school for use as four (4) elementary school classrooms and teachers’ restrooms (the “Elementary School Equipment”, and together with the High School Equipment, the “Equipment” and the “Elementary School Improvements” and together with the High School Improvements the “Improvements”), all located on an approximately 1.7 acres of land (the “Land”), which Land is owned by the School and located at Tax Parcel Number 34-291.00-088, consisting of 127 North Franklin Street and 117 North Franklin Street in the Village of Hempstead, Nassau County, New York (collectively, the Improvements, the Equipment and the Land, the “Facility”, the High School Equipment, the High School Improvements and the Land, the “High School Facility” and the Elementary School Equipment, Elementary School Improvements and the Land, the “Elementary School Expansion”); (B) paying capitalized interest on the Series 2017 Bonds during the construction period; (C) funding a debt service reserve, if required, for the Series 2017A Bonds; and (D) paying certain costs of issuance of the Series 2017 Bonds (the “Project”). The High School Facility shall be adjacent to the Elementary School Facility on the Land currently owned by the Borrower. The street address of the High School Facility is expected to be 127 North Franklin Street, Hempstead, Nassau County, New York. The costs of the portion of the Project constituting the Elementary School Expansion in the amount of approximately \$1,000,000 will be paid from the proceeds of the Series 2017B Bonds, provided that if any necessary approvals, consents, certificates or permits in connection therewith are not received or not received in a timely fashion, the Borrower may use such proceeds of the Series 2017B Bonds as contingency amounts for the construction, equipping and furnishing of other components of the Project. Further, the Borrower will use approximately \$500,000 of the proceeds of the Series 2017B Bonds to pay for the costs of the satisfaction of any liens or encumbrances on the Mortgaged Property.

### **The Current School Facilities**

A portion of the proceeds of the Issuer’s Tax-Exempt Education Revenue Bonds (The Academy Charter School Project), Series 2011A, originally issued in the aggregate principal amount of \$10,505,000 and Taxable Education Revenue Bonds (The Academy Charter School Project), Series 2011B, originally issued in the aggregate principal amount of \$235,000 (collectively, the “Series 2011 Bonds”) was used to finance the acquisition, construction, renovation and equipping an approximately 34,540 square foot two-story building located at 117 North Franklin Street, Hempstead, New York (the “Elementary School Facility”), currently utilized by the Borrower as its elementary school. As noted below, as part of the Project, the Borrower is undertaking the Elementary School Expansion.

A portion of the proceeds of the Issuer’s Tax-Exempt Education Revenue Bonds (The Academy Charter School Project), Series 2013A, originally issued in the aggregate principal amount of \$12,970,000 and Taxable Education Revenue Bonds (The Academy Charter School Project), Series 2013B, originally issued in the aggregate principal amount of \$545,000 (collectively, the “Series 2013 Bonds” and together with the Series 2011 Bonds, the “Prior Bonds”) was used to finance the acquisition, design, construction, expansion, renovation, equipping and furnishing of the Borrower’s approximately 67,900 square foot school facilities located at 159 N. Franklin Street, Hempstead, New York (the “Middle School Facility” and together with the Elementary School Facility, the “Current School Facilities”) currently utilized by the Borrower as its middle school.

The Borrower’s Current School Facilities have reached their capacity with the Borrower’s current billable enrollment for the 2016-17 school year of 940 students and cannot accommodate the Borrower’s space needs for its high school under its current expansion plan. See “APPENDIX B – THE BORROWER – Enrollment,” “APPENDIX B – THE BORROWER – Project.”

The construction, renovation and equipping of the Current School Facilities financed with a portion of the proceeds of the Prior Bonds were completed on time, commenced operations as of the beginning of 2012-13 school year with respect to the Elementary School Facility and 2014-15 school year, with respect to the Middle School Facility, respectively, and as planned, and currently accommodate the Borrower's grades K-9.

The School is actively contesting a mechanic's lien filed on premises known and located at 159 North Franklin St., Hempstead, NY, the site of the Middle School. The contractor has sought a lien in the approximate amount of \$1,033,501. That amount does not reflect a waiver filed by the contractor that will reduce the requested lien amount to \$487,858. The lien is being contested in The Nassau County Supreme Court in a proceeding bearing docket number 604520/2016. Further, the Borrower will use approximately \$500,000 of the proceeds of the Series 2017B Bonds to pay for the costs of the satisfaction of any liens or encumbrances on the Mortgaged Property including the referenced mechanic's lien.

### **The New High School Facility and the Elementary School Expansion**

The Borrower is in the process of undertaking an expansion plan, whereby it intends to increase its enrollment by approximately five hundred eighteen (518) students over the next several school years. The Borrower expects that the new High School Facility will house its 9-12 grades. The approximately 77,215 square foot High School Facility will accommodate approximately six hundred (600) students in approximately twenty five (25) general classrooms, in addition to administrative areas and various specialty rooms (music, arts, science, math, library/media), auditorium, gymnasium with locker rooms, cafeteria, kitchen, and associated administrative and storage uses. In addition, approximately 35,000 square feet will be used as a new garage and parking area located in the lower level.

Further, as part of the Project and with the use of the Series 2017B Bonds only, the Borrower is undertaking the Elementary School Expansion effecting the Elementary School Facility, consisting of the construction and equipping of an approximately 4,654 square foot addition to a previously existing elementary school for use as four (4) elementary school classrooms and teachers' restrooms.

### **Construction Contract – Improvements and Equipment**

The Borrower has engaged Combined Resources Consulting and Design, Inc., Garden City, New York ("CRCD") to provide architectural and engineering services with respect to the construction, renovation and equipping of the High School Facility and the Elementary School Expansion. The Borrower has obtained all necessary planning board, zoning board and related approvals and permits for the construction, renovation and equipping of the High School Facility except for a certificate of occupancy and certificate completion that will be issued post-Closing Date. In addition, CRCD prepared plans and specifications for the High School Facility that were submitted to and approved by the Village of Hempstead Department of Buildings as evidenced by a building permit issued on July 28, 2017.

The costs of the portion of the Project constituting the Elementary School Expansion in the amount of approximately \$1,000,000 are included in the Construction Contract and will be paid from the proceeds of the Series 2017B Bonds, provided that if any necessary approvals, consents, certificates or permits in connection therewith are not received or not received in a timely fashion, the Borrower may use such proceeds of the Series 2017B Bonds as contingency amounts for the construction, equipping and furnishing of other components of the Project.

With respect to the construction, renovation and equipping of the High School Facility and the Elementary School Expansion, the Borrower has entered into an agreement (the "Construction Contract") with RFP Construction Inc. (the "Contractor"). The fixed stipulated and guaranteed price for the construction of the High School Facility set forth in the Construction Contract is \$25,000,000, including certain contractor supplied furniture fixtures and equipment for the gymnasium, subject to change order provisions under the Construction Contract.

The Construction Contract provides that the date of substantial completion of the Facility is no later than July 1, 2019 and the Borrower expects to operate the High School Facility beginning with the 2019/2020 school year. The construction budget includes contingency reserves in the amount of \$1,500,000 to pay for construction and design contingencies.

The Borrower expects to spend approximately \$5,000,000 of Bond proceeds on non-contractor supplied furniture fixtures and equipment for the High School Facility, that is not included in the fixed stipulated and guaranteed price for the construction of the High School Facility under the Construction Contract.

### **Project Monitoring**

The construction, renovation and equipping, as applicable, of the High School Facility and the Elementary School Expansion is anticipated to be administered as follows: Pursuant to an Architecture Agreement between the Borrower and CRCD (the "Architecture Agreement"), CRCD, as the architect for the construction project, shall review all requisitions for progress payments submitted by all contractors and subcontractors. CRCD shall certify that the quantity of work completed is accurate and that the quality of the contractor's/subcontractor's work has been performed in substantial compliance with the contract documents.

Pursuant to a Paymaster and Representative Agreement (the "Paymaster Agreement"), the Borrower has retained Mr. Fredric Pocci, PE, an independent construction consultant (the "Paymaster") to independently approve all payments to the general contractor and all subcontractors after simultaneous exchange of said payments and lien waivers. Pursuant to the Paymaster Agreement, prior to release of any payment, the Paymaster shall verify that all contractors, subcontractors, material suppliers or laborers have provided lien waivers for all payments already made and, to the extent allowable by the laws of the State, conditional lien waivers for any current payment to be made. If the Paymaster approves a requisition, the Paymaster shall forward the requisition to CRCD and the Borrower for their approval. Upon approval of CRCD and the Borrower, the Paymaster shall forward the approved requisition to the Trustee to effectuate such payment to the contractor, subcontractor, material supplier or laborer in accordance with the approved requisition from the appropriate fund pursuant to the Indenture. No payment shall be made without the written approval of the Paymaster, CRCD and the Borrower. Under the Paymaster Agreement, the Paymaster shall assist in the coordination and implementation of the construction project by monitoring construction progress, verifying compliance with the construction contract documents prepared by CRCD, monitoring the construction budget and schedule and assisting in value engineering decisions to assist in cost control.

The Paymaster has more than 40 years of experience in management, engineering, construction and renovation and has served as Paymaster and Executive Director for the North Hudson Sewer Authority for more than 24 years and Assistant Commissioner of Operations for the New York City Department of Buildings (NYCDOB) responsible for the NYCDOB field inspectors and plan examiners. The Paymaster has acted in an identical capacity in connection with the construction and renovation of the Current School Facilities financed with a portion of the Series 2011 Bond and the Series 2013 Bond proceeds.

A complete copy of the Construction Contract, Architecture Contract, Paymaster and Representative Agreement and the qualifications of the Paymaster is available upon request as provided under "MISCELLANEOUS – Additional Information" below. See "RISK FACTORS - Construction Costs and Completion of Construction" and "APPENDIX B – THE BORROWER – Project Design Construction and Renovation."

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## SOURCES AND USES OF FUNDS

The following table sets forth anticipated sources and uses of funds in connection with the plan of finance described above:

**TABLE 1: SOURCES AND USES OF FUNDS**

<b>Sources</b>	
Par Amount of Series 2017A Bonds	\$35,900,000.00
Par Amount of Series 2017B Bonds	2,685,000.00
<b>TOTAL</b>	<u><u>\$38,585,000.00</u></u>

<b>Uses</b>	
Design, Construction and Renovation and Equipping of the Facility	\$30,007,825.68
Capitalized Interest	3,505,878.82
Lien Reserve	500,000.00
Series 2017A Debt Service Reserve Fund Deposit	2,933,765.50
Costs of Issuance, Including Underwriter's Discount	1,637,530.00
<b>TOTAL</b>	<u><u>\$38,585,000.00</u></u>

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## DEBT SERVICE REQUIREMENTS\*

Set forth in the following table are the aggregate debt service requirements for the Series 2011, Series 2013 and Series 2017 Bonds.

<u>Period Ending</u>	<u>Series 2011 and Series 2013 Bonds</u>		<u>Series 2017 Bonds</u>		<u>Aggregate Debt Service</u>
	<u>Principal &amp; Interest</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	
6/30/2018	\$2,151,418	-	\$1,129,012	\$1,129,012	\$3,280,429
6/30/2019	2,157,855	-	2,376,867	2,376,867	4,534,722
6/30/2020	2,151,648	\$ 555,000	2,376,867	2,931,867	5,083,515
6/30/2021	2,153,470	590,000	2,340,293	2,930,293	5,083,763
6/30/2022	2,152,908	630,000	2,301,412	2,931,412	5,084,319
6/30/2023	2,154,960	675,000	2,259,895	2,934,895	5,089,855
6/30/2024	2,154,215	715,000	2,215,412	2,930,412	5,084,627
6/30/2025	2,155,703	760,000	2,173,766	2,933,766	5,089,468
6/30/2026	2,154,010	800,000	2,132,346	2,932,346	5,086,356
6/30/2027	2,154,138	840,000	2,088,746	2,928,746	5,082,883
6/30/2028	2,155,673	890,000	2,042,966	2,932,966	5,088,638
6/30/2029	2,153,233	940,000	1,990,545	2,930,545	5,083,777
6/30/2030	2,156,818	995,000	1,935,179	2,930,179	5,086,996
6/30/2031	2,150,633	1,055,000	1,876,573	2,931,573	5,082,206
6/30/2032	2,155,060	1,115,000	1,814,434	2,929,434	5,084,494
6/30/2033	2,153,923	1,180,000	1,748,760	2,928,760	5,082,683
6/30/2034	2,152,220	1,255,000	1,675,128	2,930,128	5,082,348
6/30/2035	2,154,540	1,335,000	1,596,816	2,931,816	5,086,356
6/30/2036	2,155,088	1,420,000	1,513,512	2,933,512	5,088,600
6/30/2037	2,153,480	1,505,000	1,424,904	2,929,904	5,083,384
6/30/2038	2,154,305	1,600,000	1,330,992	2,930,992	5,085,297
6/30/2039	2,151,768	1,700,000	1,231,152	2,931,152	5,082,920
6/30/2040	2,155,455	1,805,000	1,125,072	2,930,072	5,085,527
6/30/2041	2,154,190	1,920,000	1,012,440	2,932,440	5,086,630
6/30/2042	1,172,560	2,040,000	892,632	2,932,632	4,105,192
6/30/2043	1,170,650	2,165,000	765,336	2,930,336	4,100,986
6/30/2044	1,173,385	2,300,000	630,240	2,930,240	4,103,625
6/30/2045	-	2,445,000	486,720	2,931,720	2,931,720
6/30/2046	-	2,595,000	334,152	2,929,152	2,929,152
6/30/2047	-	2,760,000	172,224	2,932,224	2,932,224
<b>Totals:</b>	<u>\$55,213,300</u>	<u>\$38,585,000</u>	<u>\$46,994,388</u>	<u>\$85,579,388</u>	<u>\$140,792,688</u>

\*Totals may not add due to rounding.

## THE SERIES 2017 BONDS

The following is a summary of certain provisions of the Series 2017 Bonds and should not be considered a full statement thereof. Reference is made to the Indenture (including the form of Series 2017A Bond and Series 2017B Bond) for the detailed provisions thereof and the discussion herein is qualified by such reference.

### General

The Series 2017 Bonds are dated the date of delivery. The Series 2017 Bonds mature on February 1 of the years and bear interest at the rates set forth on the inside front cover page hereof. The Series 2017A Bonds are issuable in the form of fully registered Bonds without coupons in minimum denominations of \$25,000 or \$25,000 plus integral multiples of \$5,000. The Series 2017B Bonds are issuable in the form of fully registered Bonds without coupons in minimum denominations of \$5,000 or integral multiples thereof. The Series 2017 Bonds will bear interest, computed on the basis of a 360 day year of twelve 30-day months, from the date of delivery, payable on February 1 and August 1 of each year, commencing on February 1, 2018 (each a “Debt Service Payment Date”).

Interest on Series 2017 Bonds due on any Debt Service Payment Date shall be payable to the Owner in whose name each Bond is registered at the close of business on the Record Date with respect to such Debt Service Payment Date by (1) check mailed on the Debt Service Payment Date to the Owner or (2) by wire transfer on the Debt Service Payment Date to each Owner of not less than \$500,000 in aggregate principal amount of Series 2017 Bonds, upon written notice provided by each Owner to the Trustee not later than five (5) days prior to the Record Date for such Debt Service Payment Date, except that payment of interest on redemption of any Series 2017 Bonds shall be made only upon presentation and surrender of such Bond as provided in the Indenture, irrespective of any transfer or exchange of such Series 2017 Bond subsequent to such Record Date and prior to such Debt Service Payment Date, unless the Issuer shall default in the payment of interest due on such Debt Service Payment Date. In the event of any such default, such defaulted interest shall be payable to the Person in whose name such Bond is registered at the close of business on a special record date for the payment of such defaulted interest established by notice mailed by or on behalf of the Issuer to the Owners of Series 2017 Bonds not less than fifteen (15) days preceding such special record date. Such notices shall be mailed to the Persons in whose name the Series 2017 Bonds are registered at the close of business on the fifth (5th) day preceding the date of mailing. Payment of interest on Series 2017 Bonds by mail will be made to the registered address of the Person entitled thereto.

Payment of the principal and, in the case of any Series 2017 Bonds redeemed prior to maturity, payment of the Redemption Price, if any, and interest accrued to the redemption date, shall be made, upon presentation and surrender at the principal corporate trust office of the Trustee, or at the office designated for such payment by any successor trustee or paying agent or at such other place as may be agreed upon in advance by the Trustee and the Owner of a Bond. The principal, Redemption Price of, if any, and interest on the Bonds are payable in lawful money of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts.

### Prior Redemption

#### Optional Redemption

The Series 2017A Bonds are subject to redemption by the Issuer, at the option of the Borrower, in whole at any time or in part on any Interest Payment Date on or after February 1, 2027, at the Redemption Price of 100% (expressed as a percentage of principal amount) plus accrued interest to the Redemption Date. The Borrower may direct such optional redemption of the Series 2017A Bonds only if the Borrower shall have prepaid an amount under the Loan Agreement and the Promissory Note equal to the Redemption Price of the Series 2017A Bonds to be redeemed.

The Series 2017B Bonds are not subject to redemption prior to maturity.

#### Sinking Fund Installment Redemption

The Series 2017A Bonds are subject to mandatory redemption in part commencing on February 1, 2024 by lot by operation of Sinking Fund Payments at a Redemption Price equal to the principal amount of the Series 2017A

Bonds to be redeemed plus accrued interest to the Redemption Date. The amounts and due dates of the Sinking Fund Payments for the Series 2017A Bonds are set forth in the following table:

Sinking Fund Payment Date  
Term Bond Maturing February 1, 2027

February 1	Amount
2024	\$480,000
2025	760,000
2026	800,000
2027*	840,000

Sinking Fund Payment Date  
Term Bond Maturing February 1, 2032

February 1	Amount
2028	\$ 890,000
2029	940,000
2030	995,000
2031	1,055,000
2032*	1,115,000

Sinking Fund Payment Date  
Term Bond Maturing February 1, 2047

February 1	Amount
2033	\$1,180,000
2034	1,255,000
2035	1,335,000
2036	1,420,000
2037	1,505,000
2038	1,600,000
2039	1,700,000
2040	1,805,000
2041	1,920,000
2042	2,040,000
2043	2,165,000
2044	2,300,000
2045	2,445,000
2046	2,595,000
2047*	2,760,000

\*Final Maturity

The Series 2017B Bonds are subject to mandatory redemption in part commencing on February 1, 2020 by lot by operation of Sinking Fund Payments at a Redemption Price equal to the principal amount of the Series 2017B Bonds to be redeemed plus accrued interest to the Redemption Date. The amounts and due dates of the Sinking Fund Payments for the Series 2017B Bonds are set forth in the following table:

Sinking Fund Payment Date  
Term Bond Maturing February 1, 2024

February 1	Amount
2020	\$555,000
2021	590,000
2022	630,000
2023	675,000
2024*	235,000

\*Final Maturity

### **Extraordinary Redemption**

The Series 2017 Bonds are subject to extraordinary mandatory redemption prior to maturity in whole or in part at any time, without premium or penalty, at a Redemption Price equal to 100% of the principal amount thereof, plus interest accrued to the Redemption Date upon the occurrence of any one of the following events:

(i) the Facility or any material portion of the Facility shall have been damaged or destroyed to such extent that, in the opinion of an Authorized Representative of the Borrower (expressed in a certificate filed with the Issuer and the Trustee within sixty (60) days after such damage or destruction), (a) the Facility or any such portion of the Facility cannot be reasonably restored within a period of six (6) consecutive months after such damage or destruction to the condition thereof immediately preceding such damage or destruction, (b) the Borrower is thereby prevented or is reasonably expected to be thereby prevented from carrying on its normal operations within the Facility or such portion of the Facility for a period of six (6) consecutive months after such damage or destruction, or (c) the cost of restoration of the Facility or such portion of the Facility would exceed the Net Proceeds of insurance carried thereon; or

(ii) title to, or the use of, all or any material part of the Facility shall have been taken by Condemnation so that in the opinion of an Authorized Representative of the Borrower (expressed in a certificate filed with the Issuer and the Trustee within sixty (60) days after the date of such taking), the Borrower is thereby prevented from carrying on its normal operations therein for a period of six (6) consecutive months after such taking.

### **Mandatory Taxability Redemption**

The Series 2017A Bonds shall be redeemed in whole as soon as practicable after the occurrence of an Event of Taxability and the receipt by the Trustee of written notice from any Owner or the School of the occurrence of an Event of Taxability (but in no event later than one hundred twenty (120) days following the date a Responsible Officer of the Trustee is notified of an Event of Taxability) at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date.

### **Notice of Redemption**

When Bonds are to be redeemed pursuant to the Indenture, the Trustee shall give notice of the redemption of the Bonds in the name of the Issuer stating: (i) the Bonds to be redeemed; (ii) the Redemption Date; (iii) that such Bonds will be redeemed at the Office of the Trustee; (iv) that on the Redemption Date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, together with interest accrued to the Redemption Date; and (v) that from and after the Redemption Date interest thereon shall cease to accrue.

Notice of redemption required by the Indenture shall be given by mailing at least thirty (30) days and not more than sixty (60) days prior to such Redemption Date to the Owner of each Bond to be redeemed at the address shown on the registration books; provided, however, that the failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceeding for the redemption of Bonds.

If notice of redemption shall have been given as aforesaid, the Bonds of such Series called for redemption shall become due and payable on the redemption date, provided, however, that with respect to any optional redemption of the Series 2017A Bonds, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2017A Bonds to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem the Series 2017A Bonds. In the event that such notice of optional redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. If a notice of optional redemption shall be unconditional, or if the conditions of a conditional notice of optional redemption shall have been satisfied, then upon presentation and surrender of the Series 2017A Bonds so called for redemption at the place or places of payment, such Series 2017A Bonds shall be redeemed.

### **Mutilated, Lost, Stolen or Destroyed Bonds**

In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and, upon its request, the Trustee shall authenticate and deliver, a new Bond of like maturity, series interest rate and principal amount and bearing the same number (or such other number as the Trustee shall permit) as the mutilated, destroyed, lost or stolen Bond, in exchange for the mutilated Bond, or in substitution for the Bond so destroyed, lost or stolen. In every case of exchange or substitution, the applicant shall furnish to the Issuer and to the Trustee (i) such security or indemnity as may be required by them to hold each of them harmless from all risks, however remote and (ii) evidence to their satisfaction of the mutilation, destruction, loss or theft of the applicant's Bond and of the ownership thereof. Upon the issuance of any Bond upon such exchange or substitution, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees, of the Issuer or the Trustee. In case any Bond which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Issuer may, instead of issuing a Bond in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond) if the applicant for such payment shall furnish to the Issuer and to the Trustee such security or indemnity as they may require to hold them harmless and evidence to the satisfaction of the Issuer and the Trustee of the mutilation, destruction, loss or theft of such Bond and of the ownership thereof.

All Bonds shall be held and owned upon the express condition that the above provisions are exclusive, with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds and shall preclude all other rights or remedies, notwithstanding any law or statute existing or hereinafter enacted to the contrary.

### **Negotiability; Transfers and Exchanges of Bonds**

All Bonds shall be negotiable, subject to the provisions for registration and transfer contained in the Indenture and in the Bonds.

So long as any Bonds shall remain Outstanding, the Issuer shall maintain, at the Office of the Trustee, books for the registration and transfer of Bonds. The Trustee is the Paying Agent for the Issuer for the purpose of registering and making transfers on such registration books. The Trustee, as Paying Agent, shall register in such books and permit to be transferred thereon, under such reasonable regulations as the Trustee may prescribe, any Bond entitled to registration or transfer.

Bonds shall be transferable only on the books of the Issuer, upon surrender thereof at the Office of the Trustee, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or his attorney duly authorized in writing. Upon the transfer of any registered Bond, the Issuer shall issue in the name of the transferee a new Bond or Bonds of the same aggregate principal amount and maturity and rate of interest as the surrendered Bond.

The Issuer, the Trustee and any Paying Agent may deem and treat the Person in whose name any Bond shall be registered upon the books of the Issuer as the absolute Owner thereof, whether such Bond shall be overdue or not for the purpose of receiving payment of the principal or Redemption Price and, except as otherwise provided in the Indenture, interest on such Bond and for all other purposes. All such payments so made to any such registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability of the Issuer upon such Bond to the extent of the sum or sums so paid. Neither the Issuer, the Trustee nor any Paying Agent shall be affected by any notice to the contrary.

In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Issuer shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of the Indenture. All Bonds surrendered in any exchanges or transfers shall forthwith be cancelled in accordance with the provisions of the Indenture. For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for (i) any tax, fee or other governmental charge required to be paid with respect to the delivery of definitive Bonds in exchange for temporary Bonds, (ii) the cost of preparing each new Bond and (iii) any other expenses of the Issuer or the Trustee incurred in connection therewith.

Neither the Issuer nor the Trustee shall be obligated to exchange or transfer any Bond during the ten (10) days next preceding the date of the first mailing of notice of such redemption.

## Book-Entry Only System

The following description of the procedures and record keeping with respect to beneficial ownership interests in the Bonds, payment of interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interests in the Bonds and other related transactions by and between DTC, DTC Participants and Beneficial Owners is based on certain information furnished by DTC. Accordingly, neither the Issuer, the Borrower, the Underwriter nor the Trustee makes any representations concerning these matters.

The Depository Trust Company (“DTC”), New York, New York will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues and money market instruments (from over 100 countries) that DTC's participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, Redemption Price, and interest payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name", and will be the responsibility of such Participant and not of DTC, the Trustee, the Borrower or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or the Trustee, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

The Trustee and the Issuer may treat DTC (or its nominee) as the sole and exclusive registered Owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, giving any notice permitted or required to be given to registered owners, registering the transfer of the Bonds, obtaining consent or other action to be taken by registered owners and for all other purposes whatsoever. Conveyance of notices and other communications by DTC to Participants, by DTC to Indirect Participants and by Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory and regulatory requirements as may be in effect from time to time.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF ANY DTC SERIES OF BONDS AS NOMINEE OF DTC, REFERENCES HEREIN TO THE HOLDERS OF SUCH DTC SERIES OF BONDS SHALL MEAN CEDE & CO. AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF SUCH SERIES OF BONDS.

NEITHER THE ISSUER, THE BORROWER NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO THE PARTICIPANTS OR THE BENEFICIAL OWNERS WITH RESPECT TO (1) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY PARTICIPANT, (2) THE PAYMENT BY DTC OR ANY PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT, SINKING FUND INSTALLMENT FOR, REDEMPTION PRICE OF OR INTEREST ON THE BONDS; (3) THE DELIVERY BY DTC OR ANY PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE INDENTURE TO BE GIVEN TO HOLDERS OF BONDS; OR (4) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF BONDS.

DTC may discontinue providing its service with respect to the Bonds at any time by giving notice to the Trustee and the Issuer and discharging its responsibilities with respect thereto under applicable law, or the Issuer may terminate its participation in the system of book-entry transfer through DTC at any time by giving notice to DTC. In either event, the Issuer may retain another securities depository for the Bonds or may authenticate and deliver bonds in the form of fully registered bond certificates in accordance with instructions from DTC or its successor. If the Issuer delivers such bond certificates, principal of the Bonds, and any premium, if applicable, would be payable in lawful money of the United States of America at such office as may be designated by the Issuer and interest on the Bonds will be payable by wire transfer or by check mailed to the respective addresses of the registered owners thereof as shown on the registration books of the Issuer as of the close of business on the last day of the calendar month preceding the applicable interest payment date.

## CHARTER SCHOOL FUNDING IN THE STATE OF NEW YORK

This section provides a brief overview of New York State's current system for funding charter schools. Prospective purchasers of the Series 2017 Bonds should note that the overview contained below and the summary of relevant New York Code provisions noted by cross-reference are provided for the convenience of prospective purchasers but are not and do not purport to be comprehensive. Additional information regarding various aspects of charter school funding in New York is available on various State-maintained websites and through other publicly available sources. Potential purchasers should note that the law applicable to charter schools in New York has developed over time and is subject to further changes in the future. See "RISK FACTORS – Future Changes to Charter School Laws."

### General

Charter schools are eligible to receive funds from State, federal and private sources, although the majority of charter school funding comes from the State. The principal source of charter school funding in New York is "Charter School Basic Tuition" which is paid by the school district of the residence of the students attending the charter schools. The enrollment of students attending charter schools is included in the enrollment, attendance, membership and, if applicable, count of students with disabilities of the school district in which the pupil resides. The Charter School Basic Tuition paid by the school district is determined by increasing 100% of the "Expense Per Pupil" for the school district for the year prior to the "base year" by the percentage in the State total "Approved Operating Expense" from two years prior to the base year to the base year. In addition, school districts pay to charter schools any federal or state aid attributable to a student with a disability attending the charter school in proportion to the level of services for such student that the charter school provides directly or indirectly. This amount may be reduced pursuant to an agreement between the school district and the charter school as set forth in the charter. In the event the school district fails to make the payments required under New York law, the State comptroller is directed to deduct from any State funds which become due to such school district an amount equal to the unpaid obligation, which the comptroller will then pay to the charter school. See "APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW – CHARTER SCHOOL FUNDING."

### Charter School Basic Tuition

Charter School Basic Tuition is calculated according to a series of statutory formulae, which are detailed and complex. By way of overview, a general description of certain of the main Charter School Basic Tuition funding formulas is provided in the paragraphs that follow. Generally, a charter school's Charter School Basic Tuition is defined as the school district's "Expense Per Pupil" for the year prior to the "base year" (i.e., the school year immediately preceding the current year) increased by the percentage in the state total "Approved Operating Expense" from two years prior to the base year to the base year. The calculation for Expense Per Pupil is a function of Approved Operating Expense for the year prior to the base year divided by the sum, computed using year prior to the base year pupil counts, of: (i) "Total Aidable Pupil Units" and (ii) "Weighted Pupils With Disabilities." See "APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW – CHARTER SCHOOL FUNDING – Charter School Basic Tuition."

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

#### Adjusted Average Daily Attendance

For purposes of computing Adjusted Average Daily Attendance, the average daily attendance of public school pupils in a full-day kindergarten and grades 1-12 is counted as the basic unit, with the attendance of such pupils in one-half day kindergartens counted as one-half of such basic unit and the attendance of such pupils in grades 7-12 counted as one and one-quarter of such base unit. The sum of all such units of attendance is the Adjusted Average Daily Attendance. Adjusted Average Daily Attendance is calculated by: (i) determining the number of religious holidays which fall on a school day within a school year according to regulations established by the commissioner; (ii) deducting the aggregate attendance on such religious holidays from the total aggregate

attendance, by grade level; (iii) deducting such religious holidays from the total number of days of session, by grade level; and (iv) computing the adjusted average daily attendance for the school year.

### **Enrollment Index**

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

### **Additional Aidable Pupil Units**

Additional Aidable Pupil Units is the sum of: (i) the attendance of summer session pupils multiplied by 12%, and (ii) the Weighted Pupils With Special Education Needs.” Weighted Pupils With Disabilities is calculated as the attendance of pupils with disabilities who have been determined by a school district committee on special education to require any of the following types and levels of programs or services, and who receive such programs and services from the school district of attendance during the base year, multiplied by a special services weighting determined as follows:

- (i) for placement for 60% or more of the school day in a special class, or home or hospital instruction for a period of more than sixty days, or special services or programs for more than 60% of the school day, the special services weighting is 170%;
- (ii) for placement for 20% or more of the school week in a resource room or special services or programs including related services required for 20% or more of the school week, or in the case of pupils in grades 7-12 or a multi-level middle school program or in the case of pupils in grades 4-6 in an elementary school operating on a period basis, the equivalent of five periods per week, but not less than the equivalent of 180 minutes in a resource room or in other special services or programs including related services, or for at least two hours per week of direct or indirect consultant teacher services, the special services weighting is 90%.

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

In addition to the Charter School Basic Tuition, school districts are required to pay directly to charter schools any federal or state aid attributable to a student with a disability attending the charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. See “APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW – CHARTER SCHOOL FUNDING – Financing of Charter Schools.”

State aid attributable to a student with a disability attending a charter school is calculated as the sum of: (i) “excess cost aid” payable to a public school district pursuant to the Education Law based on the resident weighted enrollment in the charter school of pupils with disabilities receiving special services or programs provided directly or indirectly by the charter school in the current school year; and (ii) any apportionment payable to such public school district pursuant to the Education Law that is based on the cost of special services or programs provided directly or indirectly by the charter school to such pupil in the current school year. “Excess cost aid” is calculated as the product of: (i) excess cost aid per pupil calculated pursuant to the Education Law; (ii) the proportion of the weighting attributable to the student's level of service provided directly or indirectly by the charter school pursuant to the Education Law; and (iii) the student's enrollment in such charter school in the current school year. See “APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW – CHARTER SCHOOL FUNDING – Public School District Payments to Charter Schools.”

Federal aid attributable to a student with a disability attending a charter school is calculated as follows:

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

Payments for federal or state aid attributable to a student with a disability to charter schools must be made by the school district in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. “APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW – CHARTER SCHOOL FUNDING – Financing of Charter Schools.”

#### **Public School Payments to Charter Schools**

The Charter School Basic Tuition is set annually in June. School districts are required to pay no later than the first business day of July, September, November, January, March and May the appropriate payment amounts as specified in the Education Law relating to the Charter School Basic Tuition. The payments are made in equal installments, adjusted for any supplemental payments due or overpayments to be recovered for the prior school year. See “APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW – CHARTER SCHOOL FUNDING – Financial Obligations of Charter Schools, Public School Districts and Education Department.”

### **SECURITY FOR THE SERIES 2017 BONDS**

#### **General**

The principal or Redemption Price of, and interest on the Series 2017 Bonds are payable solely from (i) the moneys payable by the Borrower under the Loan Agreement and (ii) all moneys and obligations which are deposited or required to be deposited in the Bond Fund, the Project Fund, or any other fund established under the Indenture (except the Rebate Fund).

Pursuant to the Indenture, the Issuer will pledge and assign to the Trustee a security interest in certain moneys due or to become due, and certain other rights and remedies of the Issuer, under or arising out of the Loan Agreement (except for certain rights specially reserved to the Issuer, the “Unassigned Rights”). The Borrower's obligation to make payments under the Loan Agreement is an unconditional obligation of the Borrower. Notwithstanding anything to the contrary, the following amounts are not pledged and are not subject to the Lien of the Indenture, and such amounts do not secure any amount payable on the Bonds: (i) amounts held by the Custodian pursuant to the terms of the Custody Agreement, and (ii) amounts held in the Rebate Fund.

The Series 2017 Bonds shall be equally and ratably secured under the Indenture with the Issuer's Series 2011 Bonds, 2013 Bonds and all other Series of Additional Bonds, if any, without preference, priority or distinction of any Bond over any other Bonds except as expressly provided in or permitted by the Indenture.

#### **Special Obligations; Limited Resources**

The Series 2017 Bonds are special obligations of the Issuer and are payable solely from the revenues, receipts and other payments derived from the Loan Agreement and the Indenture. Payments pursuant to the Loan

Agreement are required to be made by the Borrower directly to the Trustee and to be deposited in a separate Bond Fund held by the Trustee for the payment of the principal of, redemption premium, if any, and interest on the Series 2017 Bonds.

THE SERIES 2017 BONDS ARE NOT OBLIGATIONS OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF (INCLUDING, WITHOUT LIMITATION, THE TOWN OF HEMPSTEAD, NEW YORK), AND NEITHER THE STATE OF NEW YORK NOR ANY POLITICAL SUBDIVISION THEREOF (INCLUDING, WITHOUT LIMITATION, THE TOWN OF HEMPSTEAD, NEW YORK) SHALL BE LIABLE THEREON. NEITHER THE AGENTS, OFFICERS, MEMBERS OR EMPLOYEES OF THE ISSUER OR ANY PERSON EXECUTING THE SERIES 2017 BONDS SHALL BE LIABLE PERSONALLY OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE THEREOF.

#### **Parity Status; Intercreditor Agreement**

As noted, the Series 2017 Bonds shall be equally and ratably secured under the Indenture with the Series 2011 Bonds and the 2013 Bonds.

In order to further secure the payment of the Series 2017 Bonds, the Borrower will grant mortgage liens on and security interests in the Facility to the Issuer pursuant to (i) a Building Loan Mortgage and Security Agreement (the "Building Loan Mortgage"), and (ii) a Project Loan Mortgage and Security Agreement (the "Project Loan Mortgage"), each dated as of August 1, 2017 (collectively, the "Mortgages"), and each from the Borrower to the Issuer. The Mortgages will each be assigned by the Issuer to the Trustee pursuant to an Assignment of Building Loan Mortgage and Security Agreement and an Assignment of Project Loan Mortgage, each dated August 10, 2017 (collectively, the "Assignments" ), each from the Issuer to the Trustee.

The Issuer has previously issued its Series 2011 Bonds pursuant to an Indenture of Trust, dated as of March 1, 2011 (the "Series 2011 Indenture"), between the Issuer and Manufacturers and Traders Trust Company, as 2011 Trustee (the "2011 Trustee"). Contemporaneously with the execution of the Series 2011 Indenture, the Issuer loaned the proceeds of the Series 2011 Bonds to the Borrower for paying the costs of the acquisition, construction, renovation, equipping and furnishing of the Borrower's facilities located at 117 North Franklin Street, Hempstead, New York (the "2011 Facility") pursuant to a certain Loan Agreement, dated as of March 1, 2011 (the "Series 2011 Loan Agreement") by and between the Issuer and the Borrower.

The Issuer has previously issued its Series 2013 Bonds pursuant to an Indenture of Trust, dated as of December 1, 2013, (the "Series 2013 Indenture"), between the Issuer and Manufacturers and Traders Trust Company, as 2013 Trustee (the "2013 Trustee"). Contemporaneously with the execution of the Series 2013 Indenture, the Issuer loaned the proceeds of the Series 2013 Bonds to the Borrower for paying the costs of the acquisition, construction, renovation, equipping and furnishing of the Borrower's facilities located at 159 N. Franklin Street, Hempstead, New York (the "2013 Facility"). pursuant to a certain Loan Agreement, dated as of December 1, 2013 (the "Series 2013 Loan Agreement") by and between the Issuer and the Borrower.

In connection with the issuance of the Series 2017 Bonds, the Borrower, Manufacturers and Traders Trust Company, as Custodian (the "Custodian"), the Trustee and the 2011 Trustee and the 2013 Trustee, will execute and deliver a certain Second Amended and Restated Custody Agreement, dated as of August 1, 2017 (the "Second Amended and Restated Custody Agreement"). Pursuant to the Second Amended and Restated Custody Agreement, the Borrower will cause payments of Education Aid due to the Borrower from the School Districts named in the Second Amended and Restated Custody Agreement to be delivered to the Custodian, and the Custodian will in turn make transfers of certain moneys respectively, to the Trustee, the 2011 Trustee and the 2013 Trustee for deposit on parity with the Series 2011 Indenture, the Series 2013 Indenture and this Series 2017 Indenture, all as set forth in the respective Series 2011 Indenture, Series 2013 Indenture and this Series 2017 Indenture. See "APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE CUSTODY AGREEMENT."

As collateral for the Borrower's payment obligations under the Loan Agreement, the 2011 Loan Agreement and the 2013 Loan Agreement, the Borrower will grant mortgage liens on and security interests in the Facility, the 2011 Facility and the 2013 Facility to the Issuer pursuant to (i) a Series 2011 Collateral Mortgage and

Security Agreement (the “Series 2011 Collateral Mortgage”); (ii) a Series 2013 Collateral Mortgage and Security Agreement (the “Series 2013 Collateral Mortgage”); and (iii) a Series 2017 Collateral Mortgage and Security Agreement (the “Series 2017 Collateral Mortgage”; and, together with the Series 2011 Collateral Mortgage and the Series 2013 Collateral Mortgage, the “Collateral Mortgages”), each dated as of August 1, 2017 and each from the Borrower to the Issuer. The Collateral Mortgages will each be assigned by the Issuer to the Trustee, the 2013 Trustee and the 2011 Trustee pursuant to a Series 2011 Assignment of Collateral Mortgage and Security Agreement (the “Series 2011 Assignment of Collateral Mortgage”), a Series 2013 Assignment of Collateral Mortgage and Security Agreement (the “Series 2013 Assignment of Collateral Mortgage”), and a Series 2017 Assignment of Collateral Mortgage and Security Agreement (the “Series 2017 Assignment of Collateral Mortgage”; and, together with the Series 2011 Assignment of Collateral Mortgage and the Series 2013 Assignment of Collateral Mortgage, the “Assignment of Collateral Mortgages”), each dated August 10, 2017 and each from the Issuer to the Trustee, the 2011 Trustee and the 2013 Trustee, respectively.. See “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE MORTGAGE.”

In connection with the issuance of the Series 2013 Bonds, the Borrower, the Custodian with respect to the 2013 Bonds and the 2011 Bonds, the 2011 Trustee, and the 2013 Trustee entered into an Intercreditor Agreement, dated as of December 1, 2013 (the “2013 Intercreditor Agreement”). In connection with the issuance of the Series 2017 Bonds, the Borrower, the Custodian, the Custodian with respect to the 2013 Bonds and the 2011 Bonds, the 2011 Trustee, the 2013 Trustee and the Trustee will enter into the First Supplemental Intercreditor Agreement, dated as of August 1, 2017 (the 2013 Intercreditor Agreement as so supplemented, the “Intercreditor Agreement”). Under the Intercreditor Agreement, the parties acknowledge and agree that the grant by the Borrower of (i) the lien on and security interest in the Pledged Revenues, and (ii) the mortgage(s) on each of the 2011 Project and the 2013 Project and the 2017 Project to each Parity Secured Party (i.e., the Trustee for the Series 2011 Bonds, the Trustee for the Series 2013 Bonds and the Trustee for the Series 2017 Bonds, and each holder of additional Parity Indebtedness identified in any supplement to the Intercreditor Agreement) shall secure the Indebtedness of the Borrower under each Parity Debt Agreement (i.e., the 2011 Loan Agreement, the 2013 Loan Agreement and the Loan Agreement, and any other instrument or agreement identified as an additional Parity Debt Agreement in any supplement to the Intercreditor Agreement entered into for the purpose of identifying the Indebtedness as additional Parity Indebtedness of the Borrower) equally and ratably in accordance with the Intercreditor Agreement, without regard to the time any such lien, security agreement or mortgage was created or the order of attachment or perfection of any such lien, security agreement or mortgage or the filing of any financing statement in respect thereof or any other circumstance whatsoever. See “APPENDIX G – FORM OF INTERCREDITOR AGREEMENT.”

The Borrower may incur further parity additional Indebtedness secured by the Pledged Revenues and the Mortgages under certain conditions, and the Indentures permits the Issuer to issue Additional Bonds on a parity with the Series 2011 Bonds, the 2013 Bonds and the Series 2017 Bonds under certain conditions. See “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF THE LOAN AGREEMENT – Additional Indebtedness” and “– SUMMARY OF THE INDENTURE – Additional Bonds Authorized.” See also “RISK FACTORS – Parity Status; Additional Indebtedness Including Additional Bonds.”

## **The Indenture**

### **General**

As security for the Bonds, the Indenture grants a security interest in, pledges and assigns to the Trustee and its successors and assigns, for the benefit of the Holders and all future Holders of the Bonds (subject to Permitted Encumbrances and excepting therefrom the Issuer's Reserved Rights), (a)(i) all moneys and obligations which are deposited or required to be deposited in the Bond Fund, the Debt Service Reserve Fund, the Renewal Fund or any other fund established under the Indenture (except the Rebate Fund), (ii) all other moneys or obligations which at such time are deposited or are required to be deposited with, or are held or required to be held by or on behalf of, or paid to the Trustee for the redemption or payment of the Series 2017 Bonds or any Series of Additional Bonds which are deemed to have been paid in accordance with the Indenture, and (iii) all rights and interests of the Issuer in and to the Loan Agreement (except Unassigned Rights) and the Promissory Note; provided, however, that the amount held by the Custodian pursuant to the Custody Agreement are not considered subject to the Lien of the Indenture; and (b) any and all other property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder

(except moneys and securities in the Rebate Fund), by the Issuer or by anyone in its behalf or with its written consent or by the Borrower in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof. “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST – Granting Clauses.”

### **Establishment of Funds**

The Indenture establishes and creates the following funds as special trust funds:

- (i) Bond Fund (containing accounts and subaccounts);
- (ii) Project Fund (containing accounts);
- (iii) Rebate Fund;
- (iv) Renewal Fund;
- (v) Debt Service Reserve Fund
- (vi) Repair and Replacement Fund; and
- (vi) Key Person Life Insurance Fund

All of the funds and accounts created under the Indenture are to be held by the Trustee. All moneys required to be deposited with or paid to the Trustee for the credit of any fund or account under any provision of the Indenture and all investments made therewith must be held by the Trustee in trust and applied only in accordance with the provisions of the Indenture, and while held by the Trustee constitute part of the Trust Estate (subject to the granting clauses of the Indenture), other than the Rebate Fund, and be subject to the lien set forth in the Indenture. For additional information, see “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST – Establishment of Funds.”

### **Debt Service Reserve Fund**

The Indenture provides for the creation of the Debt Service Reserve Fund in the custody of the Trustee. On the Closing Date, upon the Issuance of the Series 2017A Bonds, the Trustee shall deposit proceeds of the Series 2017A Bonds in an amount equal to \$[DSRF], which is the Debt Service Reserve Fund Requirement applicable for the Series 2017A Bonds and zero dollars (\$0.00), which is the Debt Service Reserve Fund Requirement applicable for the Series 2017B Bonds. In addition, there shall be credited to the applicable account of the Debt Service Reserve Fund: loan repayments under the Loan Agreement and the Custody Agreement to be deposited thereto.

Moneys and securities held for credit in the Debt Service Reserve Fund shall be transferred by the Trustee to the Interest Account and the Principal Account of the Bond Fund at the times and in the amounts required pursuant to the Indenture.

Whenever the Trustee shall determine that the moneys and securities in the Debt Service Reserve Fund with respect to the Series 2017A Bonds, will be equal to or in excess of the Redemption Price of all of the Outstanding Bonds of such Series 2017A Bonds plus accrued interest to the Redemption Date, the Trustee shall use and apply the amounts on deposit in the Debt Service Reserve Fund to the redemption of all Outstanding Bonds of such Series 2017A Bonds on the first date thereafter that such Series 2017A Bonds are subject to optional redemption pursuant to the Indenture.

Any income or interest earned by, or increment to, the Debt Service Reserve Fund shall be transferred by the Trustee and deposited (i) prior to the Completion Date, to the Project Fund and applied to pay costs of the Project, and (ii) after the Completion Date, to the Interest Account of the Bond Fund with respect to such Series of Bonds and applied to the payment of the interest component of the next upcoming Debt Service Payments with

respect to such Series of Bonds, and the Borrower's obligations under the Loan Agreement shall be adjusted accordingly.

In order to ensure the maintenance of the Debt Service Reserve Fund Requirement with respect to the Series 2017A Bonds, the Trustee, upon the determination of any deficiency in the Debt Service Reserve Fund, shall make and deliver to the Issuer and the Borrower at the intervals required pursuant to the Indenture, a certificate stating the amount required to restore the amount of the Debt Service Reserve Fund to the amount of the Debt Service Reserve Fund Requirement, and the Trustee shall collect such deficiency from the Borrower as a special rental payment, as provided in the Loan Agreement.

The money on deposit in the Series 2017 Debt Service Reserve Fund is held solely for the benefit of the Series 2017A Bondholders and no portion of the Series 2017A Debt Service Reserve Fund may be used to pay Debt Service Payments on the Series 2017B Bonds, the Series 2013 Bonds or the Series 2011 Bonds. See, "APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST – Debt Service Reserve Fund."

### **Key Person Life Insurance Fund**

The Borrower is required to obtain a \$2,000,000 "key person" life insurance policy per person on the lives of Reverend Barrington F.H. Goldson, Chairman of the Board of Trustees and Wayne Haughton, Executive Director until 2033 that names the Trustee as the primary beneficiary by the Closing Date or as soon thereafter as practicable. The Key Person Life Insurance Proceeds Fund shall be in the custody of the Trustee and will only be created upon the death of either of the above referenced individuals when the "key person" life insurance proceeds are paid out to the Trustee. The Trustee shall hold the "key person" life insurance policy and make a claim for the proceeds of such life insurance policy in the event of the death of either "key person" named herein. The receipt of insurance proceeds upon the death of one "key person" named herein does not void the requirement to maintain "key person" insurance upon the other surviving "key person" named herein. Insurance proceeds received from the "key person" insurance policies maintained pursuant to the Indenture and Loan Agreement shall be deposited to the Key Person Life Insurance Proceeds Fund. The Trustee shall hold such moneys in the Key Person Life Insurance Proceeds Fund for purposes of an operating reserve to be used by the Borrower only upon the consent of the Registered Owners of at least a majority of the Outstanding Bonds. So long as the Borrower is in annual compliance with all covenants under the Loan Agreement and the Indenture, the moneys held in the Key Person Life Insurance Proceeds Fund may be used to redeem Bonds with the longest maturity upon the first available call date. To the extent that money will remain in the Key Person Life Insurance Proceeds Fund through the final maturity of the Series 2017 Bonds, such moneys may be deposited in the Debt Service Reserve Fund and the Principal Account of the Bond Fund and the Interest Account of the Bond Fund, to call the final principal amount of Bonds prior to their final maturity. For additional information, see "APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE"

### **Additional Bonds**

So long as the Indenture is in effect, one or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of (i) financing additional costs with respect to the Project, (ii) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions, improvements or facilities to the Project, (iv) funding the costs of acquiring, constructing, equipping and start-up costs of any capital project of the Borrower, (v) refunding Outstanding Bonds or Indebtedness of the Borrower or (vi) refunding any other Indebtedness or bonds for which the Borrower is the primary obligor, or for which the Borrower is responsible for paying the debt service payments in connection therewith, or which the Borrower has guaranteed. Such Additional Bonds shall be payable from the receipts and revenues payable to the Issuer from a Loan Agreement between the Issuer and the Borrower. Prior to the issuance of a Series of Additional Bonds and the execution of a Supplemental Indenture in connection therewith, (x) the Issuer and the Borrower shall enter into a new Loan Agreement providing, among other things, that the payments payable under the new Loan Agreement shall be computed so as to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith and (y) the Mortgage shall be amended, modified or supplemented and consolidated to secure such series of Additional Bonds and the Custody Agreement shall be extended to secure such Series of Additional Bonds.

No additional Bonds shall be issued without a written opinion of Bond Counsel, to the effect that the issuance of the Additional Bonds and the execution thereof have been duly authorized and that all conditions precedent to the delivery thereof have been fulfilled;

Each Series of Additional Bonds issued under the Indenture shall be equally and ratably secured under the Indenture with the Series 2017 Bonds, the 2013 Bonds and the Series 2011 Bonds and all other Series of Additional Bonds, if any, without preference, priority or distinction of any Bond over any other Bonds except as expressly provided in or permitted by the Indenture.

Notwithstanding anything herein to the contrary, no series of Additional Bonds shall be issued unless: (i) at the time of issuance of such Series of Additional Bonds and after the application of proceeds thereof, there is no Event of Default under any Bond Document; (ii) the Loan Agreement is in effect and at the time of issuance there is no Event of Default under any such document nor any event which upon notice or lapse of time or both would become such an Event of Default; and (iii) the Rating Agency, if any, has confirmed in writing that the issuance of such Additional Bonds will not result in a reduction or withdrawal of the then current rating on the Series 2017 Bonds, the 2013 Bonds and Series 2011 Bonds Outstanding. See “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST – Additional Bonds.”

## **The Custody Agreement**

### **General**

Pursuant to the Second Amended and Restated Custody Agreement (the “Custody Agreement”), the Borrower has covenanted to pay or cause to be paid directly to the Custodian all payments of Education Aid received by the Borrower. The Charter Schools Act of the New York Education Law prohibits a charter school from pledging or assigning State Education Operating Aid and Disability Aid in connection with the construction, acquisition, reconstruction, rehabilitation or improvement of a school facility. The Custody Agreement provides that the Custodian shall act as an agent of the Borrower and requires that, upon receipt of any such payments, the Custodian shall immediately transfer to the Trustee the amount of monies described in the then-applicable Custody Agreement Notice, along with any deficiency in amounts described in prior Custody Agreement Notices, which Custody Agreement Notices shall certify the amounts necessary to pay debt service on the Series 2017 Bonds, Series 2013 Bonds and Series 2011 Bonds and amounts required to be deposited in any debt service reserve fund with respect to the Series 2017 Bonds, the Series 2013 Bonds or the Series 2011 Bonds. Under the Custody Agreement, the Borrower is required to timely notify the State Commissioner of Education of any failure of the School District to make required Education Aid Payments, and is required to cause the State Comptroller to pay any Education Aid Payments payable by the State Comptroller to the Custodian. Notwithstanding the foregoing, in the event that such Education Aid Payments are paid by the State Comptroller to the Borrower, as opposed to the Custodian, the Borrower shall immediately transfer such amounts to the Custodian to be applied in accordance with the provisions of the Custody Agreement. See “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE CUSTODY AGREEMENT.”

### **Covenants of the Custodian**

Pursuant to the Custody Agreement, the Custodian covenants and agrees with the Borrower, the Trustee, the 2011 Trustee and the 2013 Trustee that from and after the date of the Custody Agreement until the Series 2017 Bonds, the Series 2013 Bonds and Series 2011 Bonds are paid in full that it will satisfy the following requirements:

- (i) The Custodian is required to establish an account called The Academy Charter School Custody Account (the “Custody Account”) for the deposit of moneys received pursuant to the Custody Agreement.
- (ii) The Custodian is required to immediately deposit all moneys received pursuant to the Custody Agreement into the Custody Account.
- (iii) Upon receipt and deposit of any moneys pursuant to the Custody Agreement, the Custodian is required to immediately transfer to the Trustee, the 2013 Trustee and the 2011 Trustee the total

amount of money described in the then applicable Custody Agreement Notices, along with any deficiency in amounts described in prior Custody Agreement Notices, which are required to include any amounts necessary to fund deficiencies in the Bond Fund and the Debt Service Reserve Fund to the extent necessary, along with all other amounts previously transferred with respect thereto to fully fund the requirements described therein (the “Current Funding Amount”).

- (iv) In the event that the Borrower has incurred Additional Parity Indebtedness satisfying the requirements of the Loan Agreement, the Custodian is required to, in addition to the payments required to be made to the Trustee in respect of the Bonds, transfer to the issuer of, or the trustee for, any such Additional Parity Indebtedness, as the case may be, any amounts due and payable with respect to such Additional Parity Indebtedness. The Custody Agreement provides that, in the event that the Custodian is required to transfer moneys held by it to two or more recipients (excluding the Borrower) and the aggregate amount then on deposit in the Custody Account is not sufficient to pay such recipients in full, the Custodian is required to transfer the available amount to such recipients on a pro rata basis.
- (v) The Custodian is required to transfer moneys, if any, remaining credited to the Custody Account after the completion of all transfers described in the then applicable Custody Agreement Notice to the Borrower automatically, unless the Custodian receives the written instructions from the Borrower to the contrary.
- (vi) The Custodian is required to immediately notify the Trustee and the Borrower of any failure to receive payment of Education Aid within one Business Day of a State Education Operating Aid Payment Date or, with respect to any payment of federally funded Other Education Aid, within one Business Day of the date such payment is due.

#### **Covenants of Trustee and Flow of Funds**

Under the Custody Agreement, the Trustee must prepare a Custody Agreement Notice, with respect to each period from and including January 1, 2018 and thereafter from and including each succeeding State Education Operating Aid Payment Date, through and including the calendar day preceding each subsequent State Education Operating Aid Payment Date (each an “Education Aid Funding Period”), certifying the respective aggregate amounts to be transferred by the Custodian to the Trustee during the applicable Education Aid Funding Period with respect to each of the following:

- (i) for deposit to the Bond Fund, as of January 1, 2018 an amount equal to the interest payment that will be due and owing on the Series 2017 Bonds on the February 1, 2018 Debt Service Payment Date and thereafter on the first Business Day of each April, July, October and January commencing on April 1, 2018 in an amount equal to 1/2 of the next upcoming interest payment on the Series 2017 Bonds due and owing on the next Debt Service Payment Date, and 1/4 of the next upcoming principal payment or sinking fund installment payment of the Series 2017 Bonds due and owing on the next Debt Service Payment Date; provided however, the Borrower shall commence making payments with respect to principal beginning January 1, [2020];
- (ii) on each redemption date, with respect to the Redemption Price (other than by sinking fund installment payments) due and payable on the Series 2017 Bonds, whether as an optional or a mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Series 2017 Bonds being redeemed on such redemption date;
- (iii) in the event that a withdrawal has been made from the Debt Service Reserve Fund which results in a deficiency in the amount required to be on deposit to the credit of the Debt Service Reserve Fund, the Trustee shall include in the Custody Agreement Notice such amount as shall be necessary to replenish such withdrawal from the Debt Service Reserve Fund over a twelve-month period in quarterly payments payable as of the first Business Day of each January, April, July and October, each such payment to be in an amount equal to one-fourth (1/4th) of the amount of the deficiency, commencing immediately succeeding the date of receipt by the Borrower from the Trustee of notice of such deficiency in the Debt Service Reserve Fund; and

- (iv) for delivery to the Borrower, the balance of any education aid received by the Custodian

## **The Loan Agreement**

### **Loan Payments; Pledge of Loan Agreement and of the Promissory Note; Pledge and Assignment to Trustee**

Pursuant to the Loan Agreement, the Issuer agrees to loan the proceeds of the Series 2017 Bonds to the Borrower, and the Borrower agrees to pay the Promissory Note and repay the loan made pursuant to the Loan Agreement by making loan payments which the Issuer agrees shall be paid in immediately available funds by the Custodian, on behalf of the Borrower, directly to the Trustee for deposit in the Bond Fund (except to the extent that amounts are on deposit in the applicable account of the Bond Fund and available therefor) as follows:

(a) The Borrower shall pay basic loan payments commencing on January 1, 2018 in an amount equal to the interest payment that will be due and owing on the Series 2017 Bonds on the February 1, 2018 Debt Service Payment Date and thereafter on the first Business Day of each April, July, October and January commencing on [April 1, 2018] in an amount equal to 1/2 of the next upcoming interest payment on the Series 2017 Bonds due and owing on the next Debt Service Payment Date, and 1/4 of the next upcoming principal payment or sinking fund installment payment of the Series 2017 Bonds due and owing on the next Debt Service Payment Date; provided however, the Borrower shall commence making payments with respect to principal beginning [January 1, 2020].

(b) In addition to the loan payments described in subparagraph (a) above, throughout the Loan Term, the Borrower shall pay to the Issuer as additional loan payments, within fifteen (15) days of the receipt of demand therefor, an amount equal to the sum of the reasonable expenses of the Issuer and the members thereof incurred (i) by reason of the Issuer's financing of the Project, or (ii) in connection with the carrying out of the Issuer's duties and obligations under the Issuer Documents, the payment of which is not otherwise provided for under this Loan Agreement. Other than the Annual Compliance Fee, the foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Issuer.

(c) In addition, the Borrower shall pay as additional loan payments within fifteen (15) days after receipt of a written demand therefor the Ordinary Expenses and Extraordinary Expenses payable by the Issuer to the Trustee pursuant to and under the Indenture.

(d) If, after making a valuation of the Debt Service Reserve Fund as set forth in the Indenture, the Trustee notifies the Borrower that the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement, the Borrower shall pay to the Trustee, in addition to the other amounts payable, as a special loan payment, on the first day of each January, April, July and October following such notification, an amount equal to one-fourth (1/4) of the total amount necessary to restore the balance in the Debt Service Reserve Fund to the Debt Service Reserve Fund Requirement.

(e) The Borrower, pursuant to the Loan Agreement, agreed to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Borrower shall fail timely to make any payment described in subparagraph (a) above, the Borrower shall pay the same together with all late payment penalties specified in the Series 2017 Bonds. In the event the Borrower shall fail timely to make any payment described in subparagraph (b) above, the Borrower shall pay the same together with interest on such payment at the per annum rate of ten percent (10%), but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Simultaneously with the issuance of the Series 2017 Bonds, the Borrower will execute and deliver to the Issuer (i) a promissory note evidencing the loan by the Issuer to the Borrower of the proceeds of the Series 2017A Bonds, which promissory note will be endorsed by the Issuer, without recourse, to the Trustee for the benefit of the Holders of the Series 2017 Bonds and (ii) a promissory note evidencing the loan by the Issuer to the Borrower of the proceeds of the Series 2017B Bonds, which promissory note will be endorsed by the Issuer, without recourse, to the Trustee for the benefit of the Holders of the Series 2017 Bonds (collectively, the "Promissory Note"). See

“APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT – Recitals.”

**Limitations on Incurrence of Additional Indebtedness**

Under the Loan Agreement, the Borrower is precluded from incurring Additional Indebtedness that is senior to the lien of the Mortgage on the Facility and the obligations of the Borrower under the Loan Agreement. The Borrower may incur Additional Parity Indebtedness only upon providing to the Trustee a certificate of an Authorized Representative of the Borrower, accompanied by a confirming accountant's certificate, to the effect that (i) the requirements regarding the incurrence of additional bonds under the Indenture have been met, but this clause (i) applies only if the other Indebtedness takes the form of Additional Bonds, and (ii) either:

- (a) the combined Maximum Annual Debt Service for outstanding Long-Term Indebtedness related to the Project and the Long-Term Indebtedness related to the project proposed to be incurred is equal to or less than 10% of the Gross Revenues as determined in the most recent audited financial statements of the Borrower; or
- (b) the Net Income Available for Debt Service as determined in the most recent audited financial statements of the Borrower must be sufficient to pay an amount representing not less than 125% of the combined Maximum Annual Debt Service for currently outstanding Long-Term Indebtedness related to the Project and the Long-Term Indebtedness related to the project proposed to be incurred.

In addition to the foregoing, prior to the incurrence of additional Parity Indebtedness, the Issuer, the Custodian, the Trustee, the Borrower and any issuer of such additional Parity Indebtedness must enter into an intercreditor agreement, satisfactory to all parties, providing for, among other things, the application and disposition of amounts on deposit in the Custody Account under the Custody Agreement.

**Covenant Waiver**

In connection with the issuance of the Series 2017 Bonds, the majority of the Holders of the Series 2011 Bonds and Series 2013 Bonds Outstanding has waived any applicable limitations on the incurrence of additional indebtedness imposed by the Series 2011 Indenture, the Series 2013 Indenture, the Series 2011 Loan Agreement and the Series 2013 Loan Agreement.

In connection with the issuance of the Series 2013 Bonds, the majority of the Holders of the Series 2011 Bonds outstanding has waived any applicable limitations on the incurrence of additional indebtedness imposed by the Series 2011 Indenture and the Series 2011 Loan Agreement.

Additional Indebtedness subordinate to the obligations of the Borrower under the Loan Agreement and lien on the Facility are permitted by the Loan Agreement. See “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF The Loan Agreement – Special Covenants – Additional Indebtedness.”

**Negative Pledge; Liens Securing Additional Indebtedness**

In the Loan Agreement, the Borrower covenants that it will not create or allow Liens upon any of its Property, except that the Borrower may create or allow (i) Liens on the Mortgaged Property provided that the Indebtedness secured by such Lien is permitted to be incurred in accordance with the limitations on Additional Indebtedness set forth in the Loan Agreement and such Lien is not senior to the Mortgage and the holder of such Lien has entered into an intercreditor agreement with the Trustee pursuant to which such lienholder has agreed that the Trustee shall as collateral agent for the benefit of the Holders of all Bonds and any other Indebtedness permitted under the Loan Agreement control all remedies related to the Mortgaged Property, (ii) Liens on real property of the Borrower (and improvements and personal property located thereon) other than the Mortgaged Property, and (iii) Permitted Liens.

## **Financial Covenants**

### ***Long-Term Debt Service Coverage Ratio***

Under the Loan Agreement, the Borrower will covenant that, so long as any Series 2017 Bonds remain Outstanding, it will maintain a Long-Term Debt Service Coverage Ratio greater than 1.15 to 1.0. Beginning with the Fiscal Year commencing July 1, 2018, the Borrower shall calculate annually the Long-Term Debt Service Coverage Ratio for the most recently completed Fiscal Year, and shall provide a copy of such calculation verified and certified by certified public accountants who completed the audit of the Borrower's financial statements for the corresponding Fiscal Year to the Trustee at the time of delivery of the annual audited financial statements. If the Long-Term Debt Service Coverage Ratio indicates that the Long-Term Debt Service Coverage Ratio of the Borrower for such previous Fiscal Year shall be less than to 1.15 to 1.0 but equal to or greater than 1.0 to 1.0, the Borrower shall, within 30 days of the date of such calculation, provide the Trustee with a detailed written explanation from an Authorized Representative of the Borrower stating the reasons for the Borrower's failure to achieve the required Long-Term Debt Service Coverage Ratio and its plan for achieving such Long-Term Debt Service Coverage Ratio by the end of the next Fiscal Year.

In the event that the Borrower is unable to comply with the above Long-Term Debt Service Coverage Ratio requirement within 12 months of the initial non-compliance, then the Owners of 2/3rds of the Outstanding Bonds shall have the right to direct the Trustee to require the Borrower to engage, at the Borrower's expense, a Management Consultant acceptable to the Trustee, as described below under "Management Consultant." See "APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT – Special Covenants - Financial Covenants."

If the Borrower is unable to meet any of the above-described debt service coverage ratio covenant within the respective specified periods following initial non-compliance, and Owners of two-thirds (2/3rds) of the Outstanding direct the Trustee to require the Borrower to engage a Management Consultant, the Management Consultant shall be required to deliver a written report to the Trustee and the Borrower within 75 days following its engagement containing recommendations concerning the Borrower's:

- (i) operations;
- (ii) financing practices and activities, including Short-Term Indebtedness, lease financing and investment activities;
- (iii) management practices, including use of consultants, budgeting practices, and on-going financial systems and monitoring of the Borrower's financial condition;
- (iv) governance and administrative practices; and
- (v) other factors relevant to maintaining compliance with the respective covenant(s).

Upon submission of the Management Consultant's report, the Borrower is required to arrange for payment of the amount owed to the Management Consultant and issue a written certificate to the Trustee indicating its acceptance or rejection of all or any material portion of the recommendations of the consultant within 30 days of receiving the report of the Management Consultant. The Owners of 2/3rds of the Outstanding Bonds shall have the right to require the Borrower to comply with any reasonable recommendation of the Management Consultant with respect to items (i) through (v) above. Notwithstanding anything to the contrary contained in the Loan Agreement, the Borrower's failure to maintain a Long-Term Debt Service Coverage Ratio of at least 1.0 to 1.0 shall constitute an Event of Default under the Loan Agreement. See "APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT – Special Covenants - Financial Covenants."

### ***Days' Cash on Hand.***

The School covenants and agrees to maintain unrestricted "Cash on Hand" of at least twenty-five (25) Days' Cash on Hand for fiscal year 2018, at least thirty-five (35) Days' Cash on Hand, for fiscal year 2019, and at

least forty-five (45) Days' Cash on Hand, for fiscal year 2020 and thereafter, until the Bonds are no longer outstanding (the "Cash on Hand Requirement"). The Cash on Hand Requirement shall be tested as of June 30 of each year based on the results of the annual audit of the School for such Fiscal Year upon the release of such audit (the "Testing Date"). Following each Testing Date, the School will provide the Dissemination Agent (as defined in the Continuing Disclosure Agreement) with a certification of having met the Cash on Hand Requirement no later than the earlier of the ensuing December 31 or three (3) weeks after completion of the School's audit for the previous Fiscal Year. The foregoing is subject to the qualification that if applicable State or federal laws or regulations, or the rules and regulations of agencies having jurisdiction, shall not permit the School to maintain the Cash on Hand Requirement, then the School shall, in conformity with the then prevailing laws, rules, or regulations, maintain its Cash on Hand equal to the maximum permissible level (the "Adjusted Cash on Hand Requirement"). The School shall provide the Trustee with a written certification if the Adjusted Cash on Hand becomes applicable and the amount of such Adjusted Cash on Hand and the Trustee shall be fully protected in relying on such written certification. In such case, the certification shall be made with respect to the Adjusted Cash on Hand Requirement in lieu of the Cash on Hand Requirement.

If the Cash on Hand for any Testing Date is less than the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement, as applicable, then, the School shall retain on an annual basis 50% of the Excess Net Revenues until such time as the School is in compliance with the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement, as applicable. For avoidance of doubt, the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement shall continue to only be tested on each Testing Date. In the event that the School fails to satisfy the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement, as applicable, and does not retain on an annual basis 50% of the Excess Net Revenues, then the Trustee shall give notice thereof to the Bondholders, and upon the written direction of the two thirds (2/3rds) of the Owners of the Outstanding Bonds, the School will promptly employ a Management Consultant to review and analyze the operations and administration of the School, inspect the Facility, and submit to the School and the Trustee written reports, and make such recommendations as to the operation and administration of the School as such Management Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The School agrees to consider any recommendations by the Management Consultant and, to the fullest extent practicable, to adopt and carry out such recommendations. The Trustee has no duty or obligation to monitor the School's compliance with any recommendations and the Trustee's sole responsibility is to forward such recommendations to the Bondholders.

So long as the School is otherwise in full compliance with its obligations under the Loan Agreement, including following, to the fullest extent practicable, the recommendations of the Management Consultant, it shall not constitute an Event of Default under the Loan Agreement if the School fails to meet the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement, as applicable, and retain on an annual basis 50% of the Excess Net Revenues. See "APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT – Special Covenants - Financial Covenants."

## **Additional Covenants**

### ***Future Rating***

Under the Loan Agreement beginning with the Borrower's Fiscal Year ending on June 30, 2019, the Borrower agrees to retain an independent financial advisor and to pursue and pay for all expenses of a rating on the Series 2017 Bonds from a Rating Agency if at such time the Borrower's financial advisor reasonably believes that an investment grade rating may be obtained based on the Borrower's operating data and financial statements. In that case, the minimum authorized denomination of the Series 2017A Bonds authorized and issued under the Indenture will be \$5,000.

### ***As Built Appraisal***

Under the Loan Agreement the Borrower covenants to obtain, pay for all expenses of and provide to the Trustee an "as built" appraisal of the Facility not later than 90 days following the Completion Date.

## **The Mortgages**

In order to further secure the payment of the Series 2017 Bonds, the Borrower will grant mortgage liens on and security interests in the Facility to the Issuer pursuant to (i) a Building Loan Mortgage and Security Agreement (the “Building Loan Mortgage”), and (ii) a Project Loan Mortgage and Security Agreement (the “Project Loan Mortgage”), each dated as of August 1, 2017 (collectively, the “Mortgages”), and each from the Borrower to the Issuer. The Mortgages will each be assigned by the Issuer to the Trustee pursuant to an Assignment of Building Loan Mortgage and Security Agreement and an Assignment of Project Loan Mortgage, each dated August \_\_, 2017 (collectively, the “Assignments”), each from the Issuer to the Trustee.

As collateral for the Borrower’s payment obligations under the Loan Agreement, the 2011 Loan Agreement and the 2013 Loan Agreement, the Borrower will grant mortgage liens on and security interests in the Facility, the 2011 Facility and the 2013 Facility to the Issuer pursuant to (i) a Series 2011 Collateral Mortgage and Security Agreement (“Series 2011 Collateral Mortgage”); (ii) a Series 2013 Collateral Mortgage and Security Agreement (the “Series 2013 Collateral Mortgage”); and (iii) a Series 2017 Collateral Mortgage and Security Agreement (the “Series 2017 Collateral Mortgage”; and, together with the Series 2011 Collateral Mortgage and the Series 2013 Collateral Mortgage, the “Collateral Mortgages”), each dated as of August 1, 2017 and each from the Borrower to the Issuer. The Collateral Mortgages will each be assigned by the Issuer to the Trustee, the 2013 Trustee and the 2011 Trustee pursuant to a Series 2011 Assignment of Collateral Mortgage and Security Agreement (the “Series 2011 Assignment of Collateral Mortgage”), a Series 2013 Assignment of Collateral Mortgage and Security Agreement (the “Series 2013 Assignment of Collateral Mortgage”), and a Series 2017 Assignment of Collateral Mortgage and Security Agreement (the “Series 2017 Assignment of Collateral Mortgage”; and, together with the Series 2011 Assignment of Collateral Mortgage and the Series 2013 Assignment of Collateral Mortgage, the “Assignment of Collateral Mortgages”), each dated August 10, 2017 and each from the Issuer to the Trustee, the 2011 Trustee and the 2013 Trustee, respectively. See “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE MORTGAGE.”

Pursuant to the Intercreditor Agreement, the Series 2017 Bonds will be secured equally, ratably and on a parity basis with the Series 2013 Bonds and the Series 2011 Bonds with respect to the lien on Pledged Revenues under the Loan Agreements and the security provided under the Mortgages. See “SECURITY FOR THE SERIES 2017 Bonds – Parity Status; Intercreditor Agreement.”

## **RISK FACTORS**

This Official Statement contains summaries of pertinent portions of the Series 2017 Bonds, the Indenture, the Loan Agreement, the Custody Agreement (defined below), the Mortgage, the Continuing Disclosure Agreement and other relevant documents. Such summaries and references are qualified in their entirety by reference to the full text of such documents. The following discussion of some of the risk factors associated with the Series 2017 Bonds is not, and is not intended to be, exhaustive, and such risks are not necessarily presented in the order of their magnitude.

This Official Statement does not describe all of the risks of an investment in the Series 2017 Bonds and the Underwriter disclaims any responsibility to advise prospective investors of such risks as they exist at the date of this Official Statement or as they change from time to time. Prospective investors should consult their own legal and tax advisors as to the risks entailed by an investment in the Series 2017 Bonds and the suitability of investing in the Series 2017 Bonds in light of their particular circumstances. Prospective investors should be able to bear the risks relating to an investment in the Series 2017 Bonds and should carefully consider, among other factors, the matters described below.

### **Speculative Investment**

Purchase of the Series 2017 Bonds involves a high degree of risk and the Series 2017 Bonds are a speculative investment. The Bonds are unrated. Although any explanation of the significance of the rating may be obtained only from rating agencies, bonds that are unrated are typically high-yield, high-risk securities, sometimes referred to as “junk bonds.” Such securities may exhibit price fluctuations due to changes in interest rate or bond yield levels. As a result, the value of the Series 2017 Bonds may fluctuate significantly in the short-term. Further, such securities have a less liquid resale market. As a result, potential investors may have difficulty selling or

disposing of the Series 2017 Bonds quickly in certain markets or market environments. Such securities are also considered predominately speculative with respect to the obligor's continuing ability to make principal and interest payments. See also "RISK FACTORS – Sufficiency of Revenues" below. The Series 2017 Bonds should not be purchased by any potential investor who, because of financial condition, investment policies or otherwise, does not desire to assume, or have the ability to bear, the risks inherent in an investment in the Series 2017 Bonds.

### **Factors Associated with Education**

There are a number of factors affecting schools in general, including the Borrower, that could have an adverse effect on the Borrower's financial position and the ability of the Borrower to generate sufficient revenues for payment of debt service on the Series 2017 Bonds. These factors include, but are not limited to, the Borrower's ability to execute on its growth plans and attract and retain a sufficient number of students; increasing costs of compliance with federal or State regulatory laws or regulations, including, without limitation, laws or regulations concerning environmental quality, work safety and accommodating persons with disabilities; increasing operating costs of the Borrower; changes in existing statutes pertaining to the powers of the Borrower and legislation or regulations which may affect funding. The Borrower cannot assess or predict the ultimate effect of these factors on its operations or financial results of operations.

### **Dependence on State Payments that are Subject to Annual Appropriation and Political Factors**

New York charter schools such as the Borrower may not charge tuition and have no taxing authority. The principal source of charter school funding in New York is the "Charter School Basic Tuition" that charter schools are paid by the school district of the residence of the students attending the charter schools, and the amount of aid received by an individual school is based on a variety of factors. See "STATE CHARTER SCHOOL FUNDING" and "APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW – CHARTER SCHOOL FUNDING." The overall amount of Education Aid provided by the State in any year is subject to appropriation by the New York Legislature. The Legislature may base its decisions about appropriations on many factors, including the State's economic performance. Further, because some public officials, their constituents, commentators and others have viewed charter schools as controversial, political and governmental factors may also come to bear on charter school funding. As a result, the Legislature may not appropriate funds, or may not appropriate funds in a sufficient amount, for the Borrower to generate sufficient revenue to meet its operating expenses and to make payments under the Loan Agreement representing debt service on the Series 2017 Bonds. No liability would accrue to the State in such event, and the State would not be obligated or liable for any future payments or any damages. If the State were to withhold Education Aid payments for any reason, even for a reason that is ultimately determined to be invalid or unlawful, the Borrower could be forced to cease operations.

### **Operating History; Reliance on Projections**

The Borrower's ability to make payments under the Loan Agreement representing debt service payments on the Series 2017 Bonds depends on its receipt of sufficient Education Aid payments. The Borrower has conducted operations only since the 2009-10 school year. The projections of revenues and expenses contained in "APPENDIX B – THE BORROWER" herein were prepared by the Borrower, with assistance from its services provider company (Victory Education Partners) and in a format suggested by the transaction consultant (Buck Financial Advisors LLC) and have not been independently verified by any party other than the Borrower. No feasibility studies have been conducted with respect to operations of the Borrower pertinent to the Series 2017 Bonds. The projections prepared by the Borrower are "forward-looking statements" and are subject to the general qualifications and limitations described under "INTRODUCTION – Forward-Looking Statements" with respect to such statements. Neither the Issuer nor the Underwriter has independently verified such projections, and each makes no representation nor gives any assurances that such projections or the assumptions underlying them, are complete or correct. Further, the projections relate only to a limited number of fiscal years and consequently do not cover the entire period that the Series 2017 Bonds will be outstanding.

The Borrower has derived its projections from the actual operations of the Borrower and from assumptions made by the Borrower about its future student enrollment and expenses. There can be no assurance that the actual enrollment, revenues and expenses for the Borrower will be consistent with the assumptions underlying the projections contained herein. Moreover, no guarantee can be made that the projections of revenues and expenses contained herein will correspond with the results actually achieved in the future because there is no assurance that actual events will correspond with the assumptions made by the Borrower. Actual operating results may be affected

by many factors, including, but not limited to, increased costs, lower than anticipated revenues (as a result of difficulty with or failure of the Borrower's growth plans, insufficient enrollment, reduced Education Aid payments, or otherwise), employee relations, changes in taxes, changes in applicable government regulation, changes in demographic trends, factors associated with education, competition for students, and changes in local or general economic conditions.

Refer to "APPENDIX B – THE BORROWER" to review the projections and to consider the various factors that could cause actual results to differ significantly from projected results. Refer to "INTRODUCTION – Forward-Looking Statements" above, for qualifications and limitations applicable to forward-looking statements.

NO GUARANTEE CAN BE MADE THAT THE PROJECTED INFORMATION CONTAINED HEREIN WILL CORRESPOND WITH THE RESULTS ACTUALLY ACHIEVED IN THE FUTURE BECAUSE THERE CAN BE NO ASSURANCE THAT ACTUAL EVENTS WILL CORRESPOND WITH THE ASSUMPTIONS MADE BY THE BORROWER. ACTUAL OPERATING RESULTS MAY BE AFFECTED BY MANY FACTORS, INCLUDING, BUT NOT LIMITED TO, INCREASED COSTS, LOWER THAN ANTICIPATED REVENUES (AS A RESULT OF DIFFICULTY WITH OR FAILURE OF THE BORROWER'S GROWTH PLANS, INSUFFICIENT ENROLLMENT, REDUCED EDUCATION AID PAYMENTS, OR OTHERWISE), EMPLOYEE RELATIONS, CHANGES IN TAXES, CHANGES IN APPLICABLE GOVERNMENT REGULATION, CHANGES IN DEMOGRAPHIC TRENDS, FACTORS ASSOCIATED WITH EDUCATION, COMPETITION FOR STUDENTS, AND CHANGES IN LOCAL OR GENERAL ECONOMIC CONDITIONS.

### **Budget Delays and Adverse Effects on Appropriations for Funding**

Charter schools depend on revenues from the State for a large portion of their operating budgets. The availability of State funds for public education is a function of legal provisions affecting school revenues and expenditures, the condition of the State economy (which affects total revenue available to the State general fund) and the budget process. In the absence of an effective budget, and in the absence of any special or emergency legislation enacted to continue appropriations, many appropriations of the State cease to continue at the end of the State's budget year (March 31). The Borrower would be materially harmed by any budget failure which delays or otherwise adversely affects appropriations for charter school funding.

### **State Financial Difficulties**

Charter schools depend on revenues from the State for a large portion of their operating budgets. The availability of State funds for public education is a function of legal provisions affecting school district revenues and expenditures, the condition of the State economy and the annual budget process. Decreases in State revenues may adversely affect education appropriations made by the Legislature. As noted, the Legislature bases its decisions about appropriations on many factors, including the State's economic performance, and, because some public officials, their constituents, commentators and others have viewed charter schools as controversial, political factors may also come to bear on charter school funding. See "RISK FACTORS – Dependence on State Payments that are Subject to Annual Appropriation and Political Factors," above.

Continued increases in spending or any future decreases in State revenues may adversely affect education appropriations made by the Legislature. The adverse effect may be exacerbated in the future to the extent that the State relies in part on federal stimulus funding in the recent past, or is adversely affected by certain automatic federal spending reductions under the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, commonly known as "sequester," or similar measures in the future. Neither the Borrower nor any other party to the Bond transaction can predict how State income or State education funding will vary over the entire term of the Series 2017 Bonds. No parties to the Bond transaction take any responsibility for informing owners of the Series 2017 Bonds about any such changes. Information about the financial condition of the State, as well as its budget and spending for education, is available and regularly updated on various State-maintained websites. Such information is prepared by the respective State entity maintaining each such website and not by any of the parties to this transaction. The parties to this transaction take no responsibility for the accuracy, completeness or timeliness of such information, and no such information is incorporated herein by these references.

## **Future Changes to Charter School Laws**

The law applicable to charter schools in New York has developed over time and is subject to further changes in the future. Future changes to applicable law by the New York Legislature could be adverse to the financial interests of the Borrower and could adversely affect the security for the Series 2017 Bonds. There can be no assurance that the Legislature will not in the future change such laws in a manner that is adverse to the interests of the registered owners of the Series 2017 Bonds. Charter School law provisions are subject to amendment, including the reduction of funding, which could adversely affect the Borrower. Adverse State budget considerations could increase the likelihood that the State Legislature would change the laws governing charter schools, and in particular charter school funding provisions. Further, State budget considerations may adversely affect appropriations for charter school funding. For more information on the laws governing charter schools in New York, see “APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW.”

## **Revocation or Termination of Charter**

Under New York law (New York Education Law, Article 56), the Borrower's Charter is subject to revocation, termination or nonrenewal under various circumstances, including: (i) when a charter school's outcome on student assessment measures adopted by the Board of Regents falls below the level that would allow the Commissioner to revoke the registration of another public school, and student achievement on such measures has not shown improvement over the preceding three school years; (ii) serious violations of law; (iii) material and substantial violation of the Charter, including fiscal mismanagement; (iv) when the public employment relations board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations related to improper employer practices of the civil service law involving interference with or discrimination against employee rights under the Public Employees' Fair Employment Act of the civil service law; or (v) repeated failure to comply with the requirement to meet or exceed enrollment and retention targets of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program pursuant to targets established by the Board of Regents or the board of trustees of the State University of New York, as applicable. See “APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW – Causes for Revocation or Termination, and – Review and Assessment” Pursuant to its terms, the Borrower's current Charter is also subject to termination or revocation upon mutual agreement of the parties. If the Borrower's Charter is not renewed, or is revoked, terminated or suspended, the Borrower could be forced to cease operations.

## **Compliance with the No Child Left Behind Act of 2001**

Title I of the Elementary and Secondary Education Act, as reauthorized by the No Child Left Behind Act (“NCLB”) of 2001, requires each state, as a condition of receiving funds under the Title I program, to implement a single, statewide accountability system applicable to all its public schools, including charter schools. The NCLB uses Adequate Yearly Progress (“AYP”) to measure and hold schools and districts responsible for student achievement. In New York, the New York State Department of Education makes AYP determinations for all schools and districts in the State. See “APPENDIX B – THE BORROWER – AYP Status.”

Materials published by the New York State Education Department, School Accountability Status, indicate the Borrower has been “in good standing” in each of the years in which it was subject to evaluation. In New York, a school that receives Title I funds is considered to be in good standing if it has not been identified as a School in Need of Improvement, in Corrective Action, Planning for Restructuring or Restructuring. Schools in improvement status under Title I must provide school choice for their students. Those in need of improvement in year two and beyond must also provide Supplemental Education Services to eligible students. In May, 2012, the State received a flexibility waiver request under NCLB that allows the State to make changes to its accountability system that differ from NCLB. Beginning with the 2012-13 school year, the new accountability system discontinues the identification of schools in the “improvement”, “corrective action” or “restructuring” categories and creates new designations that include the identification of “Focus District,” “Focus School,” “Priority School,” “Reward School” and “Good Standing.” The Borrower's accountability status for the 2013-14 school year is “Good Standing.” For more information, see “APPENDIX B – THE BORROWER – AYP Status.” There can be no assurance that the Borrower will make AYP in the future or that the Borrower will continue to attain “Good Standing” accountability status in the subsequent school years. Any failure by the Borrower to make AYP or attain acceptable accountability status

may have a material adverse effect on the Borrower and its ability to generate revenues sufficient to make payments under the Loan Agreement representing debt service on the Series 2017 Bonds.

On December 10, 2015, President Barack Obama signed the Every Student Succeeds Act (“ESSA”), which replaced NCLB and reauthorized and updated the Elementary and Secondary Education Act (“ESEA”). Overall, the new law provides states more authority on standards, assessments, accountability, supports, and interventions while preserving the general structure of the ESEA funding formulas. Most of the new provisions do not take effect until the 2017–18 school year, making the 2016–17 school year a transition year for local educational agencies (“LEAs”).

In the fall of 2016, the New York State Education Department (“NYSED”) began the initial planning for the development and implementation of the State’s ESSA Statewide Accountability System (“Accountability System”). In March of 2017, the NYSED released a “Revised State Template for the Consolidated State Plan” (the “Revised Template”). Upon USDE approval for the Accountability System, it will then be implemented starting in the 2017-18 school year. ESSA requires that the Accountability System be fully implemented for the 2017-18 school year. More information on the planning and implementation of the State’s ESSA Accountably System and the Revised Template can be found at <http://www.p12.nysed.gov/accountability/essa.html>.

On March 27, 2017, President Donald Trump signed into law two resolutions, H.J. Res. 57 and H.J. Res. 58, that roll back Obama-administration regulations informing state education officials how to implement the ESSA. H.J. Res. 57 prevents the Department of Education from dictating prescriptive requirements for how states and school districts measure achievement, using metrics such as school ratings, timelines for interventions for failing schools and student participation in state assessments. H.J. Res. 58 negates a rule that dictates specific requirements states must use to determine the effectiveness of teacher-preparation programs. The underlying ESSA statute is not affected by the resolutions. The repeal of the regulations are not expected to impact state officials' ongoing development of new accountability systems or alter current state plans, as states have drafted plans to conform with the ESSA statute and not the regulations.

There can be no assurance that the Charter School will remain in “Good Standing” in subsequent school years. Failure of the Charter School to meet the requirements of ESSA, when implemented, may have a material adverse effect on the Charter School and its ability to make payments due under the Loan Agreement.

### **Services Provider; Management and Key Personnel; Challenges with Respect to Growth Plans**

The Borrower contracts with Victory Education Partners (formerly known as Victory Schools, Inc.), New York, New York (“Victory”) for budgeting and financial management services, and Human Resource administration. For more information, see “APPENDIX B – THE BORROWER – Services Provider.” No assurance can be made that Victory will continue to provide such services to the Borrower. If Victory ceases to provide the Borrower with such services, the Borrower's ability to continue to operate in the manner in which it currently operates would require it to assume responsibility for the functions currently provided by Victory or to contract with another service provider competent to provide such services. There can be no assurance that the Borrower would be able to perform such functions or contract with another party for such services. Any failure in this regard would adversely affect its operations and ultimately its ability to generate revenues sufficient to make payments under the Loan Agreement representing debt service on the Series 2017 Bonds.

The Borrower’s creation, curricula, educational philosophy, and day-to-day operations reflect the vision and commitment of the individuals who serve on the Institution's Board of Trustees and as the Institution's administrators (the “Key Personnel”). The loss of any Key Personnel would adversely affect the Institution's operations, its ability to attract and retain students and ultimately its financial results. For more information regarding the Institution's Key Personnel refer to “APPENDIX B – THE BORROWER – Governance and Management.”

The Borrower will also need to manage its planned growth. As noted, the Borrower is in the process of undertaking an expansion plan whereby it intends to increase its enrollment by approximately 300 students over the next several school years. The Borrower will need to continue to manage its growth including the addition of the 7th and 8th grades in 2014-15 school years. There is no guaranty that the Borrower will be able to expand its operations as planned. See “APPENDIX B – THE BORROWER – Facility.”

## **Sufficiency of Revenues**

The Series 2017 Bonds are payable solely from certain payments and other amounts derived by the Issuer pursuant to the Loan Agreement, and are secured only by such amounts and a pledge of certain funds and accounts created under the Indenture and an assignment of the Mortgage. Based on present circumstances, and based on its projections regarding enrollment, the Borrower believes it will generate sufficient revenues for payment of debt service on the Series 2017 Bonds. The Borrower's Charter however, may be revoked, or the basis of the assumptions used by the Borrower to formulate its beliefs may otherwise change. No representation or assurance can be made that the Borrower will continue to generate sufficient revenues to make payments under the Loan Agreement representing debt service on the Series 2017 Bonds.

## **Operating History, Reliance on Projections**

The Borrower's ability to make payments under the Loan Agreement representing debt service payments on the Series 2017 Bonds depends on its receipt of Education Aid payments. The Borrower has conducted operations only since the 2009-10 school year. The projections of revenues and expenses contained in "APPENDIX B – THE BORROWER" herein were prepared by the Borrower who is in the process of undertaking an expansion plan whereby it intends to increase its enrollment by approximately 600 students over the next several school years. See "APPENDIX B – THE BORROWER – Enrollment." The projections of revenues and expenses have not been independently verified by any party other than the Borrower. No feasibility studies have been conducted with respect to operations of the Borrower pertinent to the Series 2017 Bonds. The projections prepared by the Borrower are "forward-looking statements" and are subject to the general qualifications and limitations described under "INTRODUCTION – Forward-Looking Statements" with respect to such statements. Neither the Issuer nor the Underwriter has independently verified such projections, and each makes no representation nor gives any assurances that such projections or the assumptions underlying them, are complete or correct. Further, the projections relate only to a limited number of fiscal years and consequently do not cover the entire period that the Series 2017 Bonds will be outstanding.

The projections are derived from the actual operations of the Borrower and from assumptions made by the Borrower about its future student enrollment and expenses. There can be no assurance that the actual enrollment, revenues and expenses for the Borrower will be consistent with the assumptions underlying the projections contained herein. Moreover, no guarantee can be made that the projections of revenues and expenses contained herein will correspond with the results actually achieved in the future because there is no assurance that actual events will correspond with the assumptions made by the Borrower. Actual operating results may be affected by many factors, including, but not limited to, increased costs, lower than anticipated revenues (as a result of difficulty with or failure of the Borrower's growth plans, insufficient enrollment, reduced Education Aid payments, or otherwise), employee relations, changes in taxes, changes in applicable government regulation, changes in demographic trends, factors associated with education, competition for students, and changes in local or general economic conditions.

Refer to "APPENDIX B – THE BORROWER" to review certain of the projections and to consider the various factors that could cause actual results to differ significantly from projected results. Refer to "INTRODUCTION – Forward-Looking Statements" above, for qualifications and limitations applicable to forward-looking statements.

NO GUARANTEE CAN BE MADE THAT THE PROJECTED INFORMATION CONTAINED HEREIN WILL CORRESPOND WITH THE RESULTS ACTUALLY ACHIEVED IN THE FUTURE BECAUSE THERE CAN BE NO ASSURANCE THAT ACTUAL EVENTS WILL CORRESPOND WITH THE ASSUMPTIONS MADE BY THE BORROWER. ACTUAL OPERATING RESULTS MAY BE AFFECTED BY MANY FACTORS, INCLUDING, BUT NOT LIMITED TO, INCREASED COSTS, LOWER THAN ANTICIPATED REVENUES (AS A RESULT OF DIFFICULTY WITH OR FAILURE OF THE BORROWER'S GROWTH PLANS, INSUFFICIENT ENROLLMENT, REDUCED EDUCATION AID PAYMENTS, OR OTHERWISE), EMPLOYEE RELATIONS, CHANGES IN TAXES, CHANGES IN APPLICABLE GOVERNMENT REGULATION, CHANGES IN DEMOGRAPHIC TRENDS, FACTORS ASSOCIATED WITH EDUCATION, COMPETITION FOR STUDENTS, AND CHANGES IN LOCAL OR GENERAL ECONOMIC CONDITIONS.

### **Competition for Students**

The Borrower primarily competes for students with other public, private and charter schools in the various school districts in Nassau County. For the 2016-17 school year, there were ten public schools serving students in the Hempstead School District that serves the Village of Hempstead within the Town of Hempstead. Of these schools, all served at least one or more grades of grades K-9. The Borrower is one of the only two charter schools in the Hempstead School District. The Borrower faces constant competition for students and there can be no assurance that the Borrower will continue to attract and retain the number of students that are needed to generate sufficient revenues for payment of debt service on the Series 2017 Bonds. See "APPENDIX B – THE BORROWER – Service Area and Competing Schools." This risk is heightened by the fact that the Borrower is in the process of undertaking an expansion plan whereby it intends to increase its enrollment by approximately 300 students over the next several school years.

### **Limitation of Pledge**

The Borrower may not legally assign or pledge any interest in public education aid payable to the Borrower pursuant to the Charter Schools Act of the New York Education Law to secure its obligations under the Loan Agreement and with respect to the Series 2017 Bonds. On the Closing Date, the Borrower shall give an irrevocable direction to the Custodian (defined herein) to apply Education Aid received by the Borrower or the Custodian as directed by the Trustee to make deposits in the Bond Fund sufficient to make loan payments to become due and to make deposits in the Debt Service Reserve Fund, and to pay the balance remaining to, or upon the order of, the Borrower.

### **Special, Limited Obligations**

The Series 2017 Bonds constitute nonrecourse obligations of the Issuer, and no assets of the Issuer are pledged or otherwise put at risk in connection with the Series 2017 Bonds. The Series 2017 Bonds are special obligations of the Issuer and neither the state of New York, nor any political subdivision thereof (including without limitation, the Town of Hempstead, New York) is obligated to pay, and neither the full faith and credit nor the taxing authority of the state of New York or any political subdivision thereof (including the Town of Hempstead, New York) is pledged to the payment of principal of, premium, if any, or interest on the Series 2017 Bonds. The Series 2017 Bonds are payable solely from and are secured by revenues of the Issuer under the Loan Agreement and other monies available therefor as described herein. The Issuer has no taxing authority and the borrower may not charge tuition. See "SECURITY FOR THE SERIES 2017 Bonds."

### **Project Approvals and Construction Process**

The Borrower will use a portion of the proceeds of the Series 2017 Bonds to finance the Project. The Borrower represents that it has or will obtain all necessary approvals, consents, certificates and permits as needed to construct the Facility in a timely fashion. Any failure by the Borrower to obtain such approvals, consents, certificates and permits could result in delay with respect to completion of the Project, and any such delay could adversely affect the Borrower's operations and its ability to generate revenues sufficient to pay debt service with respect to the Series 2017 Bonds.

### **Construction Costs and Completion of Construction**

If construction of the Project result in construction costs that exceed the amount available to pay such costs, the Borrower's scope of construction would have to be modified to lower construction costs and there is a risk that construction of the Project would not be completed as planned. The Borrower has engaged Combined Resources Consulting and Design, Inc., Garden City, New York ("CRCD") to provide architectural and engineering services with respect to the construction, renovation and equipping of the Project. The Borrower has obtained all necessary planning board, zoning board and related approvals and permits for the construction, renovation and equipping of the Project except for a certificate of occupancy and certificate completion that will be issued post-Closing Date. In addition, CRCD prepared plans and specifications for the Project that were submitted to and approved by the Village of Hempstead Department of Buildings as evidenced by a building permit issued on July 28, 2017. The Borrower solicited bids for the construction of the Project and received bids by three qualified bidders. The Borrower

determined that the lowest bid was submitted by RFP Construction Inc. and the Borrower has entered into an agreement (the "Construction Contract") with RFP Construction Inc. (the "Contractor"). The fixed stipulated and guaranteed price for the construction of the Project set forth in the Construction Contract is \$25,000,000, including certain contractor supplied furniture fixtures and equipment, subject to change order provisions under the Construction Contract. The Construction Contract provides that the date of substantial completion of the Project is no later than July 1, 2019 and the Borrower expects to operate the Project beginning with the 2019/20 school year. The construction budget includes adequate contingency reserves to pay for any construction contingencies.

The construction and renovation of the Project is anticipated to be administered as follows: Pursuant to an Architecture Agreement between the Borrower and CRCD (the "Architecture Agreement"), CRCD, as the architect for the Project, shall review all requisitions for progress payments submitted by all contractors and subcontractors. CRCD shall certify that the quantity of work completed is accurate and that the quality of the contractor's/subcontractor's work has been performed in substantial compliance with the contract documents.

Pursuant to a Paymaster and Representative Agreement (the "Paymaster Agreement"), the Borrower has retained Mr. Fredric Poggi, PE, an independent construction consultant (the "Paymaster") to independently approve all payments to the general contractor and all subcontractors after simultaneous exchange of said payments and lien waivers. Pursuant to the Paymaster Agreement, prior to release of any payment, the Paymaster shall verify that all contractors, subcontractors, material suppliers or laborers have provided lien waivers for all payments already made and, to the extent allowable by the laws of the State, conditional lien waivers for any current payment to be made. If the Paymaster approves a requisition, the Paymaster shall forward the requisition to CRCD and the Borrower for their approval. Upon approval of CRCD and the Borrower, the Paymaster shall forward the approved requisition to the Trustee to effectuate such payment to the contractor, subcontractor, material supplier or laborer in accordance with the approved requisition from the appropriate fund pursuant to the Indenture. No payment shall be made without the written approval of the Paymaster, CRCD and the Borrower. Under the Paymaster Agreement, the Paymaster shall assist in the coordination and implementation of the Project by monitoring construction progress, verifying compliance with the construction contract documents prepared by CRCD, monitoring the construction budget and schedule and assisting in value engineering decisions to assist in cost control.

The Paymaster has more than 40 years of experience in management, engineering, construction and renovation and has served as Paymaster and Executive Director for the North Hudson Sewer Authority for more than 24 years and Assistant Commissioner of Operations for the New York City Department of Buildings (NYCDOB) responsible for the NYCDOB field inspectors and plan examiners. The Paymaster has acted in an identical capacity in connection with the construction and renovation of the Current School Facilities financed with a portion of the Series 2011 Bond and the Series 2013 Bond proceeds.

Despite the above-described precautions, there are always risks associated with new construction. For example, even though the Construction Contract will contain a stipulated sum, there can be no guaranty that actual construction costs will not exceed such amount and hence exceed the amount available to the Borrower for construction purposes. Further, contingency amounts may be insufficient to cover additional costs arising due to factors such as unforeseen site conditions or contract omissions. In addition, although payment and performance completion bonds are contemplated to protect against costs associated with transferring a project to a new contractor, disputes can arise as to their enforcement and, in any event, they cannot protect against timing delays when projects run into difficulty (due to performance of contractors or any other reason). Such timing delays could cause operational difficulties for the Borrower. More generally, the timing of completion of the new High School Facility may be delayed due to unforeseen factors such as unexpected site problems, labor disputes, rain, flooding, delays of public companies, government bureaucracy, fire, unusual delays in deliveries, unavoidable casualties, or other causes beyond the control or fault of contractors, the Borrower or others.

No assurance can be given that construction of the new High School Facility will be completed on time or for the amount of Series 2017 Bond proceeds allocated for such purpose. These risks are heightened by the fact that the Borrower is relying on the additional capacity contemplated to be provided by the new High School Facility to accommodate its projected increased enrollment in the near term. See "APPENDIX B – THE BORROWER – Enrollment."

### **Failure to Provide Ongoing Disclosure**

The Borrower will enter into a Continuing Disclosure Agreement pursuant to Securities and Exchange Commission Rule 15c2 12 (17 CFR Part 240, § 240.15c2 12) (the “Rule”) in connection with the issuance of the Series 2017 Bonds. Failure to comply with the Continuing Disclosure Agreement and the Rule in the future may adversely affect the liquidity of the Series 2017 Bonds and their market price in the secondary market. See “CONTINUING DISCLOSURE AGREEMENT” and “APPENDIX F – FORM OF CONTINUING DISCLOSURE AGREEMENT.”

### **As Built Value; Value of Facility May Fluctuate**

The Construction Contract provides a fixed stipulated and guaranteed price of \$25,000,000 for the completion of an operational charter high school and certain elementary school classrooms and related areas, exclusive of furniture, fixtures and equipment supplied by the Borrower. The Borrower intends to procure an “as built” appraisal of the Facility upon completion. Following the completion of the Current School Facilities, the Borrower obtained and provided to the Trustee an “as built” appraisals of the Current School Facilities. The “as built” appraisal report of the Facility will be available upon completion and the “as built” appraisals of the Current School Facilities are available to potential investors upon request as described under “MISCELLANEOUS – Additional Information.”

Further, because an appraisal represents only the opinion of the appraiser and only as of its date, there may be a difference between the actual value of the Facility, even after the Facility is completed, and the amount of the Series 2017 Bonds, and that difference may be material and adverse to Bondholders.

At any time there may be a difference between the actual value of the Borrower's interests in the Facility and the amount of the Series 2017 Bonds outstanding or the Borrower's interest in the Current School Facilities and the amount of Series 2013 Bonds and/or Series 2011 Bonds outstanding, and that difference may be material and adverse to Bondholders. In particular, it cannot be determined with certainty what the value of the Borrower's interests in the Facility or the Current School Facilities would be in the event of foreclosure under the Mortgages. Such value at any given time will be directly affected by market and financial conditions which are not in the control of the parties involved in the transaction. Real property values can fluctuate substantially depending on a variety of factors. Moreover, there is nothing associated with the Facility or the Current School Facilities which would suggest that their value would remain stable or would increase if the general values of property in the community were to decline. This risk is heightened by the fact that the Facility will be and the Current School Facilities were constructed and renovated specifically for use as a school, which could make it difficult to successfully re-let the Facility or the Current School Facilities, and/or limit or associate additional costs with alternative uses of the Facility or the Current School Facilities.

### **Foreclosure Deficiency and Delays**

If revenues are insufficient to pay the principal of and interest on the Series 2017 Bonds, the Trustee may seek to foreclose on the Mortgages. There can be no assurance that the value of the Borrower's interest in the 2011 Facility, the 2013 Facility and the Facility would be sufficient to meet all remaining debt service requirements with respect to the Series 2011 Bonds, Series 2013 Bonds or Series 2017 Bonds at the time of any foreclosure. See “RISK FACTORS – As Built Value; Value of Facility May Fluctuate” above. In addition, the time necessary to institute and complete foreclosure proceedings would likely substantially delay receipt of funds from a foreclosure.

### **Damage or Destruction of the Facility**

The Loan Agreement requires that the Facility be insured against certain risks. See “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT – Insurance Required.” There can be no assurance that the amount of insurance required to be obtained or actually obtained with respect to the Facility will be adequate, or that the cause of any damage or destruction to the Facility will be as a result of a risk which is insured. Further, there can be no assurance with respect to the ongoing creditworthiness of the insurance companies from which the Borrower obtains insurance policies.

## **Environmental Regulation**

A Phase I Environmental Site Assessment has been conducted with respect to the Facility. See “APPENDIX B – THE BORROWER – Environmental Assessment.” The report prepared in connection with the assessment speaks only as of its dates, and no additional assessments have been requested or performed subsequent to that date. Potential purchasers should refer to the complete reports for additional information regarding the assessments performed. Copies of the reports are available as described under “MISCELLANEOUS – Additional Information” below.

More generally, the Facility is and will be subject to various federal, State and local laws and regulations governing health and the environment. In general, these laws and regulations could result in liability for remediating adverse environmental conditions on or relating to the Facility, whether arising from pre-existing conditions or conditions arising as a result of activities conducted in connection with the ownership of and operations at the Facility. Costs incurred with respect to environmental remediation or liability could adversely affect the Borrower's financial condition and its ability to generate revenues sufficient to pay debt service on the Series 2017 Bonds.

## **Potential Effects of Bankruptcy**

If the Borrower were to file a petition for relief (or if a petition were filed against the Borrower as debtor) under the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., as amended, or other state insolvency, liquidation or receivership laws, the filing could operate as an automatic stay of the commencement or continuation of any judicial or other proceeding against the Borrower, or the property of the Borrower. If the bankruptcy court or other state or federal court so ordered, the property and revenues of the Borrower could be used for the benefit of the Borrower despite the claims of its creditors (including the owners of the Series 2017 Bonds).

In a bankruptcy proceeding under Chapter 11 of the Bankruptcy Code, the Borrower could file a plan of reorganization that would modify the rights of creditors generally or the rights of any class of creditors, secured or unsecured (including the owners of the Series 2017 Bonds). The plan, when approved (“confirmed”) by the bankruptcy court, binds all creditors who had notice or knowledge of the plan and discharges all claims against the Borrower except as otherwise provided for in the plan. No plan may be confirmed by a bankruptcy court unless, among other conditions, the plan is in the best interest of creditors, is feasible and has been accepted by each class of claims impaired thereunder. Even if the plan is not so accepted, it may be confirmed if the court finds that the plan is fair and equitable with respect to each class of non-accepting creditors impaired thereunder and does not discriminate unfairly.

## **Additional Bonds; Limitations on Incurrence of Additional Indebtedness**

The Indenture permits the issuance of Additional Bonds equally and ratably secured under the Indenture on a parity with the Series 2017 Bonds if certain conditions are met. Under the Loan Agreement, the Borrower is precluded from incurring Additional Indebtedness that is senior to the lien of the Mortgage on the Facility and the obligations of the Borrower under the Loan Agreement. The Borrower may incur Additional Indebtedness only upon the satisfaction of certain conditions. The Series 2017 Bonds are parity additional Indebtedness within the meaning of the 2011 Loan Agreement, and the Holders of the Series 2011 Bonds and the Series 2017 Bonds are secured on a parity basis with respect to the Pledged Revenues and the Mortgages. The Borrower may incur further parity additional Indebtedness secured by the Pledged Revenues and the Mortgages under certain conditions, and the Indentures permit the Issuer to issue Additional Bonds on a parity with the Series 2011 Bonds and the Series 2017 Bonds under certain conditions. See “APPENDIX D – GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS – SUMMARY OF CERTAIN PROVISIONS OF THE Loan Agreement –Additional Indebtedness,” SECURITY FOR THE SERIES 2017 Bonds – The Indenture –Additional Indebtedness,” and “SECURITY FOR THE SERIES 2017 Bonds – The Loan Agreement – Limitations on Incurrence of Additional Indebtedness.”

## **Risk of Amendment**

Most of the provisions of the Indenture may be amended with the consent of the Holders of a majority in principal amount of Outstanding Bonds. If Bonds are issued in an amount greater than the previously Outstanding Bonds, such new Bonds could cause the Indenture to be amended in material ways. Additionally, such amendment could result if the underwriter for the related new Bonds were to vote such Bonds to direct the related Bond trustee to vote such new Bonds to amend the Indenture prior to their further distribution to the general public.

## **Enforcement of Remedies**

The remedies available to the Trustee or the registered owners of the Series 2017 Bonds upon an Event of Default under the Indenture and the Loan Agreement are in many respects dependent upon judicial actions that are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, the remedies provided in the Indenture and the Loan Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2017 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by the valid exercise of the sovereign powers of the State and the constitutional powers of the United States of America, bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

## **Determination of Taxability**

The excludability from gross income for federal income taxation purposes of the interest on the Series 2017A Bonds is based on the continuing compliance by the Trustee, the Borrower and the Issuer with certain covenants contained in the Indenture, the Loan Agreement and the Tax Compliance Agreement, dated as of the date of delivery of the Series 2017A Bonds, and executed by the Issuer and the Borrower. These covenants relate generally to restrictions on the use of the Facility by the Borrower, restrictions on use of the Facility by organizations other than the Borrower, arbitrage limitations, and rebate of certain excess investment earnings, if any, to the federal government. Failure to comply with such covenants could cause interest on the Series 2017A Bonds to become subject to federal income taxation retroactive to the date of issuance of the Series 2017A Bonds.

## **Loss of Tax-Exempt Status**

The tax-exempt status of the Series 2017A Bonds presently depends upon maintenance by the Borrower of its status as an organization described in section 501(c)(3) of the Code. The maintenance of this status depends on compliance with general rules regarding the organization and operation of tax-exempt entities, including operation for charitable and educational purposes and avoidance of transactions that may cause earnings or assets to inure to the benefit of private individuals, such as the private benefit and inurement rules.

Tax-exempt organizations are subject to scrutiny from and face the potential for sanctions and monetary penalties imposed by the IRS. One primary penalty available to the IRS under the Code with respect to a tax-exempt entity engaged in inurement or unlawful private benefit is the revocation of tax-exempt status. Although the IRS has not frequently revoked the 501(c)(3) tax-exempt status of non-profit organizations, it could do so in the future. Loss of tax-exempt status by the Borrower could result in loss of tax exemption of the Series 2017A Bonds and defaults in covenants regarding the Series 2017A Bonds and other obligations would likely be triggered. Loss of tax-exempt status by the Borrower could also result in substantial tax liabilities on its income. For these reasons, loss of tax-exempt status of the Borrower could have material adverse consequences on the financial condition of the Borrower.

The Borrower or the Series 2017A Bonds may be audited by the IRS. Because of the complexity of the tax laws and the presence of issues about which reasonable persons can differ, an IRS audit could result in additional taxes, interest, and penalties. An IRS audit ultimately could affect the tax-exempt status of the Borrower, as well as the exclusion from gross income for federal income tax purposes of the interest on the Series 2017A Bonds and any other tax-exempt debt issued for benefit of the Borrower.

## **Secondary Market**

There is no guarantee that a secondary trading market will develop for the Series 2017 Bonds. Consequently, prospective bond purchasers should be prepared to hold their Series 2017 Bonds to maturity or prior redemption. This risk is heightened by the fact that the Series 2017 Bonds are a speculative investment. See “RISK FACTORS – Speculative Investment” above. Subject to applicable securities laws and prevailing market conditions, the Underwriter intends but is not obligated to make a market in the Series 2017 Bonds.

## **Risk of Loss from Nonpresentment upon Redemption**

The rights of the registered owners of the Series 2017 Bonds to receive interest will terminate on the date, if any, on which the Series 2017 Bonds are to be redeemed pursuant to a call for redemption, notice of which has been given under the terms of the Indenture.

## **Enforcement of Remedies**

The remedies available to the Trustee or the registered owners of the Series 2017 Bonds upon an Event of Default under the Indenture and the Loan Agreement are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, the remedies provided in the Indenture and the Loan Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2017 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by the valid exercise of the sovereign powers of the State and the constitutional powers of the United States of America, bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

## **LEGAL MATTERS**

### **General**

All legal matters incident to the authorization, issuance, sale and delivery of the Series 2017 Bonds by the Issuer are subject to the approving opinion of Nixon Peabody LLP, Bond Counsel, whose approving opinion will be delivered with the Series 2017 Bonds, and the proposed form of which is set forth in “APPENDIX E – FORM OF BOND COUNSEL OPINION.” The legal opinion delivered may vary from that form if necessary to reflect facts and law on the date of delivery.

Certain legal matters will be passed upon by Ryan, Brennan & Donnelly LLP, Floral Park, New York, as counsel to the Issuer; by Rivkin Radler, LLP, Uniondale, New York, as counsel to the Borrower; and by Harris Beach PLLC, New York, New York, as counsel to the Underwriter.

The various legal opinions to be delivered concurrently with the delivery of the Series 2017 Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment of the transaction opined upon or of the future performance of parties to such transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

The enforceability of the rights and remedies of the Trustee and the owners of the Series 2017 Bonds under the Indenture and the availability of remedies to any party seeking to enforce the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decision, including specifically Title 11 of the United States Code (the federal bankruptcy code), the enforceability of the rights and remedies under the Indenture and the availability of remedies to any party seeking to enforce the security granted thereby may be limited.

The various legal opinions to be delivered concurrently with the delivery of the Series 2017 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by the valid exercise of the constitutional powers of the State of New York and the United States of America and bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). These exceptions would encompass any exercise of federal, State or local police powers (including the police powers of the State), in a manner consistent with the public health and welfare. The enforceability of the Indenture and the availability of remedies to a party seeking to enforce a pledge of security under the Indenture in a situation where such enforcement or availability may adversely affect public health and welfare may be subject to these police powers.

## **Pending and Threatened Litigation**

### **No Proceedings Against the Borrower**

In connection with the issuance of the Series 2017 Bonds, the Borrower will deliver a certificate or certificates which will state that, as of the date of issuance of the Series 2017 Bonds, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board or body pending or, to the best of its knowledge, threatened against or affecting the Borrower, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Indenture, the Loan Agreement, the Custody Agreement and the bond purchase agreement (referred to in “MISCELLANEOUS – Underwriting”), or this Official Statement, the validity and enforceability of the Indenture, the Loan Agreement, the Custody Agreement, the bond purchase agreement or the Series 2017 Bonds or the operations (financial or otherwise) of the Borrower.

### **No Proceedings Against the Issuer**

In connection with the issuance of the Series 2017 Bonds, the Issuer will deliver a certificate or certificates which will state that, as of the date of issuance of the Series 2017 Bonds, there is no pending or threatened litigation seeking to restrain or enjoin the issuance, sale, execution or delivery of the Series 2017 Bonds, questioning or affecting the validity of the Series 2017 Bonds or any proceedings of the Issuer taken with respect to the issuance or sale thereof, questioning or affecting the validity of the pledge or application of any moneys, revenues or security provided for the payment of the Series 2017 Bonds or questioning or affecting the existence or powers of the Issuer.

## **TAX MATTERS – SERIES 2017A BONDS**

### **Federal Income Tax Opinion**

The Code imposes certain requirements that must be met subsequent to the issuance and delivery of the Series 2017A Bonds for interest thereon to be and remain excluded from gross income for federal income tax purposes. Noncompliance with such requirements could cause the interest on the Series 2017A Bonds to be included in gross income for federal income tax purposes retroactive to the date of issue of the Series 2017A Bonds. Pursuant to the Indenture, the Loan Agreement and the Tax Certificate for the Series 2017A Bonds, the Issuer and the Borrower has have covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of the interest on the Series 2017A Bonds from gross income for federal income tax purposes pursuant to Section 103 of the Code. In addition, the Issuer and the Borrower has made certain representations and certifications in the Indenture, the Loan Agreement and the Tax Certificate. Bond Counsel will also rely on the opinions of counsel to the Borrower as to all matters concerning the status of the Borrower as an organization described in Section 501(c)(3) of the Code and exempt from federal income tax under Section 501(a) of the Code. Bond Counsel will not independently verify the accuracy of those representations and certifications or that opinion.

In the opinion of Nixon Peabody LLP, Bond Counsel, under existing law and assuming compliance with the aforementioned covenants, and the accuracy of certain representations and certifications made by the Issuer and the Borrower described above, interest on the Series 2017A Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code. Bond Counsel is also of the opinion that such interest is not treated as a preference item in calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Interest on the Series 2017A Bonds is, however, included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations.

### **State Tax Opinion**

Bond Counsel is also of the opinion that interest on the Series 2017A Bonds is exempt from personal income taxation imposed by the State of New York or any political subdivision thereof, including The City of New York, assuming compliance with the tax covenants and the accuracy of the representations and certifications described under the heading “Federal Income Taxes.” Bond Counsel expresses no opinion as to other New York State or local tax consequences arising with respect to the Series 2017A Bonds nor as to the taxability of the Series 2017A Bonds or the income therefrom under the laws of any jurisdiction other than the State of New York.

## **Ancillary Tax Matters**

Ownership of the Series 2017A Bonds may result in other federal tax consequences to certain taxpayers, including, without limitation, certain S corporations, foreign corporations with branches in the United States, property and casualty insurance companies, individuals receiving Social Security or Railroad Retirement benefits, and individuals seeking to claim the earned income credit. Ownership of the Series 2017A Bonds may also result in other federal tax consequences to taxpayers who may be deemed to have incurred or continued indebtedness to purchase or to carry the Series 2017A Bonds. Prospective investors are advised to consult their own tax advisors regarding these rules.

Interest paid on tax-exempt obligations such as the Series 2017A Bonds is subject to information reporting to the Internal Revenue Service (the “IRS”) in a manner similar to interest paid on taxable obligations. In addition, interest on the Series 2017A Bonds may be subject to backup withholding if such interest is paid to a registered owner that (a) fails to provide certain identifying information (such as the registered owner’s taxpayer identification number) in the manner required by the IRS, or (b) has been identified by the IRS as being subject to backup withholding.

Bond Counsel is not rendering any opinion as to any federal tax matters other than those described in the opinion attached as Appendix E to this Official Statement. Prospective investors, particularly those who may be subject to special rules described above, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the Series 2017A Bonds, as well as any tax consequences arising under the laws of any state or other taxing jurisdiction.

## **Changes in Law and Post Issuance Events**

Legislative or administrative actions and court decisions, at either the federal or state level, could have an adverse impact on the potential benefits of the exclusion from gross income of the interest on the Series 2017A Bonds and for federal or state income tax purposes, and thus on the value or marketability of the Series 2017A Bonds. This could result from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), repeal of the exclusion of the interest on the Series 2017A Bonds from gross income for federal or state income tax purposes, or otherwise. In this regard, there have been various proposals in recent years that would limit the extent of the exclusion from gross income of interest on obligations of states and political subdivisions under Section 103 of the Code for taxpayers whose income exceeds certain thresholds. It is not possible to predict whether any legislative or administrative actions or court decisions having an adverse impact on the federal or state income tax treatment of Holders of the Series 2017A Bonds may occur. Prospective purchasers of the Series 2017A Bonds should consult their own tax advisers regarding the impact of any change in law on the Series 2017A Bonds.

Bond Counsel has not undertaken to advise in the future whether any events after the date of issuance and delivery of the Series 2017A Bonds may affect the tax status of interest on the Series 2017A Bonds. Bond Counsel expresses no opinion as to any federal, state or local tax law consequences with respect to the Series 2017A Bonds, or the interest thereon, if any action is taken with respect to the Series 2017A Bonds or the proceeds thereof upon the advice or approval of other counsel.

The form of the approving opinion of Bond Counsel is attached to this Official Statement as APPENDIX E – “FORM OF BOND COUNSEL OPINION.”

## **TAX MATTERS - SERIES 2017B BONDS**

### **In General**

The following is a summary of certain anticipated United States federal income tax consequences of the purchase, ownership and disposition of the Series 2017B Bonds. The summary is based upon the provisions of the Code, the Treasury Regulations promulgated thereunder and the judicial and administrative rulings and decisions now in effect, all of which are subject to change. Such authorities may be repealed, revoked, or modified, possibly with retroactive effect, so as to result in United States federal income tax consequences different from those described below. The summary generally addresses Series 2017B Bonds held as capital assets within the meaning

of Section 1221 of the Code and does not purport to address all aspects of federal income taxation that may affect particular investors in light of their individual circumstances or certain types of investors subject to special treatment under the federal income tax laws, including but not limited to financial institutions, insurance companies, dealers in securities or currencies, persons holding such Series 2017B Bonds as a hedge against currency risks or as a position in a “straddle,” “hedge,” “constructive sale transaction” or “conversion transaction” for tax purposes, or persons whose functional currency is not the United States dollar. It also does not deal with Holders other than original purchasers that acquire Series 2017B Bonds at their initial issue price except where otherwise specifically noted. Potential purchasers of the Series 2017B Bonds should consult their own tax advisors in determining the federal, state, local, foreign and other tax consequences to them of the purchase, holding and disposition of the Series 2017B Bonds.

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

### **U.S. Holders**

As used herein, the term “U.S. Holder” means a beneficial owner of Series 2017B Bonds that is (a) an individual citizen or resident of the United States for federal income tax purposes, (b) a corporation, including an entity treated as a corporation for federal income tax purposes, created or organized in or under the laws of the United States or any State thereof (including the District of Columbia), (c) an estate whose income is subject to federal income taxation regardless of its source, or (d) a trust if a court within the United States can exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust. Notwithstanding clause (d) of the preceding sentence, to the extent provided in Treasury regulations, certain trusts in existence on August 20, 1996, and treated as United States persons prior to that date that elect to continue to be treated as United States persons also will be U.S. Holders. In addition, if a partnership (or other entity or arrangement treated as a partnership for federal income tax purposes) holds Series 2017B Bonds, the tax treatment of a partner in the partnership generally will depend upon the status of the partner and the activities of the partnership. If a U.S. Holder is a partner in a partnership (or other entity or arrangement treated as a partnership for federal income tax purposes) that holds Series 2017B Bonds, the U.S. Holder is urged to consult its own tax advisor regarding the specific tax consequences of the purchase, ownership and dispositions of the Series 2017B Bonds.

### **Federal Taxation of Interest Generally**

Interest on the Series 2017B Bonds is not excluded from gross income for federal income tax purposes under Code section 103 and so will be fully subject to federal income taxation. Purchasers (other than those who purchase Series 2017B Bonds in the initial offering at their principal amounts) will be subject to federal income tax accounting rules affecting the timing and/or characterization of payments received with respect to such Series 2017B Bonds. In general, interest paid on the Series 2017B Bonds and recovery of any accrued original issue discount and market discount will be treated as ordinary income to a Bondholder, and after adjustment for the foregoing, principal payments will be treated as a return of capital to the extent of the U.S. Holder’s adjusted tax basis in the Series 2017B Bonds and capital gain to the extent of any excess received over such basis.

### **State Taxes**

Interest on the Series 2017B Bonds is not exempt from personal income taxes of the State of New York and its political subdivisions, including The City of New York. Bond Counsel expresses no opinion as to other state or local tax law consequences arising with respect to the Series 2017B Bonds nor as to the taxability of the Series 2017B Bonds or the income derived therefrom under the laws of any jurisdiction other than the State of New York.

### **Market Discount**

Any owner who purchases a Series 2017B Bond at a price which includes market discount (i.e., at a purchase price that is less than its adjusted issue price in the hands of an original owner) in excess of a prescribed de minimis amount will be required to recharacterize all or a portion of the gain as ordinary income upon receipt of each scheduled or unscheduled principal payment or upon other disposition. In particular, such owner will generally

be required either (a) to allocate each such principal payment to accrued market discount not previously included in income and to recognize ordinary income to that extent and to treat any gain upon sale or other disposition of such a Series 2017B Bond as ordinary income to the extent of any remaining accrued market discount or (b) to elect to include such market discount in income currently as it accrues on all market discount instruments acquired by such owner on or after the first day of the taxable year to which such election applies.

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

An owner of a Series 2017B Bond who acquires such Series 2017B Bond at a market discount also may be required to defer, until the maturity date of such Series 2017B Bonds or the earlier disposition in a taxable transaction, the deduction of a portion of the amount of interest that the owner paid or accrued during the taxable year on indebtedness incurred or maintained to purchase or carry a Series 2017B Bond in excess of the aggregate amount of interest (including original issue discount) includable in such owner's gross income for the taxable year with respect to such Bond. The amount of such net interest expense deferred in a taxable year may not exceed the amount of market discount accrued on the Series 2017B Bond for the days during the taxable year on which the owner held the Series 2017B Bond and, in general, would be deductible when such market discount is includable in income. The amount of any remaining deferred deduction is to be taken into account in the taxable year in which the Series 2017B Bond matures or is disposed of in a taxable transaction. In the case of a disposition in which gain or loss is not recognized in whole or in part, any remaining deferred deduction will be allowed to the extent gain is recognized on the disposition. This deferral rule does not apply if the Bondholder elects to include such market discount in income currently as described above.

### **Bond Premium**

A purchaser of a Series 2017B Bond who purchases such Series 2017B Bond at a cost greater than its remaining redemption amount will have amortizable bond premium. If the holder elects to amortize this premium under Section 171 of the Code (which election will apply to all Series 2017B Bonds held by the holder on the first day of the taxable year to which the election applies and to all Series 2017B Bonds thereafter acquired by the holder), such a holder must amortize the premium using constant yield principles based on the holder's yield to maturity. Amortizable bond premium is generally treated as an offset to interest income, and a reduction in basis is required for amortizable bond premium that is applied to reduce interest payments. Purchasers of any Series 2017B Bonds who acquire such Series 2017B Bonds at a premium should consult with their own tax advisors with respect to state and local tax consequences of owning such Series 2017B Bonds.

### **Surtax on Unearned Income**

Recently enacted legislation generally imposes a tax of 3.8% on the "net investment income" of certain individuals, trusts and estates for taxable years beginning after December 31, 2012. Among other items, net investment income generally includes gross income from interest and net gain attributable to the disposition of certain property, less certain deductions. U.S. Holders should consult their own tax advisors regarding the possible implications of this legislation in their particular circumstances.

### **Sale or Redemption of Bonds**

A Bondholder's adjusted tax basis for a Series 2017B Bond is the price such owner pays for the Series 2017B Bond plus the amount of original issue discount and market discount previously included in income and reduced on account of any payments received on such Series 2017B Bond other than "qualified stated interest" and any amortized bond premium. Gain or loss recognized on a sale, exchange or redemption of a Bond, measured by the difference between the amount realized and the Bondholder's tax basis as so adjusted, will generally give rise to capital gain or loss if the Series 2017B Bond is held as a capital asset (except in the case of Series 2017B Bonds acquired at a market discount, in which case a portion of the gain will be characterized as interest and therefore ordinary income).

If the terms of the Series 2017B Bonds are materially modified, in certain circumstances, a new debt obligation would be deemed created and exchanged for the prior obligation in a taxable transaction. Among the modifications which may be treated as material are those which related to the redemption provisions and, in the case of a nonrecourse obligation, those which involve the substitution of collateral. The defeasance of the Series 2017B Bonds may also result in a deemed sale or exchange of such Series 2017B Bonds under certain circumstances.

EACH POTENTIAL HOLDER OF SERIES 2017B BONDS SHOULD CONSULT ITS OWN TAX ADVISOR CONCERNING (1) THE TREATMENT OF GAIN OR LOSS ON SALE OR REDEMPTION OF THE SERIES 2017B BONDS, AND (2) THE CIRCUMSTANCES IN WHICH SERIES 2017B BONDS WOULD BE DEEMED REISSUED AND THE LIKELY EFFECTS, IF ANY, OF SUCH REISSUANCE.

### **Non-U.S. Holders**

The following is a general discussion of certain United States federal income tax consequences resulting from the beneficial ownership of Series 2017B Bonds by a person other than a U.S. Holder, a former United States citizen or resident, or a partnership or entity treated as a partnership for United States federal income tax purposes (a "Non-U.S. Holder").

Subject to the discussion of backup withholding and the Foreign Account Tax Compliance Act ("FATCA"), payments of principal by the Issuer or any of its agents (acting in its capacity as agent) to any Non-U.S. Holder will not be subject to federal withholding tax. In the case of payments of interest to any Non-U.S. Holder, however, federal withholding tax will apply unless the Non-U.S. Holder (1) does not own (actually or constructively) 10-percent or more of the voting equity interests of the Issuer, (2) is not a controlled foreign corporation for United States tax purposes that is related to the Issuer (directly or indirectly) through stock ownership, and (3) is not a bank receiving interest in the manner described in Section 881(c)(3)(A) of the Code. In addition, either (1) the Non-U.S. Holder must certify on the applicable IRS Form W-8 (series) (or successor form) to the Issuer, its agents or paying agents or a broker under penalties of perjury that it is not a U.S. person and must provide its name and address, or (2) a securities clearing organization, bank or other financial institution, that holds customers' securities in the ordinary course of its trade or business and that also holds the Series 2017B Bonds must certify to the Issuer or its agent under penalties of perjury that such statement on the applicable IRS Form W-8 (series) (or successor form) has been received from the Non-U.S. Holder by it or by another financial institution and must furnish the interest payor with a copy.

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

If a Non-U.S. Holder is engaged in a trade or business in the United States and interest on a Series 2017B Bond held by such holder is effectively connected with the conduct of such trade or business, the Non-U.S. Holder, although exempt from the withholding tax discussed above (provided that such holder timely furnishes the required certification to claim such exemption), may be subject to United States federal income tax on such interest in the same manner as if it were a U.S. Holder. In addition, if the Non-U.S. Holder is a foreign corporation, it may be subject to a branch profits tax equal to 30% (subject to a reduced rate under an applicable treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments. For purposes of the branch profits tax, interest on a Series 2017B Bond will be included in the earnings and profits of the holder if the interest is effectively connected with the conduct by the holder of a trade or business in the United States. Such a holder must provide the payor with a properly executed IRS Form W-8ECI (or successor form) to claim an exemption from United States federal withholding tax.

Generally, any capital gain realized on the sale, exchange, retirement or other disposition of a Series 2017B Bond by a Non-U.S. Holder will not be subject to United States federal income or withholding taxes if (1) the gain

is not effectively connected with a United States trade or business of the Non-U.S. Holder, and (2) in the case of an individual, the Non-U.S. Holder is not present in the United States for 183 days or more in the taxable year of the sale, exchange, retirement or other disposition, and certain other conditions are met.

For newly issued or reissued obligations, such as the Series 2017B Bonds, FATCA imposes U.S. withholding tax on interest payments and, for dispositions after December 31, 2018 (see IRS Notice 2015-66), gross proceeds of the sale of the Series 2017B Bonds paid to certain foreign financial institutions (which is broadly defined for this purpose to generally include non-U.S. investment funds) and certain other non-U.S. entities if certain disclosure and due diligence requirements related to U.S. accounts or ownership are not satisfied, unless an exemption applies. An intergovernmental agreement between the United States and an applicable non-U.S. country may modify these requirements. In any event, Bondholders or beneficial owners of the Series 2017B Bonds shall have no recourse against the Issuer, nor will the Issuer be obligated to pay any additional amounts to “gross up” payments to such persons, as a result of any withholding or deduction for, or on account of, any present or future taxes, duties, assessments or government charges with respect to payments in respect of the Series 2017B Bonds.

Non-U.S. Holders should consult their own tax advisors with respect to the possible applicability of federal withholding and other taxes upon income realized in respect of the Series 2017B Bonds.

### **Information Reporting and Backup Withholding**

For each calendar year in which the Series 2017B Bonds are outstanding, the Issuer, its agents or paying agents or a broker is required to provide the IRS with certain information, including a holder’s name, address and taxpayer identification number (either the holder’s Social Security number or its employer identification number, as the case may be), the aggregate amount of principal and interest paid to that Holder during the calendar year and the amount of tax withheld, if any. This obligation, however, does not apply with respect to certain U.S. Holders, including corporations, tax-exempt organizations, qualified pension and profit sharing trusts, and individual retirement accounts and annuities.

If a U.S. Holder subject to the reporting requirements described above fails to supply its correct taxpayer identification number in the manner required by applicable law or under-reports its tax liability, the Issuer, its agents or paying agents or a broker may be required to make “backup” withholding of tax on each payment of interest or principal on the Series 2017B Bonds. This backup withholding is not an additional tax and may be credited against the U.S. Holder’s federal income tax liability, provided that the U.S. Holder furnishes the required information to the IRS.

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

Payments of the proceeds from the sale of a Series 2017B Bond to or through a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, information reporting (but not backup withholding) may apply to those payments if the broker is one of the following:

- a U.S. person;
- a controlled foreign corporation for U.S. tax purposes;
- a foreign person 50-percent or more of whose gross income from all sources for the three-year period ending with the close of its taxable year preceding the payment was effectively connected with a United States trade or business; or
- a foreign partnership with certain connections to the United States.

Payment of the proceeds from a sale of a Series 2017B Bond to or through the United States office of a broker is subject to information reporting and backup withholding unless the holder or beneficial owner certifies as to its taxpayer identification number or otherwise establishes an exemption from information reporting and backup withholding.

The preceding federal income tax discussion is included for general information only and may not be applicable depending upon a holder's particular situation. Holders should consult their tax advisors with respect to the tax consequences to them of the purchase, ownership and disposition of the Series 2017B Bonds, including the tax consequences under federal, state, local, foreign and other tax laws and the possible effects of changes in those tax laws.

IN ALL EVENTS, ALL INVESTORS SHOULD CONSULT THEIR OWN TAX ADVISORS IN DETERMINING THE FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES TO THEM OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE SERIES 2017B BONDS.

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

The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), imposes certain fiduciary obligations and prohibited transaction restrictions on employee pension and welfare benefit plans subject to Title I of ERISA ("ERISA Plans"). Section 4975 of the Code imposes essentially the same prohibited transaction restrictions on tax-qualified retirement plans described in Section 401(a) and 403(a) of the Code, which are exempt from tax under Section 501(a) of the Code, other than governmental and church plans as defined herein ("Qualified Retirement Plans"), and on Individual Retirement Accounts ("IRAs") described in Section 408(b) of the Code (collectively, "Tax-Favored Plans"). Certain employee benefit plans such as governmental plans (as defined in Section 3(32) of ERISA), and, if no election has been made under Section 410(d) of the Code, church plans (as defined in Section 3(33) of ERISA), are not subject to ERISA requirements. Additionally, such governmental and non-electing church plans are not subject to the requirements of Section 4975 of the Code. Accordingly, assets of such plans may be invested in the Series 2017 Bonds without regard to the ERISA and Code considerations described below, subject to the provisions of applicable federal and state law.

In addition to the imposition of general fiduciary obligations, including those of investment prudence and diversification and the requirement that a plan's investment be made in accordance with the documents governing the plan, Section 406 of ERISA and Section 4975 of the Code prohibit a broad range of transactions involving assets of ERISA Plans and Tax-Favored Plans and entities whose underlying assets include plan assets by reason of ERISA Plans or Tax-Favored Plans investing in such entities (collectively, "Benefit Plans") and persons who have certain specified relationships to the Benefit Plans ("Parties In Interest" or "Disqualified Persons"), unless a statutory or administrative exemption is available. The definitions of "Party in Interest" and "Disqualified Person" are expansive. While other entities may be encompassed by these definitions, they include, most notably: (1) fiduciary with respect to a plan; (2) a person providing services to a plan; and (3) an employer or employee organization any of whose employees or members are covered by the plan. Certain Parties in Interest (or Disqualified Persons) that participate in a prohibited transaction may be subject to a penalty (or an excise tax) imposed pursuant to Section 502(i) of ERISA (or Section 4975 of the Code) unless a statutory or administrative exemption is available.

Certain transactions involving the purchase, holding or transfer of the Series 2017 Bonds might be deemed to constitute prohibited transactions under ERISA and Section 4975 of the Code if assets of the Issuer were deemed to be assets of a Benefit Plan. Under final regulations issued by the United States Department of Labor (the "Plan Assets Regulation"), the assets of the Issuer would be treated as plan assets of a Benefit Plan for the purposes of ERISA and Section 4975 of the Code only if the Benefit Plan acquires an "equity interest" in the Issuer and none of the exceptions contained in the Plan Assets Regulation is applicable. An equity interest is defined under the Plan Assets Regulation as an interest in an entity other than an instrument which is treated as indebtedness under applicable local law and which has no substantial equity features. Although there can be no assurances in this regard, it appears that the Series 2017 Bonds should be treated as debt without substantial equity features for purposes of the Plan Assets Regulation. This determination is based upon the traditional debt features of the Series 2017 Bonds, including the reasonable expectation of purchasers of Series 2017 Bonds that the Series 2017 Bonds will be repaid when due, traditional default remedies, as well as the absence of conversion rights, warrants and other typical equity features. The debt treatment of the Series 2017 Bonds for ERISA purposes could change subsequent

to issuance of the Series 2017 Bonds. In the event of a withdrawal or downgrade to below investment grade of the rating of the Series 2017 Bonds or a characterization of the Series 2017 Bonds as other than indebtedness under applicable local law, the subsequent purchase of the Series 2017 Bonds or any interest therein by a Benefit Plan Investor is prohibited.

However without regard to whether the Series 2017 Bonds are treated as an equity interest for such purposes, though, the acquisition or holding of Series 2017 Bonds by or on behalf of a Benefit Plan could be considered to give rise to a prohibited transaction if the Issuer or the Issuing and Paying Agent, or any of their respective affiliates, is or becomes a Party in Interest or a Disqualified Person with respect to such Benefit Plan.

Most notably, ERISA and the Code generally prohibit the lending of money or other extension of credit between an ERISA Plan or Tax-Favored Plan and a Party in Interest or a Disqualified Person, and the acquisition of any of the Series 2017 Bonds by a Benefit Plan would involve the lending of money or extension of credit by the Benefit Plan. In such a case, however, certain exemptions from the prohibited transaction rules could be applicable depending on the type and circumstances of the plan fiduciary making the decision to acquire a Bond. Included among these exemptions are: Prohibited Transaction Class Exemption (“PTCE”) 96-23, regarding transactions effected by certain “in-house asset managers”; PTCE 90-1, regarding investments by insurance company pooled separate accounts; PTCE 95-60, regarding transactions effected by “insurance company general accounts”; PTCE 91-38, regarding investments by bank collective investment funds; and PTCE 84-14, regarding transactions effected by “qualified professional asset managers.” Further, the statutory exemption in Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code provides for an exemption for transactions involving “adequate consideration” with persons who are Parties in Interest or Disqualified Persons solely by reason of their (or their affiliate’s) status as a service provider to the Benefit Plan involved and none of whom is a fiduciary with respect to the Benefit Plan assets involved (or an affiliate of such a fiduciary). There can be no assurance that any class or other exemption will be available with respect to any particular transaction involving the Series 2017 Bonds, or that, if available, the exemption would cover all possible prohibited transactions.

By acquiring a Series 2017 Bond (or interest therein), each purchaser and transferee (and if the purchaser or transferee is a Plan, its fiduciary) is deemed to represent and warrant that either (i) it is not acquiring the Series 2017 Bond (or interest therein) with the assets of a Benefit Plan Investor, governmental plan or church plan; or (ii) the acquisition and holding of the Series 2017 Bond (or interest therein) will not give rise to a nonexempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. Benefit Plan Investors may not purchase the Series 2017 Bonds at any time that the ratings on the Series 2017 Bonds are below investment grade or the Series 2017 Bonds have been characterized as other than indebtedness for applicable local law purposes. A purchaser or transferee who acquires Series 2017 Bonds with assets of a Benefit Plan Investor represents that such purchaser or transferee has considered the fiduciary requirements of ERISA or other similar laws and has consulted with counsel with regard to the purchase or transfer.

Any ERISA Plan fiduciary considering whether to purchase the Series 2017 Bonds on behalf of an ERISA Plan should consult with its counsel regarding the applicability of the fiduciary responsibility and prohibited transaction provisions of ERISA and Section 4975 of the Code to such investment and the availability of any of the exemptions referred to above. Persons responsible for investing the assets of Tax-Favored Plans that are not ERISA Plans should seek similar counsel with respect to the prohibited transaction provisions of the Code and the applicability of any similar state or federal law.

## **CONTINUING DISCLOSURE AGREEMENT**

The Borrower will enter into and deliver a Continuing Disclosure Agreement (the “Continuing Disclosure Agreement”) with respect to the Series 2017 Bonds. The Continuing Disclosure Agreement is made for the benefit of the registered and Beneficial Owners of the Series 2017 Bonds and to assist the Underwriter in complying with its obligations pursuant to Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”). See “APPENDIX F – FORM OF CONTINUING DISCLOSURE AGREEMENT.”

The continuing disclosure agreement entered into by the Borrower in connection with the Series 2011 Bonds (the “2011 Continuing Disclosure Agreement”) required the Borrower to annually provide an annual report

(the "Annual Report") not later than 120 days after the close of each fiscal year of the Borrower, which is June 30. Under the 2011 Continuing Disclosure, the Borrower is required to provide information to the MSRB through EMMA. The Borrower filed its Annual Report for each of the years ended June 30, 2011 through 2013 in a timely fashion. However, the Annual Report for the year ended June 30, 2013 did not include the Enrollment and Wait List Data that is required under the 2011 Continuing Disclosure Agreement. The 2011 Continuing Disclosure Agreement and the continuing disclosure agreement entered into by the Borrower in connection with the Series 2013 Bonds (the "2013 Continuing Disclosure Agreement") also require filing of, at least once per quarter, the Borrower's unaudited financial statements for the previous quarter reflecting revenues and expenses as compared with the Borrower's operating budget together with copies of each report on enrollment, headcount, membership, attendance and similar statistics with respect to the Borrower submitted by the Borrower to the New York State Education Department during the previous calendar quarter ("Enrollment and Head Count Report"). Over the previous five years, such quarterly unaudited financial statements were filed late as follows:

- Quarter Ended 9/30/12 - filed late on 12/31/12
- Quarter Ended 12/31/12 - filed late on 2/1/13
- Quarter Ended 6/30/13 - filed late on 8/2/13
- Quarter Ended 9/30/13 - filed late on 11/20/13

The Borrower notes that in all of the above cases the filings were delinquent because the Borrower's submission to the State of the same documents required to be submitted within 30 days following the end of a quarter under the 2011 Continuing Disclosure Agreement are due 45 days after the end of each quarter. The 2011 Continuing Disclosure Agreement has been amended to align the two reporting dates by providing that the quarterly filings are due 45 days after the end of each quarter.

Over the previous five years, such quarterly unaudited financial statements did not provide the Enrollment and Head Count Report as follows:

- Quarter Ended 9/30/11 - filed late on 12/12/13
- Quarter Ended 12/31/11 - filed late on 12/12/13
- Quarter Ended 9/30/13 - filed late on 12/12/13.

Over the previous five years, such quarterly unaudited financial statements were filed late as follows:

- Quarter Ended 6/30/2016- filed late 8/27/2016
- Quarter Ended 9/30/2015- filed late 12/2/2015
- Quarter Ended 6/30/2015- filed late on 12/2/2015
- Quarter Ended 12/31/2014- filed late on 3/13/2015
- Quarter Ended 9/30/2014- filed late on 11/26/2014
- Quarter Ended 6/30/2014- filed late on 11/26/2014

The Borrower notes that in all of the cases listed in the six bullet points above, the filings were timely made by the Borrower with the Dissemination Agent but were delinquent posted by the dissemination Agent.

The 2013 Continuing Disclosure Agreement requires the filing of monthly construction progress reports. No such reports have been filed by the Borrower; provided, however that Bondholders were provided with such reports directly.

The Borrower notes that the pursuant to the 2011 Continuing Disclosure Agreement and the 2013 Continuing Disclosure Agreement, failure to file quarterly unaudited financial statements and pursuant to the 2013 Continuing Disclosure Agreement, failure to file monthly construction progress reports, do not necessitate the filing of event notices, because such obligations are contractual obligations of the Borrower not required under the Rule.

The Borrower (with assistance from the Dissemination Agent has reviewed its continuing disclosure processes and procedures, including through conducting discussions with the Dissemination Agent regarding the requirements of the 2011 Continuing Disclosure Agreement and the 2013 Continuing Disclosure Agreement. Other than as described above, the Borrower has not failed to comply in all material respects in the previous five years with any previous undertakings required by the Rule.

## **FINANCIAL STATEMENTS**

The financial statements of the Borrower for the years ended June 30, 2016 included in this Official Statement in “APPENDIX C – FINANCIAL STATEMENTS,” have been audited by Koch Group & Company, LLP (“Koch Group”), to the extent and for the periods indicated in their report thereon. Such financial statements have been included in reliance upon the report of Koch Group. The Borrower is not aware of any facts that would make such financial statements misleading.

## **MISCELLANEOUS**

### **Underwriting**

Subject to the terms and conditions of a bond purchase agreement (the “Bond Purchase Agreement”) entered into by and among the Issuer, the Borrower and Robert W. Baird & Co. Incorporated (the “Underwriter”), the Series 2017 Bonds are being sold by the Issuer to the Underwriter at an underwriting discount of \$578,775.00 (\$538,500.00 with respect to the Series 2017A Bonds and \$40,275.00 with respect to the Series 2017B Bonds). Expenses associated with the issuance of the Series 2017 Bonds are being paid from proceeds of the Series 2017 Bonds. The right of the Underwriter to receive compensation in connection with the Series 2017 Bonds is contingent upon the actual sale and delivery of the Series 2017 Bonds. The Underwriter has initially offered the Series 2017 Bonds to the public at the prices set forth on the inside front cover page of this Official Statement. Such prices may subsequently change without any requirement of prior notice. The Underwriter reserves the right to join with dealers and other investment banking firms in offering the Series 2017 Bonds to the public.

### **Financial Advisors**

Buck Financial Advisors LLC, Englewood, Colorado, is serving as financial advisor to the Borrower. Buck Financial Advisors LLC is not obligated nor has undertaken to make an independent verification or to assume the responsibility for the accuracy or completeness of the information contained in this Official Statement.

### **Additional Information**

The summaries of or references to constitutional provisions, statutes, resolutions, agreements, contracts, financial statements, reports, publications and other documents or compilations of data or information set forth in this Official Statement do not purport to be complete statements of the provisions of the items summarized or referred to and are qualified in their entirety by the actual provisions of such items, copies of which are either publicly available or available upon request and the payment of a reasonable copying, mailing and handling charge from the Underwriter.

*[Remainder of page intentionally left blank]*

**Certification**

The preparation of this Official Statement and its distribution have been authorized by the Borrower and the Issuer. This Official Statement is not to be construed as an agreement or contract between the Borrower or the Issuer and any purchaser, Owner or Holder of any Bond.

**TOWN OF HEMPSTEAD LOCAL DEVELOPMENT CORPORATION**

By: Edith M. Longo  
Edith M. Longo  
Deputy Executive Director/Chief Financial Officer

**THE ACADEMY CHARTER SCHOOL**

By: Barrington Goldson  
Barrington Goldson  
Board Chair

## APPENDIX A

### SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW

This appendix summarizes certain provisions of New York charter school law. This Appendix provides a summary only, and only for informational purposes. Potential investors should refer to and independently evaluate applicable provisions of the charter school law in their entirety, with assistance from counsel as necessary, for a complete understanding of their terms. Further, potential investors should note that the provisions summarized below are subject to change, and this summary only pertains to certain aspects of currently existing law. See “RISK FACTORS – Future Changes to Charter School Laws.”

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

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

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

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

An application to establish a charter school may be submitted by teachers, parents, school administrators, community residents or any combination thereof. Such application may be filed in conjunction with a college, university, museum, educational institution, not-for-profit corporation exempt from taxation under paragraph 3 of subsection (c) of section 501 of the internal revenue code or for-profit business or corporate entity authorized to do business in New York state. Provided however, for-profit business or corporate entities shall not be eligible to submit an application to establish a charter school pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this article, or operate or manage a charter school for a charter issued pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this article. For charter schools established in conjunction with a for-profit business or corporate entity, the charter shall specify the extent of the entity's participation in the management and operation of the school.

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

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

- (a) The board of education of a school district eligible for an apportionment of aid under subdivision four of section thirty-six hundred two (apportionment of public moneys to school districts employing eight or more teachers) of this chapter;

(b) The board of trustees of the state university of New York; or

(c) The board of regents. The board of regents shall be the only entity authorized to issue a charter pursuant to this article. Notwithstanding any provision of this subdivision to the contrary, an application for the conversion of an existing public school to a charter school shall be submitted to, and may only be approved by, the charter entity set forth in paragraph (a) of this subdivision. Notwithstanding any law, rule or regulation to the contrary, any such application for conversion shall be consistent with this section but shall not be subject to the process pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this article, and the charter entity shall require that the parents or guardians of a majority of the students then enrolled in the existing public school vote in favor of converting the school to a charter school.

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

Charters may be renewed, upon application, for a term of up to five years in accordance with the provisions of this article for the issuance of such charters pursuant to section twenty-eight hundred fifty-two of this article; provided, however, that a renewal application shall include:

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

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

(c) Copies of each of the annual reports of the charter school required by subdivision two of section twenty-eight hundred fifty-seven of this article, including the charter school report cards and the certified financial statements.

(d) Indications of parent and student satisfaction.

(e) The means by which the charter school will meet or exceed enrollment and retention targets as prescribed by the board of regents or the board of trustees of the state university of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program which shall be considered by the charter entity prior to approving such charter school's application for renewal. When developing such targets, the board of regents and the board of trustees of the state university of New York shall ensure (1) that such enrollment targets are comparable to the enrollment figures of such categories of students attending the public schools within the school district, or in a city school district in a city having a population of one million or more inhabitants, the community school district, in which the charter school is located; and (2) that such retention targets are comparable to the rate of retention of such categories of students attending the public schools within the school district, or in a city school district in a city having a population of one million or more inhabitants, the community school district, in which the proposed charter school would be located.

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

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

(a) Upon the approval of a charter by the board of regents, the board of regents shall incorporate the charter school as an education corporation for a term not to exceed five years, provided however in the case of charters issued pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this article the board of regents shall incorporate the charter school as an education corporation for a term not to exceed five years in which instruction is provided to pupils plus the period commencing with the effective date of the charter and ending with the opening of the school for instruction.

Such certificate of incorporation shall not modify or limit any terms of the charter approved by the board of regents. Upon approval of an application to renew a charter, the board of regents shall extend the certificate of

incorporation for a term not to exceed five years. Upon termination or nonrenewal of the charter of a charter school pursuant to section twenty-eight hundred fifty-five of this article, the certificate of incorporation of the charter school shall be revoked by the board of regents pursuant to section two hundred nineteen of this chapter (change of charter), provided that compliance with the notice and hearing requirements of such section twenty-eight hundred fifty-five of this article shall be deemed to satisfy the notice and hearing requirements of such section two hundred nineteen. It shall be the duty of the trustees of the charter school to obtain federal tax-exempt status no later than one year following approval of a charter school by the board of regents. For purposes of this article, "certificate of incorporation" shall mean the provisional charter issued by the board of regents to form the charter school as an educational corporation pursuant to sections two hundred sixteen (charters) and two hundred seventeen (provisional charters) of this chapter.

(b) An education corporation organized to operate a charter school shall have all corporate powers necessary and desirable for carrying out a charter school program in accordance with the provisions of this article, other applicable laws and regulations and the terms of the charter, including all of the powers of an education corporation formed to operate an elementary or secondary school and those powers granted under the provisions of the not-for-profit corporation law that are made applicable to charter schools by section two hundred sixteen-a (applicability of not-for-profit corporation law) of this chapter. The powers of the trustees of the charter school shall include those powers specified in section two hundred twenty-six (powers of trustees of institutions) of this chapter.

(b-1) An education corporation operating a charter school shall be authorized to operate more than one school or house any grade at more than one site, provided that a charter must be issued for each such additional school or site in accordance with the requirements for the issuance of a charter pursuant to this article and that each such additional school or site shall count as a charter issued pursuant to subdivision nine of section twenty eight hundred fifty-two of this article; and provided further that:

(i) a charter school may operate in more than one building at a single site; and

(ii) a charter school which provides instruction to its students at different locations for a portion of their school day shall be deemed to be operating at a single site.

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

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

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

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

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

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

(\* NB Effective until June 30, 2018)

\* (a) For purposes of sections seven hundred one, seven hundred eleven, seven hundred fifty-one and nine hundred twelve of this chapter, a charter school shall be deemed a nonpublic school in the school district within which the charter school is located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider. Where the charter school arranges to have the school district of residence provide such special education programs or services, such school district shall provide services in the same manner as it serves students with disabilities in other public schools in the school district, including the provision of supplementary and related services on site to the same extent to which it has a policy or practice of providing such services on the site of such other public schools.

(\* NB Effective June 30, 2018)

\* (a) For purposes of sections seven hundred one, seven hundred eleven, seven hundred fifty-one and nine hundred twelve of this chapter, a charter school shall be deemed a nonpublic school in the school district within which the charter school is located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider.

(b) For purposes of section thirty-six hundred thirty-five of this chapter, a charter school shall be deemed a nonpublic school. The charter and application therefore shall set forth the manner in which students ineligible for transportation pursuant to section thirty-six hundred thirty-five of this chapter shall be transported to and from school. Any supplemental transportation provided by a charter school shall comply with all transportation safety laws and regulations applicable to other public schools. A school district may enter into a contract for the provision of supplemental transportation services to a charter school, and any such services shall be provided by the school district at cost.

(c) A charter school may contract with the governing body of a public college or university for the use of a school building and grounds, the operation and maintenance thereof. Any such contract shall provide such services or facilities at cost. A school district shall permit any charter school granted approval to co-locate, to use such services and facilities without cost. Notwithstanding any provision of law to the contrary, any approval prior to January 1, 2014, pursuant to paragraph (h) of subdivision 1 of section 2590-g of the education law, of a significant change in school utilization relating to the co-location of a school authorized pursuant to article 56 of the education law or to allocate such school space in a district school building made prior to the implementation of the requirements of paragraph (h) of subdivision 1 of section 2590-g of the education law shall not, on or after the effective date of this act, be altered, revised, amended, revoked, overturned, or withdrawn, nor shall any such decision or approval that has not been altered, revised, amended, overturned or withdrawn by the board of education or the chancellor as of the effective date of this act fail to be implemented without the consent of the charter school approved for co-location in a public school building unless such charter school is no longer authorized pursuant to article 56 of the education law.

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

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

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

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

(b) A charter school shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in this article. A charter school shall be exempt from all other state and local laws, rules, regulations or policies governing public or private schools, boards of education, school districts and political subdivisions, including those relating to school personnel and students, except as specifically provided in the school's charter or in this article. Nothing in this subdivision shall affect the requirements of compulsory education of minors established by part one of article sixty-five (compulsory education and school census) of this chapter.

(c) A charter school shall be subject to the financial audits, the audit procedures, and the audit requirements set forth in the charter and shall be subject to audits of the comptroller of the state of New York at his or her discretion. Such procedures and standards shall be consistent with generally accepted accounting and audit standards. Independent fiscal audits shall be required at least once annually.

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

(e) A charter school shall be subject to the provisions of articles six (freedom of information law) and seven of the public officers (open meetings law) law.

(f) A charter school shall be subject to the provisions of sections eight hundred (definitions), eight hundred one (conflicts of interest prohibited), eight hundred two (exceptions), eight hundred three (disclosure of interest), eight hundred four (contracts void), eight hundred four-a (certain interests prohibited), eight hundred five (violations), eight hundred five-a (certain action prohibited), eight hundred five-b (solemnization of marriages) and eight hundred six (code of ethics) of the general municipal law to the same extent such sections apply to school districts.

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

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

(b) Any child who is qualified under the laws of this state for admission to a public school is qualified for admission to a charter school. Applications for admission to a charter school shall be submitted on a uniform application form created by the department and shall be made available by a charter school in languages predominately spoken in the community in which such charter school is located. The school shall enroll each eligible student who submits a timely application by the first day of April each year, unless the number of applications exceeds the capacity of the grade level or building. In such cases, students shall be accepted from among applicants by a random selection process, provided, however, that an enrollment preference shall be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located, and siblings of pupils already enrolled in the charter school. Preference may also be provided to children of employees of the charter school or charter management organization, provided that such children of employees may constitute no more than fifteen percent of the charter school's total enrollment. The commissioner shall establish regulations to require that the random selection process conducted pursuant to this paragraph be performed in a transparent and equitable manner and to require that the time and place of the random selection process be publicized in a manner consistent with the requirements of section one hundred four of the public officers law and be open to the public.

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

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

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

The charter entity, or the board of regents, may terminate a charter upon any of the following grounds:

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

(b) Serious violations of law;

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

(d) When the public employment relations board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of subdivision one of section two hundred nine-a (improper employer practices) of the civil service law involving interference with or discrimination against employee rights under article fourteen (Public Employees' Fair Employment Act) of the civil service law; or

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

Notice of intent to revoke a charter shall be provided to the board of trustees of a charter school at least thirty days prior to the effective date of the proposed revocation. Such notice shall include a statement of reasons for the proposed revocation. The charter school shall be allowed at least thirty days to correct the problems associated with the proposed revocation. Prior to revocation of the charter, a charter school shall be provided an opportunity to

be heard, consistent with the requirements of due process. Upon the termination of a charter, the charter school shall proceed with dissolution pursuant to the procedures of the charter and direction of the charter entity and the board of regents.

In addition to the provisions of subdivision two of this section, the charter entity or the board of regents may place a charter school falling within the provisions of subdivision one of this section on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in summary revocation of the school's charter.

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

The regulatory power of the board of regents and the commissioner shall not extend to charter schools except as otherwise specifically provided in this article.

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

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

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

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

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

(d) efforts taken by the charter school in the existing school year, and a plan for efforts to be taken in the succeeding school year, to meet or exceed enrollment and retention targets set by the board of regents or the board of trustees of the state university of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program established pursuant to paragraph (e) of subdivision four of section twenty-eight hundred fifty-one of this article.

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

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

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

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

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

(d) A list of all actions taken by a charter entity on charter application and the rationale for the renewal or revocation of any charters; and

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

The board of regents shall review the educational effectiveness of the charter school approach authorized by this article and the effect of charter schools on the public and nonpublic school systems. Not later than December thirty-first, two thousand three, the board of regents shall report to the governor, the temporary president of the senate, the speaker of the assembly and the board of regents with recommendations to modify, expand, or terminate that approach. Such report shall include, for each charter school, a copy of the school's mission statement, attendance statistics and dropout rates, student performance on standardized assessment tests, projections of financial stability, and, wherever practicable, comparisons to other public schools.

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

## CHARTER SCHOOL FUNDING

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

(\*\*Effective until June 30, 2018)

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

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

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

(iii) for the 2010-2011 through two 2013-2014 school years, the charter school basic tuition shall be the basic tuition computed for the 2010-2011 school year pursuant to the provisions of subparagraph (i) of this paragraph;

(iv) for the 2014-2015, 2015-2016 and 2016-2017 school years, the charter school basic tuition shall be the sum of the lesser of the charter school Basic Tuition computed for the 2010-2011 school year pursuant to the provisions of subparagraph (i) of this paragraph or the charter school basic tuition

computed for the current year pursuant to the provisions of subparagraph (i) of this paragraph plus the supplemental basic tuition;

(v) for the 2017-2018 school year, the charter school basic tuition shall be the sum of (A) the charter school Basic Tuition for the 2016-2017 school year plus (B) five hundred dollars;

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

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

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

For the purposes of this subdivision, the “supplemental basic tuition” shall be (A) for a school district for which the charter school basic tuition computed for the current year is greater than or equal to the charter school basic tuition for the 2010-2011 school year pursuant to the provisions of subparagraph (i) of this paragraph, (1) for the 2014-2015 school year two hundred and fifty dollars, and (2) for the 2015-2016 school year three hundred and fifty dollars, and (3) for the 2016-2017 school year five hundred dollars, and (4) for the 2017-2018 school year and thereafter, the sum of (i) the supplemental basic tuition calculated for the 2016-2017 school year plus (ii) five hundred dollars, and (B) for school years prior to the 2017-2018 school year, for a school district for which the charter school basic tuition for the 2010-2011 school year is greater than the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the positive difference of the charter school basic tuition for the 2010-2011 school year minus the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph and (C) for school years following the 2016-2017 schools years, for a school district for which the charter school basic tuition for the 2010-2011 school year is greater than the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the sum of (i) the supplemental basic tuition calculated for the 2016-2017 school year plus (ii) five hundred dollars.

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

(c) Notwithstanding any other provision of this subdivision to the contrary, payment of the federal aid attributable to a student with a disability attending a charter school shall be made in accordance with the requirements of section 8065-a of title twenty of the United States code and sections 76.785-76.799 and 300.209 of title thirty-four of the code of federal regulations. \*

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

\*\* (Effective June 30, 2018)

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

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

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

(iii) for the 2010-2011 through two 2013-2014 school years, the charter school basic tuition shall be the basic tuition computed for the 2010-2011 school year pursuant to the provisions of subparagraph (i) of this paragraph;

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

(v) for the 2017-2018 school year, the charter school basic tuition shall be the sum of (A) the charter school Basic Tuition for the 2016-2017 school year plus (B) five hundred dollars;

(vi) for the 2018-2019 school year, the charter school basic tuition shall be the lesser of (A) the product of (i) the charter school basic tuition calculated for the Base Year multiplied by (ii) the average of the quotients for each school year in the period commencing with the year five years prior to the base year and finishing with the year prior to the base year of the total approved operating expense for such school

district calculated pursuant to §3602(1)(t) of the New York Education Law for each such year divided by the total approved operating expense for such district for the immediately preceding year, provided that the highest and lowest annual quotients shall be excluded from the calculation of such average or (B) the quotient of the total general fund expenditures for the school district calculated pursuant to an electronic data file created for the purpose of compliance with section 305(21)(b) of the Education Law published annually on May 15th for the year prior to the Base Year divided by the total estimated public enrollment for the school district pursuant to §3602(1)(n) of the New York Education Law for the year prior to the base year.

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

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

For the purposes of this subdivision, the “supplemental basic tuition” shall be (A) for a school district for which the charter school basic tuition computed for the current year is greater than or equal to the charter school basic tuition for the 2010-2011 school year pursuant to the provisions of subparagraph (i) of this paragraph, (1) for the 2014-2015 school year two hundred and fifty dollars, and (2) for the 2015-2016 school year three hundred and fifty dollars, and (3) for the 2016-2017 school year five hundred dollars, and (4) for the 2017-2018 school year and thereafter, the sum of (i) the supplemental basic tuition calculated for the 2016-2017 school year plus (ii) five hundred dollars, and (B) for school years prior to the 2017-2018 school year, for a school district for which the charter school basic tuition for the 2010-2011 school year is greater than the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the positive difference of the charter school basic tuition for the 2010-2011 school year minus the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph and (C) for school years following the 2016-2017 schools years, for a school district for which the charter school basic tuition for the 2010-2011 school year is greater than the charter school basic tuition for the current year pursuant to the provisions of subparagraph (i) of this paragraph, the sum of (i) the supplemental basic tuition calculated for the 2016-2017 school year plus (ii) five hundred dollars.

(b) The school district shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Notwithstanding anything in this section to the contrary, amounts payable pursuant to this section may be reduced pursuant to an agreement between the school and the charter entity set forth in the charter. Payments made pursuant to this section shall be made by the school district in six substantially equal installments each year beginning on the first business day of July and every two months

thereafter. Amounts payable under this section shall be determined by the Commissioner. Amounts payable to a charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation.

(c) school districts shall be eligible for an annual apportionment equal to the amount of the supplemental basic tuition paid to for the charter school in the base year for the expenses incurred in the 2014-2015, 2015-2016, and 2016-2017 school years and thereafter\*\*

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

Nothing in this article shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a charter school. The board of trustees of a charter school is authorized to accept gifts, donations or grants of any kind made to the charter school and to expend or use such gifts, donations or grants in accordance with the conditions prescribed by the donor; provided, however, that no gift, donation or grant may be accepted if subject to a condition that is contrary to any provision of law or term of the charter.

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

As referenced in the New York Education Law § 2856, "expense per pupil" shall mean approved operating expense for the year prior to the base year divided by the sum, computed using year prior to the base year pupil counts, of the total aidable pupil units plus weighted pupils with special education needs. Expense per pupil for each borough in the city school district of the city of New York shall be the expense per pupil of the entire city school district.

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

"Weighted pupils with disabilities" shall be computed as follows:

(a) "Pupils with disabilities" shall mean pupils of school age who are identified as students with disabilities pursuant to article eighty-nine of this chapter and the regulations of the commissioner and who receive special education services or attend special education programs which meet criteria established by the commissioner, operated by a school district eligible for total foundation aid pursuant to this section or by a board of cooperative educational services, whether or not the school district is a component of such board.

(b) "Weighted pupils with disabilities" shall mean the attendance, as defined in the regulations of the commissioner, of pupils with disabilities who have been determined by a school district committee on special education to require any of the following types and levels of programs or services specified in this subparagraph, and who receive such programs and services from the school district of attendance during the base year, multiplied by a special services weighting determined as follows:

(i) for placement for sixty per centum or more of the school day in a special class, or home or hospital instruction for a period of more than sixty days, or special services or programs for more than sixty per centum of the school day, the special services weighting shall be one hundred seventy percent;

(ii) for placement for twenty per centum or more of the school week in a resource room or special services or programs including related services required for twenty per centum or more of the school week, or in the case of pupils in grades seven through twelve or a multi-level middle school program as defined by the commissioner or in the case of pupils in grades four through six in an elementary school operating on a period basis, the equivalent of five periods per

week, but not less than the equivalent of one hundred eighty minutes in a resource room or in other special services or programs including related services, or for at least two hours per week of direct or indirect consultant teacher services, in accordance with regulations of the commissioner adopted for such purpose, the special services weighting shall be ninety percent.

Computation of total aidable pupil units. A district's total aidable pupil units shall be the sum of the district's adjusted average daily attendance computed pursuant to this section for the year prior to the base year multiplied by the enrollment index computed pursuant to this section for the base year plus the additional aidable pupil units computed for the year prior to the base year under paragraph c of this subdivision.

(a) For purposes of this section weighted average daily attendance of a school district for any school year shall be computed as follows:

(1) Weighted average daily attendance shall be determined by using the average daily attendance of public school pupils in a full-day kindergarten and grades one through six as the basic unit, with the attendance of such pupils in one-half day kindergartens measured at one-half of such basic unit and the attendance of such pupils in grades seven through twelve measured at one and one-quarter of such basic unit. The sum of all such units of attendance shall be the weighted average daily attendance.

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

(3) In any instance where a pupil is a resident of another state or an Indian pupil is a resident of any portion of a reservation located wholly or partly within the borders of the state pursuant to subdivision four of section forty-one hundred one (duties of commissioner regarding Indian children) of this chapter or a pupil is living on federally owned land or property, such pupil's attendance shall be counted as part of the weighted average daily attendance of the school district in which such pupil is enrolled.

(4) Resident weighted average daily attendance for purposes of determining the aid ratio of a school district for any school year shall be the weighted average daily attendance for the school year immediately preceding the base year, less the weighted average daily attendance of nonresident pupils attending public schools in the district for such school year, plus the weighted average daily attendance of pupils resident in the district but attending public schools in another district or state plus the weighted average daily attendance of pupils resident in the district but attending full-time a school operated by a board of cooperative educational services or a county vocational education and extension board for such school year. The attendance of nonresident pupils attending public school in the district and resident pupils attending such schools outside of the district shall be determined by applying to the number of such pupils registered during the school year in each case the ratio of aggregate days attendance to the possible aggregate days attendance of all pupils in attendance in the district. Indian pupils of a reservation attending public school, or pupils living on the United States military reservation at West Point attending public school, shall be deemed to be resident pupils of the district providing such school, for purposes of this paragraph. Where a school district has entered into a contract with the state university pursuant to subdivision two of section three hundred fifty-five (powers and duties of trustees – administrative and fiscal functions) of this chapter under which the school district makes payments in the nature of tuition for the education of certain children residing in the district, such children for whom such tuition payments are made shall be deemed to be resident pupils of such district for the purposes of this paragraph.

(5) In determining the resident weighted average daily attendance of a component school district of a central high school district for computing the aid ratio the weighted average daily attendance of high school pupils residing in such component district and attending the central high school shall be included. The resident weighted average daily attendance of a central high school district itself shall be the sum of the resident weighted average daily attendance of each component school district computed as provided in the first sentence of this paragraph.

(6) Notwithstanding the provisions of subparagraphs four and five of this paragraph, when a school district shall experience an increase in resident weighted average daily attendance during the current year because of the closing in whole, or in part, of a non-public school or a campus school, or a school previously operated by the United States government on the United States military reservation at West Point, the commissioner, in computing any aid ratio of such district, shall permit the use of such additional resident weighted average daily attendance for aid ratio purposes during the current year and the next succeeding year, provided that such additional resident weighted average daily attendance attributable to such closing, or part thereof, shall be in excess of one hundred students; provided, however, that such district which qualifies for an increase in total wealth pupil units pursuant to paragraph f of this subdivision, shall use the increase in resident weighted average daily attendance, even if such increase in resident weighted average daily attendance is less than one hundred.

(b) For purposes of this section adjusted average daily attendance of a school district for any school year shall be computed as follows:

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

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

(3) In any instance where a pupil is a resident of another state or an Indian pupil is a resident of any portion of a reservation located wholly or partly within the borders of the state pursuant to subdivision four of section forty-one hundred one (duties of commissioner regarding Indian children) of this chapter or a pupil is living on federally owned land or property, such pupil's attendance shall be counted as part of the adjusted average daily attendance of the school district in which such pupil is enrolled.

(c) Computation of additional aidable pupil units. The additional aidable pupil units used to compute total aidable pupil units pursuant to paragraph e of this subdivision shall be the sum of the attendance of summer session pupils multiplied by twelve per centum and the weighted pupils with special educational needs. The additional aidable pupil units used to compute total wealth pupil units pursuant to paragraph f of this subdivision shall be the sum of the year prior to the base year resident weighted pupils with special educational needs and resident weighted pupils with handicapping conditions. Nothing contained in this paragraph shall be construed to result in the inclusion of the attendance of summer session pupils in the computation of weighted or adjusted average daily attendance pursuant to this subdivision.

“Enrollment index” shall be computed by dividing the public school enrollment for the current year by public school enrollment for the base year, both as defined in paragraph n of this subdivision, with the result carried to three places without rounding.

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

(b) “Public school district enrollment” shall mean the sum of: (1) the number of children on a regular enrollment register of a public school district on such date; (2) the number of children eligible to receive home instruction in the school district on such date; (3) the number of children for whom equivalent attendance must be computed pursuant to this subdivision on such date; (4) the number of children with disabilities who are residents of such district who are registered on such date to attend programs under the provisions of paragraph c of subdivision two of section forty-four hundred one (children with handicapping conditions definitions) of this chapter; (5) the number of children eligible to receive educational services on such date but not claimed for aid pursuant to subdivision seven of section thirty-two hundred two (public schools free to resident pupils; tuition from nonresident pupils) of this chapter; and (6) the number of children registered on such date to attend programs (i) pursuant to subdivision two of section three hundred fifty-five (powers and duties of trustees – administrative and fiscal functions) of this chapter or (ii) pursuant to an agreement between the city school district of the city of New York and Hunter College pursuant to section sixty-two hundred sixteen of this chapter.

(c) Equivalent attendance shall mean the quotient of the total number of student hours of instruction in programs in a public school of a school district or a board of cooperative educational services leading to a high school diploma or a high school equivalency diploma as defined in regulations of the commissioner for pupils under the age of twenty-one not on a regular day school register of the district, divided by one thousand. Average daily attendance shall include the equivalent attendance of the school district. For the purposes of secondary school weighting, such equivalent attendance shall be considered as average daily attendance in grades seven through twelve.

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

(1) any balances and transfers;

(2) any payments for transportation of pupils to and from school during the regular school year inclusive of capital outlays and debt service therefor;

(2-a) a portion of any payments for transportation of pupils to and from district operated summer school programs pursuant to subdivision six of section thirty-six hundred twenty-two-a (aidable regular transportation) of this article, inclusive of capital outlays and debt service therefor, equal to the product of such expenditures multiplied by the quotient of the total apportionment after the proration, if any, required by such subdivision six of such section divided by the total apportionment prior to such proration;

(3) any payments for capital outlay and debt service for school building purposes, provided, however, that in the case of a school district which has entered into a contract with state university pursuant to paragraph o of subdivision two of section three hundred fifty-five (conduct

of research and experiments) of this chapter, under which the school district makes payment to state university on account of capital outlay relating to certain children residing in such school district, such payments shall not be so excluded;

- (4) any payments for cafeteria or school lunch programs;
- (5) any proceeds of short term borrowings in the general fund and any payments from the proceeds of the sale of obligations in the capital fund;
- (6) any cash receipts which reduce the cost of an item when applied against the expenditure therefor, except gifts, donations and earned interest and any refunds made;
- (7) any payments made to boards of cooperative educational services for purposes or programs for which an apportionment is paid pursuant to other sections of this chapter, except that payments attributable to eligible pupils with disabilities and ineligible pupils residing in noncomponent districts shall be included in operating expense;
- (8) any tuition payments made to other school districts inclusive of payments made to a central high school district by one of its component school districts;
- (9) any apportionment or payment received from the state for experimental or special programs paid under provisions other than those found in this section and other than any apportionments or payments received from the state by the city school district of the city of Yonkers for the purpose of funding an educational improvement program pursuant to a court order and other than any other state grants in aid identified by the commissioner for general use as specified by the board of education pursuant to subdivision two of section seventeen hundred eighteen (limitation upon expenditures) of this chapter;
- (10) any funds received from the federal government except the federal share of Medicaid subject to the provisions of section thirty-six hundred nine-a (moneys apportioned, when and how payable commencing July first, two thousand seven) of this part and except Impact Aid funds received pursuant to sections two and six of Public Law eighty-one-eight hundred seventy-four (PL 81-874) or any law superseding such law in any such district which received aid pursuant to both such sections; provided further, however, that there shall be excluded from such federal funds or other apportionments any payments from such funds already deducted pursuant to this paragraph;
- (11) any payments made for which an apportionment is disallowed pursuant to regulations of the commissioner;
- (12) any expenditures made for accounting, tabulation, or computer equipment, in excess of ten thousand dollars unless such expenditures shall have been specifically approved by the commissioner;
- (13) any rentals received payments received pursuant to the provisions of section four hundred three-a (Leasing of school property) of this chapter;
- (14) any rentals or other annual payments received pursuant to the provisions of section four hundred three-b (Leasing of school buildings and facilities) of this chapter;
- (15) any expenditures made for persons twenty-one years of age or over attending employment preparation education programs pursuant to subdivision eleven of this section;
- (16) any tuition payments made pursuant to a contract under the provisions of

paragraphs e, f, g, h, i and l of subdivision two of section forty-four hundred one (“special services or programs” definition) of this chapter or any tuition payments on behalf of pupils attending a state school under paragraph d of such subdivision;

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

(18) any payments to the commissioner of taxation and finance pursuant to article twenty-three (metropolitan commuter transportation mobility tax) of the tax law.

### **Transitional Aid for Charter School Payments (New York Education Law § 3602)**

In addition to any other apportionment under this section, for the two thousand seven — two thousand eight school year and thereafter, a school district other than a city school district in a city having a population of one million or more shall be eligible for an apportionment in an amount equal to the sum of:

(a) the product of (i) the product of eighty percent multiplied by the charter school basic tuition computed for such school district for the base year pursuant to section twenty-eight hundred fifty-six of this chapter, multiplied by (ii) the positive difference, if any, of the number of resident pupils enrolled in the charter school in the base year less the number of resident pupils enrolled in a charter school in the year prior to the base year, provided, however, that a school district shall be eligible for an apportionment pursuant to this paragraph only if the number of its resident pupils enrolled in charter schools in the base year exceeds two percent of the total resident public school district enrollment of such school district in the base year or the total general fund payments made by such district to charter schools in the base year for resident pupils enrolled in charter schools exceeds two percent of total general fund expenditures of such district in the base year, plus

(b) the product of (i) the product of sixty percent multiplied by the charter school basic tuition computed for such school district for the base year pursuant to section twenty-eight hundred fifty-six of this chapter, multiplied by (ii) the positive difference, if any, of the number of resident pupils enrolled in the charter school in the year prior to the base year less the number of resident pupils enrolled in a charter school in the year two years prior to the base year, provided, however, that a school district shall be eligible for an apportionment pursuant to this paragraph only if the number of its resident pupils enrolled in charter schools in the year prior to the base year exceeds two percent of the total resident public school district enrollment of such school district in the year prior to the base year or the total general fund payments made by such district to charter schools in the year prior to the base year for resident pupils enrolled in charter schools exceeds two percent of the total general fund expenditures of such district in the year prior to the base year, plus

(c) the product of (i) the product of forty percent multiplied by the charter school basic tuition computed for such school district for the base year pursuant to section twenty-eight hundred fifty-six of this chapter, multiplied by (ii) the positive difference, if any, of the number of resident pupils enrolled in the charter school in the year two years prior to the base year less the number of resident pupils enrolled in a charter school in the year three years prior to the base year, provided, however, that a school district shall be eligible for an apportionment pursuant to this paragraph only if the number of its resident pupils enrolled in charter schools in the year two years prior to the base year exceeds two percent of the total resident public school district enrollment of such school district in the year two years prior to the base year or the total general fund payments made by such district to charter schools in the year two years prior to the base year for resident pupils enrolled in charter schools exceeds two percent of the total general fund expenditures of such district in the year two years prior to the base year.

(d) For purposes of this subdivision the number of pupils enrolled in a charter school shall not include pupils enrolled in a charter school for which the charter was approved by a charter entity contained in paragraph a of subdivision three of section twenty-eight hundred fifty-one of this chapter.

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

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

For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

Charter School obligations:

(a) No later than 30 days prior to the first business day of July, September, November, January, March and May, each charter school shall report to each public school district with resident pupils attending the charter school and to the department an updated estimate of the enrollment of students attending the charter school in the current school year who are residents of such public school district and any reduced amounts per pupil that shall be payable to the charter school for such students pursuant to subdivision one of section 2856 of the Education Law that has been established pursuant to an agreement between the charter school and the charter school entity as set forth in the charter. For each student with a disability attending such charter school, such report shall also indicate the level of special programs or services to be provided directly or indirectly to such student by the charter school and an estimated annual cost to be incurred by the charter school in providing such special programs or services.

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

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

Public school district of residence obligations:

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

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

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

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

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

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

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

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

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

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

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

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

(e) school districts shall include the enrollment of resident students attending charter schools in the enrollment, attendance and, if applicable, count of students with disabilities reported to the department for the purposes of claiming State aid.

Department obligations:

(a) On or before the first day of June of each year, or as soon as practicable upon the receipt of Federal notice of the estimated State appropriation for the next school year, the commissioner shall notify all school districts and all charter schools of the adjusted expense per pupil of each public school district and the estimated per pupil allocation under part B of the Federal Individuals with Disabilities Education Act to be used in the calculation of payments due to charter schools in next school year. Notice of final Federal per pupil allocation will be issued as soon as practicable upon the State's receipt of the notice of final allocation from the Federal government.

(b) In the event of the failure of a school district to fulfill the financial obligation required by section 2956 of the Education Law equal to the amounts calculated pursuant to this section, upon notification by the charter

school, the commissioner shall certify the amounts of the unpaid obligations to the comptroller to be deducted from State aid due the school district and paid to the applicable charter schools.

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## **APPENDIX B**

### **THE BORROWER**

#### **General**

The Academy Charter School (the “Borrower” or “School”) is a New York education corporation incorporated by the Board of Regents of the University of the State of New York (the “Board of Regents”) under Article 56 of the New York Education Law. The Borrower was incorporated on February 23, 2009 for the purpose of operating a charter school. The Borrower is an organization described under Section 501(c)(3) of Code which is exempt from federal income taxation under Section 501(a) of the Code (except with respect to “unrelated business taxable income” within the meaning of Section 512(a) of the Code) and (b) which is not a “private foundation” as defined in Section 509(a) of the Code. The Borrower's bylaws provide that the Borrower is governed and controlled by a board of trustees (the “Board”). See “Governance and Management” below.

The Borrower began operating grades K-2 in the 2009-10 school year with 165 students, residing primarily in twelve school districts in Nassau County, New York, the largest of which is the Hempstead Union Free School District (the “District”). For the 2016-17 school year, there were ten, non-charter, public schools serving students in the District. The Borrower being one of the only two charter schools in the District. Since the 2010-11 school year, the Borrower added a grade in each of the subsequent years as well as expanded classes for existing grades, and currently serves 940 students in grades K-9. As part of its current expansion plan consisting of the new High School Facility, the Borrower expects to add grade 10 in the 2017-18 school year, grade 11 in the 2018-19 school year and grade 12 in the 2019-20 school year with grades 9 through 11 to first occupy the new High School Facility in school year 2018-19. See “The Project” below.

The Borrower initially received its charter contract (as revised or renewed from time-to-time, the “Charter”) from the Board of Regents for and on behalf of the New York State Education Department (“NYSED”) on February 23, 2009 which expired on February 22, 2014. Prior to the initial charter expiration, the Borrower applied for and received a revision to the Charter to include grade six and to expand maximum allowable enrollment. Pursuant to the Charter revision, the Borrower commenced operation of grade six with the 2013-14 school year. The Borrower applied for renewal of the Charter on August 15, 2013 which was approved on January 27, 2014 and issued on March 3, 2014. In January 2016, the Charter School Institute approved the High School expansion. Currently the Charter is effective through June 30, 2019, and it authorizes the Borrower to operate grades K-12 with a maximum enrollment of 1,550 students.

#### **Mission Statement**

The Borrower’s mission is to create world class competitive scholars who will LEARN today, LEAD tomorrow, and SERVE in the future. The Borrower seeks to graduate students with the content mastery and life skills needed to excel post-graduation and to position the students in the top five percent of their graduating middle and high school classes, respectively, in New York.

#### **Philosophy / Vision**

The Borrower offers exceptional interdisciplinary curricula in a technology-rich environment that challenges students to explore connections across subjects and use experiential learning to bridge the gaps between theory and practice. The Borrower seeks to improve student academic achievement by focusing on three important areas of growth that will enable the students to be empowered adults: mastery of academic subjects, an intensive focus on character development, and fostering a lifelong behavior of giving back to their community. The Borrower employs a committed staff whose teaching and high academic and behavioral expectations promote the excellence the community's children can achieve. Teachers facilitate engaging activities that drive success for students at every skill level. Technology and the arts will be tools that are used across the curricula.

The fundamental belief at the School is that all children can learn. All children have the right to attend schools in which they can progress and learn, and have a real opportunity to learn equally rigorous content. The

Borrower holds itself accountable to the same standards as those of the highest performing schools in New York. Ultimately, the Borrower expects to see children engaged in challenging work, such as conducting experiments for deep understanding, exploring cultures and histories using primary documents, engaging in debates of classical literature, analyzing great works of art, and appreciating musical compositions, among others. The Borrower's goal is for every child to become a critical thinker and life-long learner.

## **Curricula**

The Borrower's instructional program is specifically designed to meet all of the New York State Common Core Standards, as well as New York State Standards for Science and Social Studies. It is the Borrower's goal to meet and exceed student performance and assessment standards in students. Instruction is age/grade appropriate with a strong emphasis on the development of students' social and academic skills through character building activities. The curricula also offer a strong emphasis on Science, Technology, Engineering and Mathematics (“STEM”).

The Borrower offers interdisciplinary curricula that addresses the academic needs of all students. The Borrower's curricula are research-based in reading, writing, mathematics, social studies and science. Teachers use state of the art presentation technology (an interactive white board and related components that enhances instruction and learning) in all subject areas to enhance the core curricula and to provide hands on and real life experiences for the students. Each classroom is equipped with computers. Computer-based instructional programs are used to provide intervention and enrichment opportunities for students. There is strong emphasis placed on writing in all subject areas.

The instructional program caters to the individual academic needs of each child. The use of data through ongoing assessments provides real time information for teachers to inform instruction. The information that is gathered is used to provide academic intervention services for struggling students as well as enrichment and challenging activities for all students.

For its K-8 grades, the Borrower utilizes a combination of classroom teachers and content specialists, while for grades 9-12 content specialists only, to deliver a departmentalized instructional approach. The core subjects are supplemented by a rich specials program that involves daily instruction in the arts. In addition, students benefit from quality instruction in physical education and health. Students receive instruction in character education daily with the intent of making them good citizens. Students in the high school grades are expected to complete an annual service learning project.

The Borrower's students are required to participate in a daily 45 minute class that will develop the School's core virtues, as well as, participate in discussions on topics such as, but not limited to, maintaining integrity on social media, peer pressure, anti-bullying, cyber bullying, study skills, self-esteem, building communication skills and proper etiquette in social settings.

The Borrower utilizes a low teacher to student ratio, which provides ample opportunity for students to receive instruction in small groups or individually. Every classroom is staffed by a licensed and/or appropriately credentialed teacher with a student to teacher ratio that does not exceed 13:1 for grades K-4, 20:1 for grades 5-8 and, is not expected to exceed 20:1 for grades 9-12.

Additionally, intervention teachers provide ongoing instructional support for students that need additional academic support. The intervention program is a combination of a push-in and pull-out program. There is an 8:1 student teacher ratio when intervention teachers go into classrooms at designated times during the school day.

## **Programs**

### *Grades 9-12*

The Borrower's high school curricula are designed to prepare Scholars to meet the New York State Regents examination (“Regents”) requirements for graduation, provide select Scholars the opportunity for advanced coursework for college preparation, and offer a variety of electives to Scholars based on developing credentials for

the workplace. Scholars can expect to have acquired 7, of the required 22 credits, by the conclusion of their 9<sup>th</sup> grade year. The Borrower’s goal is to have Scholars complete most of their Regents requirements by the end of their 11<sup>th</sup> grade year. Table B-1 below provides a sample outline of the High School Scholar’s four year sequence and a course/credit load in each grade:

TABLE B-1: HIGH SCHOOL STUDENT FOUR (4) YEAR SEQUENCE				
Year 1 (Grade 9)	Year 2 (Grade 10)	Year 3 (Grade 11)	Year 4 (Grade 12)	Credits Acquired
Algebra 1* (Regents)	Geometry (Regents)	Algebra 2/ Trigonometry (Regents)	Pre-Calculus/Math Elective	4
English 9 Literature & Language Arts 9	English 10 Literature & Language Arts	English 11 Literature & Language Arts	AP English/English Elective	4
Living Environment** (Regents)	Chemistry (Regents)	Physics (Regent)	Earth Science (Regents)	4
United States History & Government (Regents)	Global History 10	Global History 11 (Regents)	Economic	4
Spanish 9	Art/Elective	Art/Elective	Art/Elective	4
Technology	Technology/ Engineering	Technology/ Engineering	Technology/ Engineering	3½
Phys. Ed/Health & Wellness	Phys. Ed	Phys. Ed	Phys. Ed	2½
Advisory	Advisory	Advisory	Advisory	0
<b>Total Acquired by Graduation</b>				<b>26</b>

\*Scholars who successfully completed the Algebra 1 Regents examination in the 8<sup>th</sup> grade will be offered Geometry.  
 \*\*Scholars who successfully completed the Living Environment Regents examination in the 8<sup>th</sup> grade will be offered an alternative Science course

The New York State Education Department (“NYSED”) requires that students take 4 (+ 1) Regents examinations for graduation: 1 English, 1 Mathematics, 1 Science, 1 Social Studies and 1 additional subject of the student’s choosing. NYSED has approved that a credential earned through student participation in Career Development and Occupational Studies can be combined with 4 Regents examinations to qualify for a high school diploma. NYSED also offers Regents diplomas with advanced designations that are based on the number and subject area of Regents examinations taken by Scholars. The following are the examination requirements for each designation:

**Traditional (Advanced Regents Designation) Combination** – ELA (English Language Arts), Global History and Geography, U.S. History and Government, 3 Mathematics, 2 Science (1 must be life science and 1 must be physical science) for a total of 8 examinations. In addition to these examinations, the student must choose either 2 additional credits in LOTE (Language Other Than English) and the locally developed Checkpoint B LOTE Exam OR a 5-unit sequence in the Arts or Career and Technical Education (CTE).

**STEM (Mathematics) Pathway Combination** – ELA, 1 Social Studies, 4 Mathematics, 2 Science (1 must be life science and 1 must be physical science) for a total of 8 examinations. In addition to these examinations, the student must choose either 2 additional credits in LOTE and the locally developed Checkpoint B LOTE Exam OR a 5 unit sequence in the Arts or CTE.

**STEM (Science) Pathway Combination** – ELA, 1 Social Studies, 3 Mathematics, 3 Science (1 must be life science and 1 must be physical science) for a total of 8 examinations. In addition to these examinations, the student must choose either 2 additional credits in LOTE and the locally developed Checkpoint B LOTE Exam OR a 5-unit sequence in the Arts or CTE.

**Pathway Combination (other than STEM)** – ELA, 1 Social Studies, 2 Science (1 must be life science and 1 must be physical science), 1 Pathway (other than Science or Mathematics) for a total of 8 examinations. In addition to these examinations, the student must choose either 2 additional credits in LOTE and the locally developed Checkpoint B LOTE Exam OR a 5-unit sequence in the Arts or CTE.

While there are differences in the structure of the academic program as compared to a traditional public high school, the course work earned for graduation is equivalent. Through high level pedagogy and highly engaged students, it is projected that students will meet the requirements for New York State Regents Diploma and Advanced Regents Diploma. The chart below depicts a typical progression of a student in the high school. Variations consist in courses as students move into the junior and senior years. Scholars at this juncture have the opportunity to take more honors and advanced placement courses to earn college credits. Scholars will also display differing interests which will be reflected in their elective choices. During the junior and senior years, all Scholars will be guided through the necessary steps of preparation for the college application process; this process will include, but not be limited to, interview preparation, personal essay coaching and career decision making. See Table B-2, below illustrating the high school credit requirements.

<b>TABLE B-2 CREDIT REQUIREMENT</b>	
Local Diploma, Regents Diploma, Regents Diploma with Advanced Designation	
	Minimum Number of Credits
English	4
Social Studies Distributed as Follows: U.S. History (1) Participation in Government (½) Economics (½) Other (2)	4
Science Distributed as Follows: Life Science (1) Physical Science (1) Life Science or Physical Science (1)	3
Mathematics	3
Languages Other than English	1 <sup>(1)</sup>
Visual Art, Music, Dance and/or Theater	1
Physical Education (participation each semester)	2
Health	.5
Electives	3.5
<b>Total</b>	<b>22</b>

**Honors Extension Program.** The Borrower’s honors extension program is a credit bearing STEM-based (Technology and Science) elective offered to students who maintain a B average or a Grade Point Average (GPA) of 3.0 beginning in the 10<sup>th</sup> grade. Designed to be rigorous and challenging, the program demands that students think critically as they apply knowledge and conduct research of real world situations. The program requires students’ efforts to go above and beyond the typical diploma expectations. Scholars who successfully complete all the components of the program have conferred upon them an “Academy Honors Diploma,” in recognition of their hard work and effort.

**College Credit Program.** The Borrower’s College Credit Program was established in collaboration with State University of New York Old Westbury (“SUNY Old Westbury”). This initiative will enable high school Scholars to earn up to 32 college credits in addition to their regents diploma. Scholars undergo a yearlong pre-collegiate program with SUNY Old Westbury in their sophomore year of high school. This include several low-risk, introductory activities including visits to the Westbury campus where Scholars participate in a variety of pre-collegiate workshops.

Scholars who successfully complete the pre-collegiate program will be eligible to take courses for college credit.

In the second semester of their sophomore year, Scholars in the Academy Master’s Program are exposed to an introductory college level course in art, to prepare them for the rigor of future college courses. The purpose of

the Master's Program is to accelerate the high school course requirement so that select participating Scholars can complete college courses in select subjects while they are enrolled in high school. As a result some Scholars will graduate high school with college credits. As part of this program, beginning in their junior year, Scholars will have the opportunity to participate in select coursework including but not limited to:

- College English
- College Algebra
- Themes in US History
- Biology for Science and Non-Science Majors
- Pre-calculus

In addition to the courses already offered by the program, the Borrower will have the opportunity to partner with the SUNY Old Westbury to develop a curriculum unique to each Scholar.

**Advisory Program.** The Borrower's High School Advisory Program is a daily class dedicated to academic growth, character development and college information sessions. Scholars are assigned to small groups, referred to as "Houses." Scholars meet for forty-five minute periods daily with their House. The House program was developed to afford the Scholars a sense of community, character development, motivation and guidance in preparation for college. Each House is comprised of one adult Academy employee and twelve to fifteen (12 -15) Scholars. During this time, the adult serves as the academic advisor to the Scholar and an immediate contact for parents. This adult also teaches the required College Seminar coursework. In addition, House time is devoted to service projects, teambuilding exercises, discussion and reflection. Scholars will remain with their designated House for the duration of their high school life. This is in an effort to build a sense of family where scholars feel supported with their house mates throughout the course of their time at The Academy.

**Mentor Program.** In line with the Borrower's mission of Learn, Lead & Serve, all High School Scholars are required to complete 100 hours of community service that include a wide range of activities and events. As part of this program, Scholars are given the opportunity to participate in community projects, service learning assignments with a variety of organizations and other school based projects. The Borrower's mentoring program provides the opportunity for its high school Scholars to receive training in peer mediation. Upon completion of training, these Scholars assist with conflict resolution for elementary and middle school classes. The Borrower's mentoring program also allows its Scholars at the high school level the opportunity to serve as tutors in various subjects to students at the elementary and middle school level. Scholars who participate in the mentoring program are given the opportunity to gain hours that are credited towards their service learning requirement.

#### *Grades K-8*

The Borrower has been proactive in planning its instructional program focused on the New York State Common Core Learning Standards. The Borrower's curriculum provides Scholars the opportunity to participate in a wide range of subjects well beyond the mandates of NYSED as well as the various instructional programs that has been approved by the charter authorizer. The program includes English Language Arts, Mathematics Social Studies, Science, Technology, fine arts and physical education. In each subject, teachers follow the sequence of instruction by themes that are mapped over the span of the school year from September to June. Though there is an ongoing focus on building literacy and mathematical competency, much of the curriculum is hands on learning and project-based. There is also a strong focus on providing instructional support including curriculum and specialized staffing for English Language Learners ("ELLs") and Students with Disabilities ("SWD").

**Balanced Literacy Program.** The Borrower's Balanced Literacy Program uses authentic literature, guided reading, independent reading, shared inquiry, author studies, genre studies, novel studies and the writing process. The Borrower uses research proven best practices to support New York State Common Core Standards ("CCSS") using authentic text using by employing a variety of commercial curricula material from publishers including Pearson Inc. (Ready Gen and My Perspective), Houghton-Mifflin Literature, Teachers College Writing, and Foundation by Wilson Education. Students receive at 135 minutes of literacy instruction per days. Struggling students receive an additional 45 minutes block for support provided by a certified Reading specialist.

**Balanced Math.** Balanced Math incorporates direct instruction and practice of skills with investigations and exploration incorporating a variety of commercial products including the New York State Common Core instructional modules by Eureka and Pearson's Inc. Envision 2.0. Scholars receive 90 minutes of Math instruction daily in grades K-8. Struggling Scholars receive up to 135 minutes daily.

**Character Education.** Character Education is an integral part of the School's curricula. In grade K-4, subject matter is taught each morning as part of the morning meeting in each classroom; and weekly during a 45 minute block in grades 5-8. During the period, Scholars recite the School's creed, participate in patriotic activities and discuss the character trait of the month. The Responsive Classroom, Character Counts and Overcoming Obstacles curriculum materials are utilized to help Scholars develop self-esteem, citizenship and positive behaviors.

## **Academic Support & Enrichment Grades K-12**

To ensure the success of every student, Scholars also engage in the following:

**Academic Intervention Support.** The Borrower's academic intervention support program offers assistance in Language Arts, Mathematics, Science and Social Studies as a regularly scheduled part of each student's daily program. This support provides access to remedial Reading and Writing depending on a student's individual needs.

**Tutoring.** In addition to the intervention services offered by the Borrower, students who need additional instructional support will work with subject teachers during the zero period and the after school hours. Through the School's partnership with SUNY Old Westbury and New York Institute of Technology ("NYIT"), student tutors work along with students who need extra intervention.

**Special Education Services.** Scholars who are classified by the Committee on Special Education (CSE), or through Section 504 with a disability affecting their educational progress, will be provided support as indicated on their Individualized Education Program (IEP) or Accommodation Plan. As required by law, School representatives and parents will assist in the development of the IEPs and accommodation plans and will work actively to design programs emphasizing student participation in the least restrictive environment. Certified special education providers will oversee the IEP implementation, while general education teacher's work as active team members in the service of each student's needs in classroom characterized as heterogeneity and differentiated instruction, Integrated Co-Teaching (ICT). With appropriate program modification and services, students will be expected to achieve their goals and earn a diploma in accordance with New York State Education Department (NYSED) regulations.

**English as a New Language.** The Borrower's English as a new language ("ENL") program is designed to support all students needing such services based on CR Part 154-2 regulations. Students receive "Stand Alone" instruction in small groups that are determined by their scores on the NYSESLAT exam. However, instruction is also integrated into core content, as the ENL teacher will push into these classrooms to support students. The Borrower's goal is to provide its Scholars with rich learning opportunities through which they can learn to listen, speak and write in English while they are mastering content knowledge including English Language Arts, Mathematics, Science, Social Studies and the arts.

**Onboarding.** Students entering the High School are provided the opportunity to acclimate to the Borrower's culture prior to the official start date for the school year. Staff and Scholars engage in team building activities and college visits over a two week period in the summer. The Borrower partners with the national renowned organization, Outwards Bounds, in planning and leading teambuilding activities.

**Special Sessions/Extracurricular Activities.** The Borrower utilizes instructional best practices which includes an extended school day (8am to 4pm). Scholars are given additional instructional time through the After School program, Saturday Academy and Winter/Spring break intersession programs. The various additional instructional times focus on small group instruction driven by data received from periodic assessments.

In addition to the academic strengths of the Borrower's program, students are exposed to several extracurricular opportunities. These include but are not limited to clubs, civic capacity, character education, leadership and mentoring programs. The clubs are designed to enhance the learning experience, promote an interdisciplinary

approach and compliment the academic rigor that students are exposed to. The students are provided several options for clubs, which include the popular Forensics Club. This program is hosted in collaboration with the Hempstead Police Department and the Police Athletic League. Students are exposed to scientific research, problem solving and community awareness. The program is assessment based, with exams and study materials. The science of forensics is related to crime scene investigations; however, the program has an interdisciplinary approach that involves English Language Arts, Math and Science. Class trips and mock investigations using the latest technology are a part of the program as well. Students receive certifications of acknowledgement at the end of the program. To promote civic capacity, students visit the assisted living facility in Hempstead to partner with residents on projects such as arts and crafts and seasonal events such as performing during the holiday seasons. The Borrower has also established several collegiate partnerships that include Adelphi University, SUNY Old Westbury and Hofstra University.

Beginning in the 2014-15 school year, the Borrower implemented a robotics program, which is designed to incorporate science, technology, mathematics and English Language Arts. The program will promote CCSS rigor and align the core subject areas in researched based and result oriented project designs that display student creativity and talent. This program is assessment based and measurable and designed to promote student competition.

**Arts Program.** The Borrower provides a robust Arts program that allows students to develop their talents and prepares them to pursue related careers in the various fields. The program, curriculum, and instruction include hands on activities, demonstration, rehearsals and expression including visual art, music, dance, and theatre across all grades. The program will have a visual arts, music, dance and theater component.

The curriculum is built around the New York City Blueprints for the Arts and is aligned with the National Core Arts Standards (Artistic Process - Creativity, Performance, Presentation, Production and Connecting). The New York City Blueprints for the Arts is a in depth set of standards and guidelines that provide standards based direction with a hands-on approach to teaching the arts. The program includes best practices and partnership with a wide array of community based organizations. The program also includes an after school component. Each subject will have activities including performances, productions and exhibitions 2-4 times per year.

**Sports Program.** The Borrower is registered with the Nassau BOCES athletic league. From this affiliation, the Borrower can schedule athletic competitions and offer boys' basketball and girls' volleyball. Coaches will be involved in strategically developing partnerships with colleges and college recruiters to engage the students in various athletic scholarship opportunities.

**Newspaper Club.** The Newspaper Club consists of a group of High School students who meet twice per week and collaborate in documenting and writing about current School-wide, community, national and international events. The members often write about controversial political topics in the world, controversial topics within the School, previous and future School events, surveys and announcements. The School newspaper, *The Academy Weekly*, is published once per quarter.

**Debate Team.** Select Scholars in the Middle School and the High School make up the Borrower's debate team. Scholars are given the opportunity to participate in regional competitions that develop their public speaking skills, accentuates critical thinking skills and improvisation. Scholars learn about topics that include conflicts and current events. Scholars meet once per week for coaching session under the tutelage of volunteer teachers and community members.

**Partnerships.** The Borrower has established partnerships with several institutions since its inception. Some of these relationships include one with SUNY Old Westbury who collaborates with the Borrower in a teacher preparation program. Student observers are paired with the Borrower's teachers to complete their requirements for the New York teacher certification program in Elementary Education. Over the years, the relationship has expanded to include a high school collaboration program. This relationship has two components. As part of the onboarding process for freshmen, scholars are involved in a college visit program to SUNY Old Westbury where they are exposed to the requirements and benefits of attending college. The second component involves an academic program that includes accelerated coursework for college preparation beginning in the 10<sup>th</sup> grade. New York Institute of Technology (NYIT) provides instructional technology professional development services for teachers. The partnership is currently being expanded to include the designing of the curriculum and development of the

STEM Program for students in the high school. Hofstra University works along with the Borrower in seeking federal grants for development of the STEM program. The next phase of the relationship with Hofstra University will focus on two key areas, building a viable sports program in the high school and strengthening the performing arts program in grades K-12.

The Borrower received a grant from the Charter School Growth Fund in 2016. The Borrower was chosen to receive an award from the Emerging CMO Fund, which awards leaders of color who lead high-performing charter schools that have the potential to grow. The grant is intended to assist the Borrower in building capacity as the Borrower continues to expand. In addition to the funding, this partnership has afforded the Borrower with opportunities for collaboration with other successful charter leaders and assistance in developing its best practices.

**Recent Accomplishments**

The Borrower has regularly been publicly recognized for its accomplishments and points to the following as highlights:

- Recognized by the NYSED to be “In Good Standing” in all academic areas in each academic year since its inception.
- Recognized by the Charter School Institute for meeting its annual benchmark for English Language Arts (ELA) and Math in each academic year since its inception.
- Several of the Borrower’s teachers were recognized by the NYSED as being Highly Effective in student growth since the 2012-13 school year, a recognition given to less than approximately 3 percent of all teachers each year in the State.
- Participated in the American Debate League Tournament and received numerous top five team and speaker awards.

**Existing Facilities**

The Borrower currently operates grades K-9 at its Elementary and Middle School Facilities.

TABLE B-3: THE BORROWER'S FACILITIES							
Charter School	Location	Grades Currently Offered (1)	2016-17 Enrollment	Estimated Physical Capacity at Facility (2)	Approximate Size	School Year Opened	Approx. % Free/Reduced as of January 2017 (3)
Elementary School (“Elementary School Facility”)	117 N Franklin Street Hempstead, NY 11550	K-4	502	500	34,540 sf	2009-10	[82]%
Middle School (“Middle School Facility”)	159 N Franklin Street Hempstead, NY 11550	5-8	323	525	67,877 sf	2012-11	[82]%
Proposed High School (“High School Facility”)	127 N Franklin Street Hempstead, NY 11550	9	115	600	77,215 sf	—	[82]%
<b>Total</b>			<b>940</b>	<b>1625</b>			

Source The Borrower  
 (1) The High School will add grade 10 for the 2017-18 school year and add a grade in each subsequent years to offer up to grade 12. See “Enrollment” and Table B-6 below.  
 (2) For the 2017-18 and 2018-19 school years the High School will be housed at the Middle School Facility, until completion of the Project. See “Existing Facilities” and “Project” below for more information on these facilities and future changes to building capacity.  
 (3) Children whose household income is at or below 130 percent of the Federal poverty guidelines qualify for free or reduced priced meals.

### *Elementary School Facility*

A portion of the proceeds of the Issuer's Tax-Exempt Education Revenue Bonds (The Academy Charter School Project), Series 2011A, originally issued in the aggregate principal amount of \$10,505,000 and Taxable Education Revenue Bonds (The Academy Charter School Project), Series 2011B in the aggregate principal amount of \$235,000 (collectively, the "Series 2011 Bonds") was used to construct, renovate and equip an approximately 34,540 square foot two-story building located at 117 North Franklin Street, Hempstead, New York (the "Elementary School Facility"). The Borrower currently operates grades K-4 at the Elementary School Facility. The Elementary School Facility houses 22 classrooms, 6 administrative offices, a cafeteria, full kitchen and gymnasium. The project was undertaken with the assistance of Combined Resources Consulting and Design, Inc., Garden City, New York ("CRCD") who provided architectural and engineering services with respect to the construction, renovation and equipment of the Elementary School Facility. The Borrower entered into a construction contract with DECA Development II, Inc. for the construction of the Elementary School Facility. Construction was completed on time and on budget. As noted below, as part of the Project, the Borrower is undertaking the Elementary School Expansion.

### *Middle School Facility*

A portion of the proceeds of the Issuer's Tax-Exempt Education Revenue Bonds (The Academy Charter School Project), Series 2013A, originally issued in the aggregate principal amount of \$12,970,000 and Taxable Education Revenue Bonds (The Academy Charter School Project), Series 2013B in the aggregate principal amount of \$545,000 (collectively, the "Series 2013 Bonds" and together with the Series 2011 Bonds, the "Existing Bonds") was used to: 1) acquire an existing approximately 1.13 acre parcel of land at 159 North Franklin Street, Village of Hempstead, Town of Hempstead, New York (further identified as Section 34, Block 291, Lot 86); 2) to renovate, expand and equip an existing approximately 39,004 square foot four-story building and 3) to construct and equip a new approximately 17,000 square foot addition to the existing building on the Land to include an approximately 9,000 square foot gymnasium and approximately 8,000 square foot full basement area with locker rooms, cafeteria, warming kitchen and associated storage uses (the "Middle School Facility"). The Borrower currently operates grades 5-9 at the Middle School Facility. The Middle School Facility houses 26 classrooms, a science lab, an auditorium, an art room, a gymnasium, a mathematics lab, intervention rooms, a multimedia room and testing room.

The Middle School Facility project was undertaken with the assistance of CRCD who provided architectural and engineering services with respect to the construction, renovation and equipment of the Middle School Facility. The Borrower entered into a construction contract with DECA Development II, Inc. with a fixed stipulated and guaranteed price for the construction of the Middle School Facility for a sum of \$6,974,807.50, subject to certain change order provisions, among others. The project was completed by August, 2014 but was over budget by approximately \$600,000 due to construction related cost overruns related to the discovery of previously undetected underground water and the necessary mid-construction alteration of the foundation.

### **The Project**

The Borrower will use the proceeds of the Series 2017 Bonds for the following purposes (A) financing the acquisition, construction, equipping and furnishing of an approximately 112,500 square foot building (five-story plus a basement), including, but not limited to, approximately 77,215 square feet for use as high school classrooms, administrative areas, auditorium, gymnasium and cafeteria and the remaining approximately 35,000 square feet will be used as a new garage and parking area located in the lower level (the "High School Equipment" and the "High School Improvements"); and with the use of the Series 2017B Bonds only, the construction and equipping of an approximately 4,654 square foot addition to a previously existing elementary school for use as four (4) elementary school classrooms and teachers' restrooms (the "Elementary School Equipment", and together with the High School Equipment, the "Equipment" and the "Elementary School Improvements" and together with the High School Improvements the "Improvements"), all located on an approximately 1.7 acres of land (the "Land"), which Land is owned by the School and located at Tax Parcel Number 34-291.00-088, consisting of 127 North Franklin Street and 117 North Franklin Street in the Village of Hempstead, Nassau County, New York (collectively, the Improvements, the Equipment and the Land, the "Facility", the High School Equipment, the High School Improvements and the Land, the "High School Facility" and the Elementary School Equipment, Elementary School Improvements and the Land, the "Elementary School Expansion"); (B) paying capitalized interest on the Series 2017 Bonds during the

construction period; (C) funding a debt service reserve, if required, for the Series 2017A Bonds; and (D) paying certain costs of issuance of the Series 2017 Bonds (the “Project”). The High School Facility shall be adjacent to the Elementary School Facility on the Land currently owned by the Borrower. The street address of the High School Facility is expected to be 127 North Franklin Street, Hempstead, Nassau County, New York. The costs of the portion of the Project constituting the Elementary School Expansion in the amount of approximately \$1,000,000 will be paid from the proceeds of the Series 2017B Bonds, provided that if any necessary approvals, consents, certificates or permits in connection therewith are not received or not received in a timely fashion, the Borrower may use such proceeds of the Series 2017B Bonds as contingency amounts for the construction, equipping and furnishing of other components of the Project. Further, the Borrower will use approximately \$500,000 of the proceeds of the Series 2017B Bonds to pay for the costs of the satisfaction of any liens or encumbrances on the Mortgaged Property. Table B-4 below provides estimate of the construction and equipment costs of the Project.

For school year 2017-18, during the first year of construction of the Facility, the Borrower will be utilizing portions of the Middle School Facility to accommodate grades 9 and 10 until completion of the High School Facility. For the school year 2018-19, the second year of construction, the Borrower will expand to offer 11th grade and grades 9-11 will be located at the same location. The High School is expected to open fall 2019 for the 2019-20 school year with grades 9-12. During the construction period, the Borrower will lease additional space at 94 Fulton Avenue, Hempstead (Chamsarang Korean Methodist Church). The Borrower anticipates moving grades K-2 to this offsite interim facility for both years of the construction period. Pursuant to the lease agreement for the interim facility, in the event of a construction delay, the Borrower can extend the lease on a monthly basis.

<b>TABLE B-4: ESTIMATED PROJECT COSTS</b>	
<b>Project</b>	<b>Amount</b>
High School Construction	\$24,000,000
Elementary School Expansion	1,000,000
Non-contractor Supplied FF&E	5,000,000
Total Estimated Project Costs	<u>\$30,000,000</u>

A complete preliminary list of contracts for the Project is available upon request as provided under “MISCELLANEOUS – Additional Information” above.

#### **Construction Contract - Improvements and Equipment**

The Borrower has engaged Combined Resources Consulting and Design, Inc., Garden City, New York (“CRCDD”) to provide architectural and engineering services with respect to the construction, renovation and equipping of the High School Facility and the Elementary School Expansion. The Borrower has obtained all necessary planning board, zoning board and related approvals and permits for the construction, renovation and equipping of the High School Facility except for a certificate of occupancy and certificate completion that will be issued post-Closing Date. In addition, CRCDD prepared plans and specifications for the High School Facility that were submitted to and approved by the Village of Hempstead Department of Buildings as evidenced by a building permit issued on July 28, 2017.

The costs of the portion of the Project constituting the Elementary School Expansion in the amount of approximately \$1,000,000 are included in the Construction Contract and will be paid from the proceeds of the Series 2017B Bonds, provided that if any necessary approvals, consents, certificates or permits in connection therewith are not received or not received in a timely fashion, the Borrower may use such proceeds of the Series 2017B Bonds as contingency amounts for the construction, equipping and furnishing of other components of the Project.

With respect to the construction, renovation and equipping of the High School Facility and the Elementary School Expansion, the Borrower has entered into an agreement (the “Construction Contract”) with RFP Construction Inc. (the “Contractor”). The fixed stipulated and guaranteed price for the construction of the High School Facility set forth in the Construction Contract is \$25,000,000, including certain contractor supplied furniture fixtures and equipment for the gymnasium, subject to change order provisions under the Construction Contract.

The Construction Contract provides that the date of substantial completion of the Facility is no later than July 1, 2019 and the Borrower expects to operate the High School Facility beginning with the 2019/2020 school year. The construction budget includes contingency reserves in the amount of \$1,500,000 to pay for construction and design contingencies.

The Borrower expects to spend approximately \$5,000,000 of Bond proceeds on non-contractor supplied furniture fixtures and equipment for the High School Facility, that is not included in the fixed stipulated and guaranteed price for the construction of the High School Facility under the Construction Contract.

### **Project Monitoring**

The construction, renovation and equipping, as applicable, of the High School Facility and the Elementary School Expansion is anticipated to be administered as follows: Pursuant to an Architecture Agreement between the Borrower and CRCD (the "Architecture Agreement"), CRCD, as the architect for the construction project, shall review all requisitions for progress payments submitted by all contractors and subcontractors. CRCD shall certify that the quantity of work completed is accurate and that the quality of the contractor's/subcontractor's work has been performed in substantial compliance with the contract documents.

Pursuant to a Paymaster and Representative Agreement (the "Paymaster Agreement"), the Borrower has retained Mr. Fredric Pocci, PE, an independent construction consultant (the "Paymaster") to independently approve all payments to the general contractor and all subcontractors after simultaneous exchange of said payments and lien waivers. Pursuant to the Paymaster Agreement, prior to release of any payment, the Paymaster shall verify that all contractors, subcontractors, material suppliers or laborers have provided lien waivers for all payments already made and, to the extent allowable by the laws of the State, conditional lien waivers for any current payment to be made. If the Paymaster approves a requisition, the Paymaster shall forward the requisition to CRCD and the Borrower for their approval. Upon approval of CRCD and the Borrower, the Paymaster shall forward the approved requisition to the Trustee to effectuate such payment to the contractor, subcontractor, material supplier or laborer in accordance with the approved requisition from the appropriate fund pursuant to the Indenture. No payment shall be made without the written approval of the Paymaster, CRCD and the Borrower. Under the Paymaster Agreement, the Paymaster shall assist in the coordination and implementation of the construction project by monitoring construction progress, verifying compliance with the construction contract documents prepared by CRCD, monitoring the construction budget and schedule and assisting in value engineering decisions to assist in cost control.

The Paymaster has more than 40 years of experience in management, engineering, construction and renovation and has served as Paymaster and Executive Director for the North Hudson Sewer Authority for more than 24 years and Assistant Commissioner of Operations for the New York City Department of Buildings (NYCDOB) responsible for the NYCDOB field inspectors and plan examiners. The Paymaster has acted in an identical capacity in connection with the construction and renovation of the Current School Facilities financed with a portion of the Series 2011 Bond and the Series 2013 Bond proceeds.

A complete copy of the Construction Contract, Architecture Agreement, Paymaster and Representative Agreement and the qualifications of the Paymaster is available upon request as provided under "MISCELLANEOUS – Additional Information" below. See "RISK FACTORS - Construction Costs and Completion of Construction" and "APPENDIX B – THE BORROWER – Project Design Construction and Renovation."

### **Environmental Assessment**

**Phase I Report.** In connection with the acquisition of 117 North Franklin Street, Hempstead, New York and the construction, renovation and equipping of the Elementary School Facility, the Borrower engaged Fenley & Nicol Environmental ("Fenley & Nicol") to assess the environmental status of the subject property. Fenley & Nicol performed a Phase I Environmental Site Assessment. The current High School Project is located on the same parcel of land as the Elementary School. The Phase I Environmental Site Assessment contained certain recommendations that were discharged as part of the scope of work in 2011 in connection with the construction of the Elementary School.

**Soil Testing.** For preliminary design purposes, soil borings were taken on April 14, 2017. These soil borings indicated the presence of groundwater approximately 15 feet below than the proposed first finished floor elevation of the new building and 2 feet below the lower level finished floor elevation. To ascertain actual groundwater levels, a test pit was made on July 18, 2017. Groundwater was observed at approximately 17 feet below the proposed finished first floor elevation of the new building and 4 feet below the lower level finished floor elevation. The level of groundwater was consistent with the design plans.

## **Charter**

### **General**

The New York State Education Law provides for the creation of charter schools to provide opportunities for teachers, parents and community members, and to establish and maintain schools that operate independently of existing schools and school districts in order to: (i) improve student learning and achievement; (ii) increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are at-risk of academic failure; (iii) encourage the use of different and innovative teaching methods; (iii) create new professional opportunities for teachers, school administrators and other school personnel; (iv) provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and (v) provide schools with a method to change from rule-based to performance-based accountability systems by holding charter schools accountable for meeting measurable student achievement results. See generally “APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW.”

The Borrower operates pursuant to a charter. A charter governs such matters as the recipient's authority to operate, student performance, financial management and governance and operations. Pursuant to New York State Education Law, the term of a proposed charter cannot exceed five years. The Borrower received its charter contract (the “Charter”) on February 23, 2009 from the Board of Regents for and on behalf of the Education Department of the State. The Charter modification was approved on April 15, 2013 to expand the maximum enrollment allowed and grades served to include grade six. Pursuant to the Charter revision, the Borrower commenced operation of grade six with the 2013-14 school year. The Borrower applied for renewal of the Charter on August 15, 2013 which was approved on January 27, 2014 and issued on March 3, 2014. In January 2016, the Charter School Institute approved the High School expansion. Currently the Charter is effective through June 30, 2019 and it authorizes the Borrower to operate grades K-12 with a maximum enrollment of 1550 students. The Charter can be renewed or extended after its term by the Board of Regents pursuant to applicable law. A complete copy of the Charter is available upon request as described under “MISCELLANEOUS – Additional Information” above.

### **Charter Renewal**

Under the terms of the New York State Education Law, charters may be renewed, upon application for renewal, for a term of up to five years. In connection with charter renewal, New York State Education Law requires applicants to submit:

- (i) A report of progress in achieving the educational objectives set forth in the charter.
- (ii) A detailed financial statement that discloses the cost of administration, instruction and other spending categories for the charter school that will allow a comparison of such costs to other schools, both public and private.
- (iii) Copies of each of the annual reports of the charter school required by the Charter Schools Article of the New York State Education Law, including charter school report cards and certified financial statements.
- (iv) Indications of parent and student satisfaction.
- (v) The means by which the charter school will meet or exceed the enrollment and retention targets prescribed by the SUNY Trustees for students with disabilities, English language learners and students who are eligible for the federal Free and Reduced-Price Lunch program, which shall be considered by the SUNY Trustees prior to approving a renewal application.

In the case of the Borrower, its Charter also requires that a renewal application contain such other material and information as is required by the Board of Regents.

The New York Education Law requires that charter renewal applications be submitted to the charter entity no later than six months prior to the expiration of the Charter; provided, however, that the charter entity may waive the deadline for good cause shown. The Borrower's Charter provides that no later than the first of July in the year prior to expiration of the Charter, the Borrower may provide the Board of Regents with an application to renew the Charter. When a charter entity determines not to renew a charter it may seek to have operations at the charter school cease as of the time of the non-renewal determination, meaning, as a practical matter, in some cases a charter schools may cease operations a semester earlier than the stated term of the non-renewed charter would otherwise allow.

Annually, the Borrower's authorizer, the State University of New York's Charter Schools Institute, requires accountability information to ensure that the Borrower is in compliance with the terms of its charter and on track with meeting its academic accountability goals. With respect to the Borrower's current compliance, See "Data Usage – Student Performance" and Table B-12: School Performance Summary: Mathematics and English Language Arts, below This information, in addition to the renewal process described below, is analyzed by representatives from the Charter Schools Institute and shared with the State University of New York's Board of Trustees (the board that ultimately determines if the Borrower is granted a renewal). Compliance information is provided to the Charter Schools Institute in the following ways: the submission of an annual report and annual compliance visits. The annual report that is submitted at the end of every school year provides information about the Borrower's academic and fiscal standing, as well as operational information (i.e., student and teacher retention, percentage of special education students, testing data etc.) Representatives from the Charter Schools Institute conduct compliance visits at least once every school year. These visits are to ensure the Charter Schools Institute that the Borrower is operating within the terms of its charter.

The Charter Schools Institute was created by the State University of New York to administer their responsibilities under the Charter Schools Act of 1998, including the review of applications, assisting in the development of charter school accountability plans and considering charters for renewal. The Charter Schools Institute's staff has become recognized as a national leader in the public charter school movement, providing extensive experience in charter schools and all aspects of public education, including curricula, school operations, accountability, fiscal oversight and program development.

The Board of Trustees of the State University of New York, jointly with the Board of Regents, are required to provide oversight sufficient to ensure that each charter school that State University of New York Trustees have authorized is in compliance with applicable law and the terms of its charter. The Charter Schools Institute, together with the State Education Department (on behalf of the Board of Regents), oversees compliance through the monitoring plans contained in each school's charter as well as through other key methods designed to ensure accountability while still respecting a school's autonomy. Among other roles, the Institute recommends for charter approval only those schools that have a high likelihood of significantly improving student achievement, especially for students at risk of academic failure; provides ongoing oversight of schools that centers on schools' progress in improving student achievement, while also reviewing their organizational and fiscal performance.

### **Charter Revocation**

A charter may be terminated by the charter entity upon any of the following statutory grounds:

- (i) If the charter school's outcome on student assessment measures adopted by the Board of Regents falls below the level that would allow the Commissioner of Education to revoke the registration of another public school and student achievement on such measures has not shown improvement over the preceding three school years:
- (ii) Serious violations of law;
- (iii) Material and substantial violation of the charter, including fiscal mismanagement; or

(iv) If the New York Public Employment Relations Board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of subdivision one of § 209-A of the New York Civil Service Law involving interference with or discrimination against employee rights under article fourteen of the New York Civil Service Law; or

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

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

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

In addition, the charter entity or the Board of Regents may place a charter school falling within the provisions of (i) through (iv) above on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in summary revocation of the Borrower's Charter. For more information, see "APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW – Causes for Revocation or Termination."

## **Services Provider Management Services Agreement**

### **General**

The Borrower has engaged Victory Schools, Inc., d/b/a Victory Education Partners ("Victory") to provide certain management services pursuant to the terms of a Second and Amended Charter School Services Agreement dated March 2016 (the "Services Agreement"). The Services Agreement became effective on July 1, 2015 and will terminate on June 30, 2018, unless extended or earlier terminated and requires payment of an annual fee to Victory in an amount equal to \$560,000 for the 2015-2016 academic year and \$450,000 per year for the 2016-2017 and 2017-2018 academic years. Victory has agreed to subordinate their Management Fee to the Series 2011, Series 2013 and Series 2017 Bond payments. Pursuant to the terms of the Services Agreement, Victory is responsible for procurement of required liability insurance and providing comprehensive financial management services for the Borrower, including without limitation, management of cash accounts, accounts payable, accounts receivable and payroll functions, budgeting, financial statement presentation and audit coordination. Victory also provides the Borrower with human resource administration and management services, through its subsidiary, Little Bird HR.

Victory Education Partners is an education service provider that began operations in 1999 serving charter schools in New York State. Victory has since expanded to assisting charter schools in Pennsylvania and Florida with finance and accounting, employee benefits and human resources support.

Victory assists the Borrower with managing the business administration of the Borrower, including the development and maintenance of operating procedures that provide for all aspects of the day-to-day operation of the Borrower.

Victory also provides the following fiscal management services to the Borrower:

- (a) Trains and supports the Borrower's business manager in all aspects of managing the on-site business and operational activities of the Borrower, including, without limitation, school enrollment; school district invoicing; transportation; inventory; BEDS reporting; FAMIS reporting; payroll; accounts payable; and human resources;
- (b) At the Board or principal's reasonable request, negotiates with public or private entities or individuals for the provision of business and operational services required by the Borrower, such as, transportation, custodial or food services;
- (c) Performs bimonthly school district invoicing;
- (d) Completes a year-end student enrollment reconciliation in consultation with the business manager;
- (e) Prior to the beginning of each fiscal year, Victory prepares and submits to the Board for its review a proposed annual budget for such fiscal year.
- (f) Victory invoices and pursues payment(s) from all sources of Borrower revenue (short of initiating litigation), including the adjusted expense per pupil for schools in New York state and categorical federal grant programs such as Title I.
- (g) Victory provides standard bookkeeping and accounting services, including preparation of ledgers of accounts receivable and payable and financial statements including balance sheets, all in accordance with applicable generally accepted accounting principles.
- (h) Victory establishes and maintains financial management and accounting controls at a level that meets at a minimum the standards and requirements of the Borrower's authorizer and Applicable Law, including, but not limited to, insurance policies for theft, employee benefits, directors' and officers' liability and a bond for the Borrower's 401(k) plan.
- (i) Victory manages biweekly personnel and payroll functions of the Borrower for all employees.
- (j) All other budgets, financial reports and financial statements as may be required by the Charter and Applicable Law, including reporting to the Board at board meetings, year-end reporting, year-end New York State Education Department annual reporting and year-end audit support;
- (k) The New York State Education Department Annual Report;

### **Victory Schools – Key Personnel**

#### **Paul J. Augello, Jr. – Chief Executive Officer**

Paul Augello has over 29 years experience in public and private accounting. Mr. Augello started at Victory in April 2003 as the Controller and was promoted to Chief Financial Officer in August 2009 and to Chief Executive Officer in June 2016. Prior to joining Victory, Mr. Augello worked for The Interpublic Group of Companies where he spent over five years as an Internal Audit Manager and as the North American Controller of Initiative Media. Before that, he was the General Audit Supervisor at The New York Times Company where he was an active project team member for all phases of the Company's three printing plant construction projects and received a Chairman's Recognition Award for his work on acquisitions and special projects. Earlier in his career, Mr. Augello was a Senior Accountant with the publishing company Random House and the accounting firm Deloitte & Touche, where he earned his C.P.A. Mr. Augello graduated with a B.S. in Accounting from Villanova University in 1988.

## **Governance and Management**

The Borrower operates as a New York non-profit educational corporation and as such is governed by the law applicable to such entities and its articles of incorporation and bylaws. The Borrower's bylaws provide that the Borrower is managed and controlled by a Board of Trustees.

### **Board of Trustees**

The Borrower's bylaws provide that its Board of Trustees shall consist of not less than nine or more than thirteen members, including the president of the Parent-Teacher Organization of the Borrower ("PTO"), who is a non-voting member for the length of his or her term as president of the PTO. Members of the Board serve for a five-year term. All Trustees are eligible for re-election. The Borrower's bylaws provide that its officers are elected annually by the Board. The bylaws provide that a vacancy in the office of any officer shall be filled for the remainder of an unexpired term by vote of a majority of Trustees then in office. The following sections provide information on the current members of the Board.

#### **Reverend Barrington F.H. Goldson – Board Chair**

Rev. Barrington Goldson is currently serving as the chair of the board of the School. As chairman, he also works closely with the trustees and executive director in strategic planning, policy implementation and oversight. Reverend Goldson is also pastor of Calvary Tabernacle in Hempstead, New York. He has served in several key management and financial positions including the Bank of New York and Merrill Lynch. Rev. Goldson holds a Bachelor's degree in Economics from City University of New York and a Bachelor's in Christian Education and Biblical Studies from Genesis School of Theology. He also holds a MBA from Grand Canyon University. He is a member of several professional associations and has received several awards and recognition from the Village of Hempstead and Nassau County.

#### **Robert Stewart –Vice Chair**

Robert Stewart is the Chief Operating Officer of Calvary Tabernacle Ministries. He is a founding Board Member of the Borrower. Since 1989, he has been President of the Tri-State Music Association, which provides yearly Music Scholarships to youth. Robert is an accomplished leader and artist, having received National Endowment for the Arts recognition in Visual Arts, Design and Technology. His design portfolio includes work for Radio City Music Hall, UNICEF, the County of Nassau, Brooklyn Public Library to name a few. He has won various National Music Awards (including Disney's National Gospel Choir Fest) with his Choir, The Calvary Tabernacle Choir. He is a graduate of the prestigious Cooper Union for the Advancement of Science and Art and holds a degree from the Genesis Bible Institute.

#### **Hazelin Williams – Trustee**

Hazelin Williams is a founding Board member and currently works as a property manager in a real estate holding company in Hempstead, New York. Ms. Williams is a community activist and the author of two books and a book of poetry. Ms. Williams has worked for insurance and investment companies handling annuities.

#### **Stephen Rowley – Trustee**

Stephen Rowley serves as a member of the Board and a professor at City University of New York, York College. Mr. Rowley graduated with a Bachelors and Masters in Economics from Hunter College.

#### **Dawn West-Bloise – Trustee**

Ms. Dawn West-Bloise serves as a member of the Board and a financial consultant with over 25 years of experience. She is an active and dedicated member of the Hempstead community.

**Peter Goodman – Trustee**

Peter Goodman serves as a member of the Board and has practiced law for over 19 years of experience focused in real estate law and business law with an emphasis on Purchases, Sales, Not For Profit Corporations and Lender Settlement. Mr. Goodman is a member of the Coalition for Excellence in Homeownership, the Long Island Housing Crisis Taskforce and a former member of the Long Island Housing Partnership’s Strategic Planning Committee. Mr. Goodman is also a member of the following Bar Associations: New York State Bar Association, the Brooklyn Bar Association and the Nassau County Bar Association.

**Roderick Roberts – Trustee**

Roderick Roberts serves as a member of the Board and has 18 years of experience in Sales Marketing Consulting. He has been the Pastor for Rhema Christian Center, Bronx New York for over twelve years. Mr. Robert has a Master's degree in Psycho-Theological Studies from HFA Theological Institute.

**Sheila Dancy-Wilkins – Trustee**

Sheila Dancy-Wilkins serves as a member of the Board. Prior to serving on The Academy Charter School Board, Ms. Dancy-Wilkins served on the St. Albans Head Start Board for eleven years. She served as a manager in the Records Management Unit at the New York City Department of Education's Division of School Facilities where she provided written information to the New York City Corporation Counsel, the New York City Comptroller's Office and the Office of the General Counsel. Ms. Dancy-Wilkins graduated with a Bachelor's degree from the City College of the City of New York with a major in History and minor in Labor Economics. She received her Juris Doctor degree from CUNY Law School at Queens College.

**Administrative Staff**

The Borrower’s staff consists of dedicated and passionate professionals who model the intellectual prowess, core virtues and civic mindedness that we expect our students to emulate. As educators, they are committed to improving their own practice and are expected and encouraged to pursue professional development opportunities outside of the pre-service and ongoing professional development offered to them. Listed below are members of the Borrower's key administrators, along with a brief description of the responsibilities of their respective positions and biographical information pertaining to each.

**Wayne Haughton – Executive Director**

Mr. Wayne Haughton has served as the Executive Director of the School since 2011 with responsibility for the daily operation of the School. He also works closely with the Board of Trustees, the Business Manager and the Principal in overseeing the execution of the charter, implementation of policies and compliance and regulations. Mr. Haughton obtained his Bachelor's degree in Management from St. John's University and holds a Master's degree from Long Island University in School District Administration. Mr. Haughton has over 24 years of experience in the fields of finance and management and has served in the Nassau County Treasurer’s Office and Nassau County Department of Management and Budgets. Mr. Haughton previously served in the field of Education as a teacher.

**Dr. Nicholas Stapleton. – Chief Academic Officer**

Dr. Nicholas Stapleton is an educator with over 25 years of experience in the public, private and charter school sectors. As Chief Academic Officer (CAO) of the Academy Charter School, he provides strategic direction and supervision of the instructional program. This includes oversight of the elementary, middle and high school curriculum development, teacher training and student support. Prior to joining to the Academy Charter School, Dr. Stapleton worked as a teacher and an administrator in the New York City Public Schools system for several years. He has served as the school leader of Charter Drew Charter School in Atlanta and the Bronx Charter School for the Arts in New York City. He also worked with Victory Schools Inc. as a regional director for one year. Dr. Stapleton has been quite successful as an educational leader and focus intensely on student learning that drives

growth in student achievement. He received a BSc in Management and Finance and MA in Economics from Brooklyn College and Ed.M and Ed.D from Teachers College, Columbia University.

#### **Travis Holloway – High School Principal**

Mr. Travis Holloway is currently serving as the Principal of The Academy Charter High School. As Principal, he works closely with the Executive Director, Chief Academic Officer and Director of Operations in overseeing the execution of the Borrower's charter, as well as ensuring that the Borrower meets its compliance obligations. He is also responsible for overseeing the implementation of the instructional program in the high school. He then obtained his Bachelor's Degree in Psychology from Boston University and his Master's degrees in Adolescent Mathematics Education from Mercy College. He has been in the education field for nearly 10 years, has served in key leadership positions and seeking certification in school supervision.

#### **Wayne Peterkin – High School Dean of Culture**

Mr. Peterkin is an educator with over twenty years of experience. He began his career in the New York City Department of Education and served as a Mathematics Instructional Coach in District 5. He also worked as a Math teacher as Charles Drew Charter School in Atlanta, Georgia. Mr. Peterkin currently serves Dean of Culture at the Academy Charter High School and will assume the position of Assistant Principal in September 2017. He obtained his Bachelors of Arts degree in Business from Atlantic Union College and his Master's degree in School Administration and Supervision from Touro College. He holds New York State certification in school building supervision.

#### **Dermoth Mattison – Middle School Principal**

Mr. Dermoth Mattison currently serves as the Principal of the Middle School. Mr. Mattison has taught and served in leadership positions in New York City Charter Schools and Public Schools. As Principal at the Academy Middle School, Mr. Mattison works closely with the Chief Academic Officer and the Academy's Senior Leadership Team to oversee the execution of the charter as well as ensuring that the Borrower meets its compliance obligations. He is responsible for overseeing the implementation of the instructional program in the Middle School. Mr. Mattison obtained a Bachelor's Degree in Psychology and Education Leadership from The City University of New York at Brooklyn College. He also holds a Master's Degree in Childhood Education from the Metropolitan College of New York. He has been in the education field for over 10 years and has served in key leadership positions.

#### **Camille Morris – Director of Student Services**

Ms. Camille Morris is currently serving as the Director of Student Services. As the Director of Student Services, Ms. Morris is responsible for the supervision of special education students and guidance services. She holds a Master's degree from Touro College in Elementary and Special Education as well as a Master's degree in Educational Administration from Mercy College.

#### **Keiron Phillips – Director of K-9 Assessment, School Data and Technology**

Keiron Phillips is currently serving as the Director of K-9 Assessment, School Data and Technology. He holds an Associate in Applied Science in Accounting from the Borough of Manhattan Community College of New York, a Bachelor of Business Administration in Finance and Investments with a Minor in Psychology from Bernard Baruch College of New York, a Master of Science degree in Early Childhood Education from Pace University and a Master of Science degree in Educational Leadership from Mercy. He is also an Adjunct Professor of Economics at the Fashion Institute of Technology, State University of New York.

#### **Kerry Jourdain – Grades K-2 Instructional Coach**

Ms. Jourdain is a founding teacher of the Borrower and currently serves as the instructional coach for Grades K-1. She works with teachers on designing curriculum maps, planning weekly lessons and guiding daily

instruction. She obtained her Bachelor's Degree in Education from Manhattan College and her Masters in Literacy from Queens College, City University of New York.

#### **Odetta Williams – Grades 3-4 Instructional Coach**

Ms. William is an experienced educator who began working at the Academy in 2010. As a results oriented professional, and a distinguished teacher, she currently serves as the instructional coach for grades 3-4. She works with teachers in designing curriculum maps, planning weekly lessons and guiding daily instruction. She obtained her Bachelor's Degree in Education from the University of the West Indies and her Master's Degree in International Education and Humanities from New York University. She also holds an Advanced Certificate in Literacy Studies from Hofstra University.

#### **Ahmed Zubair – Middle School Math Instructional Coach**

Mr. Zubair is an educator with several years of experience. He began his career as a teacher at Democracy Prep Public School. He joined the Academy staff in 2014 as a middle school Mathematics teacher and currently serves as the Mathematics instructional coach in the middle school. He is a New York State certified teacher who obtained both his Bachelor of Science degree in Mathematics, and his Master's degree in Mathematics from Stony Brook University.

#### **Carla Best – Middle School ELA Instructional Coach**

Ms. Best is a founding teacher at the Academy with several years of experience as an educator. She is a results oriented professional and is currently serving as the English Language Arts instructional coach for the Middle School. She works with teachers in designing curriculum maps, planning weekly lessons and guiding daily instruction. She obtained her Bachelor's degree in Education from the State University of New York at Buffalo, and her Master's degree in Teaching from Fordham University.

#### **Dr. Shelley Jallow – Professional Development Consultant**

Dr. Jallow is a seasoned educator with more than twenty-six years of experience leading schools and district initiatives. She is currently an education consultant with the Center for Educational Innovation in New York City and has been a mathematics teacher, professional developer, principal, assistant superintendent, chief academic officer, and deputy superintendent in several urban and suburban school communities. Dr. Jallow obtained her doctoral degree in Educational Leadership from St. John Fisher College, her Master's degree in Secondary Education from City College of New York, and her Bachelor's degree in Marketing from Howard University.

#### **Wayne Edwards – Professional Development Consultant**

Mr. Edwards is an educator with several years of experience. He began his career as a teacher with the Freeport Union Free School District. He also served as the K-12 Director of Mathematics in The Uniondale Union Free School District, and the Huntington Union Free School District. He is currently working as an independent Mathematics consultant providing professional development services to teachers and coaches in several metropolitan area schools. In 2014, he began working with the Academy Charter School to help provide guidance centers around curriculum design and is currently coaching with the middle school and high school staff. He obtained his Bachelor of Arts degree in Mathematics from City College, City University of New York, and his Master's degree Elementary Mathematics Education from Brooklyn College, City University of New York.

#### **Janet Sanderson – Professional Development Consultant**

Ms. Sanderson is a seasoned educator with more than thirty-two -years of experience as a teacher, assistant principal and principal. She is currently an independent education consultant focused on providing professional development services in curriculum improvement and school leadership. At the Academy, Ms. Sanderson works directly with the Chief Academic Officer and school principals on a variety of school wide improvement initiatives. She obtained her Bachelor's degree in Economics from City College, City University of New York, her Masters of Business Administration degree in Finance from Long Island University and a Professional Diploma in Educational Administration from Long Island University.

### **Shamel Farley - Professional Development Consultant**

Ms. Farley is an educator and trainer at Pearson Inc. She conducts training nationally for several school systems. Her expertise is literacy curriculum development and implementation. She works with the English Language Arts instructional coaches and teachers at the elementary, middle and high school. She works with Academy teachers in designing curriculum maps and delivery of instruction. Shamel obtained Bachelor's degree in Early Elementary Education from New York University, and her Masters in Literacy from Hunter College, City University of New York. She is a doctoral candidate at Fordham University.

### **Donna M. Douglas – Director of Operations**

Ms. Donna M. Douglas is currently serving as the Director of Operations of the Borrower. As Director of Operations, Ms. Douglas is responsible for facilities management, procurement, service contracts and human resource management. Ms. Douglas has over 15 years' experience as a Human Resources Professional and served as the Business Manager for the Borrower from 2009 -2013. She received her Bachelor's degree in Health Service Administration from Lehman College. She also received her Master's in HR Management and Labor Relations from New York Institute of Technology and a Master's in School District Business Leadership from Long Island University.

### **Washburn Martin – Business Manager**

Mr. Washburn Martin is currently serving as the Business Manager of the Borrower. As the Business Manager, Mr. Martin is responsible for collaborating with the school administrators and BoostEd, the Borrower's financial partner to create annual budgets, preparing and updating cash forecasts, managing spending and days cash on hand, improving internal controls, managing the accounts payable processing and some payments, managing the collection and deposit of account receivables, working with external auditors on audit projects, and creating financial reports and analyses as needed. He is a Certified Public Accountant with over 13 years of financial, operational, contract compliance, and tax auditing experience. He received his Bachelor's degree in Business Administration from Siena College.

### **Hope Chin – Business Manager**

Ms. Hope Chin currently serves as a Business Manager for the Borrower. As Business Manager, Ms. Chin primary functions cover the facilities maintenance, security, purchasing and supports the budgetary function of the Borrower. Her experience includes seventeen years of governmental accounting at the United Nations. She received her Bachelor's degree in Accounting from the Bernard Baruch College, NY

### **Key Person Life Insurance**

The Borrower is required to obtain a \$2,000,000 "key person" life insurance insurance policy per person on the lives of Reverend Barrington F.H. Goldson, Chairman of the Board of Trustees and Wayne Haughton, Executive Director until 2033 that names the Trustee as the primary beneficiary by the Closing Date or as soon thereafter as practicable. The Key Person Life Insurance Proceeds Fund will be in the custody of the Trustee and will only be created upon the death of either of the above referenced individuals when the "key person" life insurance proceeds are paid out to the Trustee.

*[Remainder of page intentionally left blank]*

## Succession Plan

School leaders in academics and administration, at each level, provide mentorship to key individuals on their team to ensure the continuity of the operations of the School. On the academic side, the Superintendent works along with each of the three School principals to train other members of their respective leadership teams to ensure an understanding of the scope of work related to the oversight of the academic programs for the event of potential succession. Out of the pool of academic coaches individuals are identified and groomed to step into the principals position(s) should the need arise. On the management side, the Executive Director works in collaboration with the Chief of Staff and Director of Operations. These individuals possess a clear understanding of the needs of the daily operations and oversight of the School.

## Employees and Labor Relations

The Borrower currently employs 63 full-time teachers, 12 specialty teachers, 23 teacher's assistants, 6 administrators and 49 support staff. The Borrower's target class size is 25-27 students. All teachers and teachers' assistants are certified by the State. As of April 1, 2017, the attendance rate for all teachers was 96.21%. The following table sets forth the Borrower's current student-faculty ratios (i.e., the number of students compared to the number of in-classroom teachers) on a grade-by-grade basis for the 2016-17 school year.

Grade	2016-17
K	13:1
1	13:1
2	13:1
3	13:1
4	13:1
5	20:1
6	20:1
7	20:1
8	20:1
9	20:1

Source: the Borrower.

All of the Borrower's teachers, support staff and additional employees are employees of and are compensated by the Borrower. Teachers are employed pursuant to letters of hire for one year. The Borrower believes that the faculty, administration and the Board have a strong and collaborative working relationship. The Borrower monitors its teachers and makes determinations about their ongoing status with the Borrower. The Borrower considers relations with the teachers to be excellent.

## Enrollment

Enrollment in the School is open to any child who is qualified under the laws of New York for admission to a public school in compliance with State law that provides that admission of students cannot be limited on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry; provided, however, that nothing shall prevent the establishment of a single-sex charter school or a charter school designed to provide expanded learning opportunities for students at-risk of academic failure. The charter school must demonstrate good faith efforts to attract and retain a comparable or greater enrollment of students with disabilities and limited English proficient students when compared to the enrollment figures for such students in the school district in which the charter school is located. New York law requires that charter schools enroll each eligible student who submits a timely application by the first day of April each year, unless the number of applications exceeds the capacity of the grade level or facility. In such cases, students must be accepted from among applicants by a random selection process, provided that an enrollment preference will be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located and siblings of pupils already enrolled in the charter school. Effective as of the 2016/17 school year, an amendment to the New York State Education Law

permits charter schools on an optional basis to provide for the children of employees certain enrollment preference limited to 15% of the charter school's total enrollment. See "APPENDIX A – SUMMARY OF CERTAIN PROVISIONS OF NEW YORK CHARTER SCHOOL LAW –Admission; Enrollment; Students."

Under its general admissions policy, the Borrower will enroll every student who submits a timely application, space permitting. A lottery is held for a grade level if there are more applications than seats available for any given grade level at the end of the enrollment period. Preference is given to students residing in the school district in which the Borrower is located, to siblings of students already enrolled in the School and to students returning to the School in any subsequent years of operation.

The Borrower's application period begins on January 1st and the deadline for applications to be received for the lottery is April 1st, but applications can still be received after the lottery drawing. The application process begins when a parent or guardian completes an application form. Once received, the application form is time-stamped, photocopied to a separated secured file, and entered into a database. All information provided on the application is verified with the applicant's family, especially the student's age, address and sibling status. After an application is deemed complete and accurate, a confirmation card is mailed indicating receipt of the application. Applications received after the deadline are entered into the database on a first-come, first-serve basis. If a lottery is not held, these applicants are admitted to the Borrower by grade in the order in which the applications are received. If a lottery has been held, these applicants are placed on a waiting list beginning after the last person in each grade who was selected by lottery.

The following table sets forth data from the New York Department of Education and as provided by the Borrower regarding its historical and projected enrollment. Information through 2016-17 is actual data as of January 31, 2017. For 2017-18 and thereafter, data presented is projected by the Borrower and is subject to the general qualifications and limitations described under "INTRODUCTION – Forward-Looking Statements," above. The Borrower's Charter currently limits the Borrower's enrollment to 1,550 subject to adjustments described under "Charter – General," above.

*[Remainder of page intentionally left blank]*

**TABLE B-6:  
HISTORICAL AND FUTURE PROJECTED BILLABLE ENROLLMENT BY GRADE LEVEL**

Grade	<i>Actual</i>					<i>Projected</i>				
	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
<b>K</b>	81	81	113	114	107	108	108	108	108	108
<b>1</b>	82	82	115	111	107	108	108	108	108	108
<b>2</b>	80	78	78	114	106	108	108	108	108	108
<b>3</b>	81	78	80	81	106	108	108	108	108	108
<b>4</b>	50	71	83	84	76	108	108	108	108	108
<b>5</b>	48	49	77	80	82	81	108	108	108	108
<b>6</b>	0	43	80	81	80	81	81	108	108	108
<b>7</b>	0	0	48	81	82	81	81	81	108	108
<b>8</b>	0	0	0	45	79	81	81	81	81	81
<b>9</b>					115	135	135	135	135	135
<b>10</b>						135	135	135	135	135
<b>11</b>							135	135	135	135
<b>12</b>								135	135	135
<b>Totals</b>	<b>422</b>	<b>482</b>	<b>674</b>	<b>791</b>	<b>940</b>	<b>1134</b>	<b>1296</b>	<b>1458</b>	<b>1485</b>	<b>1485</b>

Source: The Borrower and from data obtained at <http://www.p12.nysed.gov/irs/statistics/enroll-n-staff/home.html> (Date Accessed: April 6, 2017).

\* The enrollment table does not include the expected addition of up to 75 students to be added on account of the expected Elementary School Expansion classrooms financed with a portion of the 2017 Bond proceeds.

**Waiting List**

Enrollment in the School is open to all residents of the State subject to compliance with State statutes, Board policy and the Borrower's Charter. There is an open application process that begins in January every year for incoming students. If at any time the number of applications exceeds the seats available for any given grade level at the Borrower, an open lottery is held. Applications must be received by April 1 for consideration in the lottery, which is held in April of each year when necessary. Students who are selected are enrolled, the remaining are placed on a waiting list. Applications received after the lottery application deadline are placed on a secondary waiting list in the order received. Students on the waiting list may be offered seats during certain times of the school year. The waiting list is purged each year and does not carry over to the following school year. The following table shows historical and current waiting list data by grade and represents demand for enrollment into the School's existing grade levels.

*[Remainder of page intentionally left blank]*

**TABLE B-7  
WAITING LIST DATA**

	<u>2015-16*</u>	<u>2016-17*</u>	<u>2017-18**</u>
<b>Grade</b>			
<b>K</b>	158	162	226
<b>1</b>	126	139	82
<b>2</b>	123	87	71
<b>3</b>	80	113	65
<b>4</b>	96	78	70
<b>5</b>	100	88	64
<b>6</b>	130	158	128
<b>7</b>	50	85	74
<b>8</b>	25	58	65
<b>9</b>		12	73
<b>10</b>			22
<b>Total</b>	<b>888</b>	<b>980</b>	<b>940</b>

Source: the Borrower.

\*As of January 31, 2017

\*\* As of April 15, 2017

### Student Retention

The following table shows the number of the Borrower students at the end of each school year beginning 2014-15. It also depicts the number of students who re-enrolled for each school year beginning 2016-17.

<b>TABLE B-8 STUDENT RETENTION DATA</b>									
<b>Grade</b>	<b>Enrollment at End of 2013-14</b>	<b>Re-Enrolled For 2014-15</b>	<b>Retention Rate</b>	<b>Enrollment at End of 2014-15</b>	<b>Re-Enrolled For 2015-16</b>	<b>Retention Rate</b>	<b>Enrollment at End of 2015-16</b>	<b>Re-Enrolled For 2016-17</b>	<b>Retention Rate</b>
<b>K</b>	80	80	100%	109	109	100%	113	112	99%
<b>1</b>	80	79	99%	11	11	100%	110	110	100%
<b>2</b>	80	80	100%	78	79	100%	108	106	98%
<b>3</b>	78	75	96%	77	75	97%	81	78	96%
<b>4</b>	70	69	99%	81	80	99%	79	78	99%
<b>5</b>	50	49	98%	75	73	97%	82	82	100%
<b>6</b>	45	44	98%	78	76	97%	81	81	100%
<b>7</b>				47	45	96%	80	80	100%
<b>8</b>							44	42	95%
<b>9</b>									
<b>Total</b>	<b>483</b>	<b>476</b>	<b>99%</b>	<b>657</b>	<b>648</b>	<b>99%</b>	<b>778</b>	<b>769</b>	<b>99%</b>

Source: the Borrower.

### Service Area and Competing schools

For the 2016-17 school year, approximately [72%] of the Borrower's students reside within the Hempstead School District, approximately [18%] reside within the neighboring school district, [3%] reside within NYC School District and the remaining students reside in other school districts.

The Borrower faces constant competition for students and there can be no assurance that it will continue to attract and retain the number of students that are needed to generate sufficient revenues for the Borrower to make payments on the Series 2017 Bonds. See “RISK FACTORS – Competition for Students.”

Information set forth in the following sections is meant to provide prospective investors with general information concerning certain economic and demographic conditions existing in the Borrower's service area. Such information has been obtained from the referenced sources and is believed to represent the most current information available from such sources, but certain of the information is released only after a significant amount of time has passed and hence such information may not be indicative of economic and demographic conditions as they currently exist or conditions which may be experienced in the near future. Further, the reported data has not been adjusted to reflect economic trends, notably inflation.

**Population**

The following table sets forth population statistics for the Village of Hempstead, Town of Hempstead, Nassau County and the State of New York.

Year	Village of Hempstead	Percent Change	Town of Hempstead	Percent Change	Nassau County	Percent Change	State of New York	Percent Change
1990	49,454	--	725,639	--	1,237,348	--	17,990,455	-
2000	56,554	14.4	755,924	4.2	1,334,544	7.9	18,976,457	5.5
2010	53,891	(4.71)	769,040	1.74	1,33,9532	0.37	19,379,102	2.1

Source: U.S. Department of Commerce, Bureau of the Census, American Fact Finder

**Median Age**

The 2010 estimated median age for the residents of the Village of Hempstead was 32.5 years, for the residents of the Town of Hempstead was 40.0 years and for residents of Nassau County was 41.1 years. The 2010 estimated median age for the residents of Bronx County was 32.8. The State-wide median age estimated for 2010 was 38.0 years. (Source: U.S. Department of Commerce, Bureau of the Census, American Fact Finder.)

**Income**

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

	2000	2010	Percentage Change
Town of Hempstead	\$77,553	\$87,382	12.7%
Nassau County	79,926	91,104	14.0
State of New York	52,280	54,148	3.6

Source: U.S. Department Commerce, Bureau of Economic Analysis.

## Basic Tuition

The following table provides information regarding the per pupil charter school basic tuition amount payable to charter schools less the basic tuition reimbursement to the school districts for the 2017-18 school years in the school districts where children enrolled at the Borrower currently reside.

**TABLE B-11:  
BASIC TUITION**

	<b>2017-18</b>
Amityville	\$ 17,777
Baldwin	15,658
Elmont	14,397
East Meadow	15,722
Freeport	15,703
Glen Cove	18,185
Hempstead	17,740
Hicksville	14,942
Huntington	17,512
Long Beach	22,348
Malverne	19,705
New York City	13,527
Oceanside	16,067
Roosevelt	16,425
South County	15,951
S Huntington	15,758
Uniondale	19,864
Valley Stream 30	17,981
West Hempstead	16,759
Westbury	18,287

Source: New York State Education Department.

## Data Usage – Student Performance

### *Grades 9-12*

The Borrower utilizes student assessment and progress data to monitor student progress, inform teacher instruction and identify appropriate support services to meet individual student needs. The following programs of assessment are utilized at the high school level:

- Practice Regents Examinations: These practice assessments are administered twice per year [mid-year and in March] to provide data concerning student mastery of curriculum that has been taught.
- Achieve 3000: This program assesses student reading levels and helps to forecast College and Career Readiness. Additionally, it provides intervention content and activities that are shaped around the individual literacy needs of students. This platform may also be used to support the “bridge” between middle school literacy and high school literacy via a Summer Bridge program for students who are entering the 9th grade.
- LearnerPal: Regents aligned learning platform that provides students with NYS aligned questioning and content. Real time assessment data is maintained by the teacher and can be utilized to support individual students in content master related to courses that end with a Regents.

## Grades K-8

The Office for Standards, Assessment and Reporting of the New York State Education Department is responsible for the coordination, development and implementation of the Grade 3-8 assessments, Regents examinations and English Language Proficiency assessments that comprise the New York State Testing Program (“NYSTP”). These examinations are administered to students in Kindergarten through Grade 8 enrolled in public, nonpublic and charter schools throughout the state.

Elementary and intermediate-level students are expected to take a series of state examinations in grades 3-8. These exams include the New York State Elementary and Intermediate Assessments in:

- Grades 3-8 English Language Arts;
- Grades 3-8 Mathematics; and
- Grade 4 and Grade 8 Science;

See Table B-12: School Performance Summary: Mathematics and English Language Arts, Table 13: -Comparison by Grade Proficiency Rate - 2015-2016 NYS English Language Arts Assessment Results and Table 14: Comparison by Grade Proficiency Rate - 2015-2016 NYS Mathematics Assessment Results, below.

Student performance on the assessments is categorized into achievement levels: Level 1 – Below Standard; Level 2 - Partially Meeting Standard; Level 3 - Meeting Standard; and Level 4 - Exceeding Standard.

In addition to teacher-prepared tests and mandated New York State Elementary Assessments, students take a series of curricula-based exams which include:

*Fountas and Pinnell Benchmark System:* The Fountas and Pinnell Benchmark System is a set of standardized, individually administered measure of early literacy development. They are designed to be short (one minute) fluency measure used to regularly monitor the development of reading and early reading skills in students in grades K-4. The measures developed upon the essential early literacy domains’ report to assess student development of phonological awareness, alphabetic understanding, and automaticity and fluency with reading. Each measure demonstrates to be reliable and valid indicators of early literacy development and predictive of later reading proficiency to aid in the early identification of students who are not progressing as expected. The results can be utilized to evaluate the individual student development as well as provide grade-level feedback toward validated instructional objectives.

*Interim Assessments:* These assessments are designed in-house using a variety of commercial products and State released testing items. They are administered in ELA and Mathematics in Grades 3-8 only. These exams are administered three times per year in November, January and March/April. The purpose of these assessments is to help teachers learn more about their students' strengths and weaknesses relative to the state standards, so that instruction can be tailored to each student's particular needs. The goal of these brief assessments is not to rank students but to support better teaching and learning.

*STAR Assessment:* The School also administers the STAR Assessment in in Reading and Mathematics in Grade K-8 three times per year, beginning in September, then in January and finally in June of each academic year. The purpose is to measure both student growth and teacher effectiveness.

*[Remainder of page intentionally left blank]*

**TABLE B-12 SCHOOL PERFORMANCE SUMMARY**

**SCHOOL PERFORMANCE SUMMARY: English Language Arts**  
Academy Charter School



	2013-14 Grades Served: K-6			MET	2014-15 Grades Served: K-7			MET	2015-16 Grades Served: K-8			MET			
	Grades	All Students	2+ Years Students		Grades	All Students	2+ Years Students		Grades	All Students	2+ Years Students				
		% (N)	% (N)			% (N)	% (N)			% (N)					
<b>ABSOLUTE MEASURES</b>															
1. Each year 75 percent of students who are enrolled in at least their second year will perform at proficiency on the New York State exam.	3	38.5 (78)	35.3 (68)		3	35.5 (76)	36.1 (61)		3	64.9 (74)	61.9 (63)				
	4	38.1 (72)	37.3 (67)		4	36.3 (80)	35.6 (59)		4	61.3 (80)	61.3 (82)				
	5	28.0 (50)	30.0 (40)		5	30.3 (76)	33.3 (60)		5	43.2 (81)	43.2 (74)				
	6	29.5 (44)	31.4 (35)		6	20.5 (78)	23.7 (38)		6	37.5 (80)	38.5 (65)				
	7	(0)	(0)		7	29.8 (47)	36.4 (33)		7	37.2 (78)	38.0 (71)				
	8	(0)	(0)		8	(0)	(0)		8	43.2 (44)	46.2 (39)				
	All	34.0 (244)	34.3 (210)	NA	All	30.5 (357)	33.5 (251)	NO	All	48.1 (437)	47.9 (374)	NO			
2. Each year the school's aggregate Performance Level Index on the State exam will meet the Annual Measurable Objective set forth in the State's NCLB accountability system.	Grades	PLI	AMO		Grades	PLI	AMO		Grades	PLI	AMO				
	3-6	115	89	YES	3-7	108	97	YES	3-8	136	104	YES			
<b>COMPARATIVE MEASURES</b>															
3. Each year the percent of students enrolled in at least their second year and performing at proficiency will be greater than that of students in the same grades in the local district.	Comparison: Hempstead UFSD				Comparison: Hempstead UFSD				Comparison: Hempstead UFSD						
	Grades	School	District		Grades	School	District		Grades	School	District				
	3-6	34.3	7.1	YES	3-7	33.5	7.3	YES	3-8	47.9	10.8	YES			
4. Each year the school will exceed its predicted percent of students at proficiency on the state exam by at least a small Effect Size (at least 0.3) based on its percentage of Economically Disadvantaged students.	% ED	Actual	Predicted	Effect Size		% ED	Actual	Predicted	Effect Size		% ED	Actual	Predicted	Effect Size	
	79.7	34.0	22.1	0.84	YES	86.2	30.5	17.7	1.04	YES	80.7	48.1	27.0	1.27	YES
<b>GROWTH MEASURE</b>															
5. Each year, the school's unadjusted mean growth percentile will meet or exceed the state's unadjusted median growth percentile.	Grades	School	State		Grades	School	State		Grades	School	State				
	4	47.4			4	50.7			4	56.8					
	5	54.8			5	55.3			5	51.7					
	6	45.3			6	43.3			6	53.5					
	7	0.0			7	51.8			7	62.4					
	8	0.0			8	0.0			8	57.1					
	All	48.9	50.0	NO	All	50.1	50.0	YES	All	58.2	50.0	YES			

**SCHOOL PERFORMANCE SUMMARY: Mathematics**  
Academy Charter School

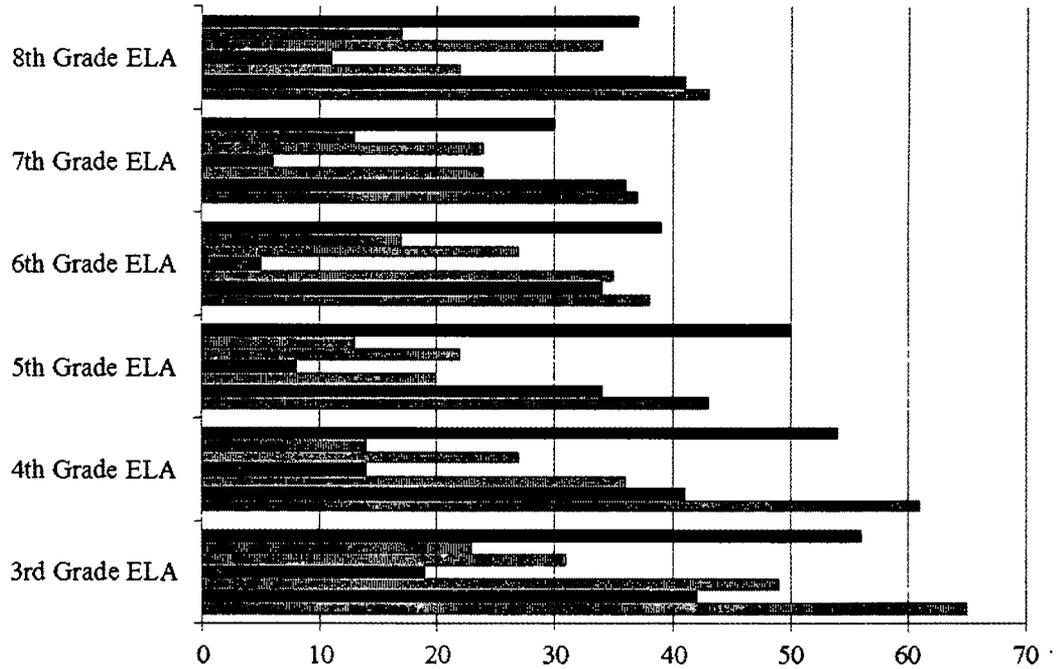


	2013-14 Grades Served: K-6			MET	2014-15 Grades Served: K-7			MET	2015-16 Grades Served: K-8			MET			
	Grades	All Students	2+ Years Students		Grades	All Students	2+ Years Students		Grades	All Students	2+ Years Students				
		% (N)	% (N)			% (N)	% (N)			% (N)					
<b>ABSOLUTE MEASURES</b>															
1. Each year 75 percent of students who are enrolled in at least their second year will perform at proficiency on the New York State exam.	3	55.1 (78)	54.4 (68)		3	41.3 (75)	41.7 (60)		3	63.0 (73)	61.3 (62)				
	4	68.4 (72)	70.1 (67)		4	57.5 (80)	55.9 (59)		4	60.8 (79)	63.9 (61)				
	5	56.0 (50)	57.5 (40)		5	55.8 (77)	61.7 (60)		5	55.6 (81)	54.1 (74)				
	6	63.6 (44)	68.6 (35)		6	41.0 (78)	50.0 (38)		6	59.5 (79)	59.4 (64)				
	7	(0)	(0)		7	48.9 (47)	60.6 (33)		7	40.3 (72)	41.8 (67)				
	8	(0)	(0)		8	(0)	(0)		8	45.5 (44)	48.7 (39)				
	All	61.1 (244)	62.4 (210)	NA	All	49.0 (357)	53.6 (250)	NO	All	54.9 (428)	55.0 (367)	NO			
2. Each year the school's aggregate Performance Level Index on the State exam will meet the Annual Measurable Objective set forth in the State's NCLB accountability system.	Grades	PLI	AMO		Grades	PLI	AMO		Grades	PLI	AMO				
	3-6	151	86	YES	3-7	138	94	YES	3-8	142	101	YES			
<b>COMPARATIVE MEASURES</b>															
3. Each year the percent of students enrolled in at least their second year and performing at proficiency will be greater than that of students in the same grades in the local district.	Comparison: Hempstead UFSD				Comparison: Hempstead UFSD				Comparison: Hempstead UFSD						
	Grades	School	District		Grades	School	District		Grades	School	District				
	3-6	62.4	12.0	YES	3-7	53.6	11.2	YES	3-8	55.0	12.4	YES			
4. Each year the school will exceed its predicted percent of students at proficiency on the State exam by at least a small Effect Size (at least 0.3) based on its percentage of Economically Disadvantaged students.	% ED	Actual	Predicted	Effect Size		% ED	Actual	Predicted	Effect Size		% ED	Actual	Predicted	Effect Size	
	79.6	61.1	30.6	1.58	YES	86.2	49.0	25.1	1.38	YES	80.7	54.9	27.5	1.41	YES
<b>GROWTH MEASURE</b>															
5. Each year, the school's unadjusted mean growth percentile will meet or exceed the state's unadjusted median growth percentile.	Grades	School	State		Grades	School	State		Grades	School	State				
	4	72.9			4	61.3			4	61.5					
	5	50.7			5	45.8			5	51.0					
	6	64.1			6	59.8			6	55.0					
	7	0.0			7	48.8			7	51.1					
	8	0.0			8	0.0			8	53.1					
	All	64.3	50.0	YES	All	54.5	50.0	YES	All	54.5	50.0	YES			

**TABLE B-13 - COMPARISON BY GRADE**

Proficiency Rate (%)

2015-2016 NYS English Language Arts Assessment Results



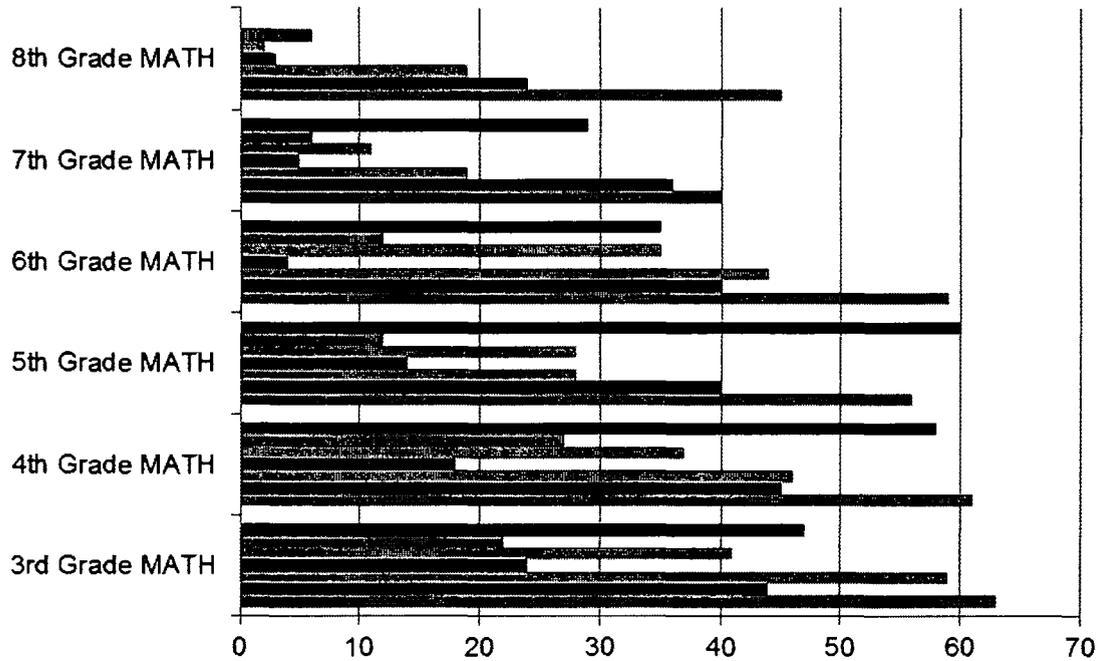
	3rd Grade ELA	4th Grade ELA	5th Grade ELA	6th Grade ELA	7th Grade ELA	8th Grade ELA
■ Baldwin	56	54	50	39	30	37
■ Roosevelt Union Free School District	23	14	13	17	13	17
■ Freeport School District	31	27	22	27	24	34
■ Hempstead School District	19	14	8	5	6	11
■ Uniondale Union Free School District	49	36	20	35	24	22
■ New York State	42	41	34	34	36	41
■ Academy Charter School District	65	61	43	38	37	43

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**TABLE B-14 - DISTRICT COMPARISON BY GRADE**

Proficiency Rate (%)

2015-2016 NYS Mathematics Assessment Results



	3rd Grade MATH	4th Grade MATH	5th Grade MATH	6th Grade MATH	7th Grade MATH	8th Grade MATH
■ Baldwin	47	58	60	35	29	0
■ Roosevelt Union Free School District	22	27	12	12	6	6
■ Freeport School District	41	37	28	35	11	2
■ Hempstead School District	24	18	14	4	5	3
■ Uniondale Union Free School District	59	46	28	44	19	19
■ New York State	44	45	40	40	36	24
■ Academy Charter School District	63	61	56	59	40	45

**AYP Status**

In New York, under the accountability provisions of Title I of the Elementary and Secondary Education Act, as reauthorized by the No Child Left Behind Act of 2001 (“NCLB”), all public school campuses, School Districts and the State are evaluated for Adequate Yearly Progress (“AYP”). Districts, campuses, and the state are required to meet AYP criteria on three measures: English Language Arts (“ELA”), Mathematics, and either Science (for elementary and middle/junior high schools) or Graduation Rate (for high schools and districts). The Borrower has achieved AYP status in English Language Arts, Mathematics and Science during each year of the current charter term.

## Debt Summary

The Series 2017 Bonds shall be equally and ratably secured under the Indenture with the Series 2013A, Series 2013B and Series 2011A Bonds. The following provides a summary of the Borrower's outstanding bonds.

**TABLE B-15:  
THE ACADEMY CHARTER BORROWER OUTSTANDING BOND SUMMARY**

<u>Series</u>	<u>Issue Par</u>	<u>Outstanding Par</u>	<u>Final Maturity</u>	<u>Rate</u>	<u>Call Date</u>
Series 2011A	\$ 10,505,000	\$ 10,130,000	2/1/2041	8.50%	2/1/21 @ Par
Series 2013A	12,970,000	12,970,000	2/1/2044	7.65%	2/1/21 @ Par
Series 2013B	545,000	255,000	2/1/2019	7.25%	Non-Callable
Totals	<u>\$ 24,255,000</u>	<u>\$ 23,355,000</u>			

Source: The Borrower (as of April 1, 2017)

The Borrower also has five capital leases outstanding in the aggregate amount of \$598,801 as of June 30, 2017.

## Internal Controls

The Borrower has internal control policies in place as set forth in the Borrower's Executive Director's Manual 3: Accounting & Finance Policies, Procedures, & Controls (the "Manual"), providing that only the Executive Director, Director of Operations and the Business Manager are authorized signatories for the Borrower's school-based checking account, with each check requiring two signatures from authorized signers. The Manual provides that the bank will issue checks in the Borrower's name and checks are pre-numbered. The Manual sets forth procurement requirements and requires that petty cash and checks be kept in a lock box. Any other cash received at the Borrower must be kept in a safe, with only the Business Manager and the Principal knowing the combination to the safe.

## Conflicts Policy

The Code of Ethics and Conflicts of Interest Policy ("Policy") adopted by the Borrower requires the Board of the Borrower to conduct itself in accordance with and subject to the limitations of the Education Law, Not-for-Profit Corporation Law, the Borrower's charter and bylaws. The Borrower's general policy on conflict of interest is that none of its faculty, staff, trustees, or officials shall engage in any activities that place them in a conflict of interest between their official activities and any other interest or obligation. The Policy extends to certain family members of the Board and relates to the number of Board trustees who can also receive compensation from the Borrower. Trustees are prohibited from engaging in self-dealing transactions, such as transactions to which the Borrower is a party and in which one or more of the Trustees has a material financial interest. The Trustees are required to fully disclose their interest to the Board prior to acting on any contract or transaction where the Trustee may have a material financial interest and must disclose all relevant and material facts known to the person about any transaction that might reasonably be construed to be adverse to the Board's interest. Such disclosure shall include all relevant and material facts known to such person about the contract or transaction that might reasonably be construed to be adverse to the Board's interest, or unduly influenced by persons who have a special interest in matters under consideration by the Board. The Trustees must avoid at all times engaging in activities that would appear to be unduly influenced by other persons who have a special interest in matters under consideration by the Board.

## Projected Revenues and Expenditures

This Official Statement contains certain "forward-looking" statements of the type described in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. See "INTRODUCTION – Caution Regarding Forward-Looking Statements" above. Although the Borrower believes that the assumptions upon which the forward-looking statements contained in this Official Statement are based are reasonable, any of the

assumptions could prove to be inaccurate and, as a result, the forward-looking statements based on those assumptions could also be incorrect. All phases of the operations of the Borrower by the Borrower involve risks and uncertainties, many of which are outside of the Borrower's control and any one of which, or a combination of which, could materially affect the Borrower's results with respect to the Borrower's operations. Factors that could cause actual results to differ from those expected include, but are not limited to, general economic conditions; the willingness of the State to fund public schools including charter schools at present or increased levels; competitive conditions within the Borrower's service area; lower-than-projected enrollment; unanticipated expenses; changes in government regulation including changes in the law governing charter schools in New York; future claims for accidents against the Borrower and the extent of insurance coverage for such claims; and other risks discussed in this Official Statement. See "RISK FACTORS" above.

The Borrower is providing the following Historical and Projected Revenues and Expenses table for illustrative purposes only. These projections have been prepared by the Borrower with assistance from its Independent Management Consultant, based on the Borrower's operating history with respect to the Borrower and its assumptions about future State funding levels and future operations of the Borrower, including student enrollment and expenses. The Borrower's projections have not been independently verified by any party other than the Borrower. The Borrower's projections have not been prepared in accordance with generally accepted accounting principles ("GAAP"). No feasibility studies have been conducted with respect to operations of the Borrower pertinent to the Series 2017 Bonds. The Underwriter has not independently verified the Borrower's projections and makes no representations nor gives any assurances that such projections, or the assumptions underlying them, are complete or correct.

NO REPRESENTATION OR ASSURANCE CAN BE GIVEN THAT THE BORROWER WILL REALIZE REVENUES IN AMOUNTS SUFFICIENT TO MAKE ALL REQUIRED PAYMENTS ON THE SERIES 2017 NOTES SUFFICIENT TO PAY DEBT SERVICE ON THE SERIES 2017 BONDS. THE REALIZATION OF FUTURE REVENUES DEPENDS ON, AMONG OTHER THINGS, THE MATTERS DESCRIBED IN "RISK FACTORS," AND FUTURE CHANGES IN ECONOMIC AND OTHER CONDITIONS THAT ARE UNPREDICTABLE AND CANNOT BE DETERMINED AT THIS TIME. THE UNDERWRITER MAKES NO REPRESENTATION AS TO THE ACCURACY OF THE PROJECTIONS CONTAINED HEREIN, NOR AS TO THE ASSUMPTIONS ON WHICH THE PROJECTIONS ARE BASED.

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**TABLE B-16: HISTORICAL AND PROJECTED REVENUES AND EXPENSES**

**The Academy Charter School**

(Years Ending June 30)	Actual 2015A	Actual 2016A	Budget 2017E	Budget 2018E	Budget 2019E	Budget 2020E	Budget 2021E
<b>STUDENTS (at full capacity)</b>	<b>675</b>	<b>795</b>	<b>962</b>	<b>1,134</b>	<b>1,296</b>	<b>1,458</b>	<b>1,485</b>
<b>STUDENTS (budgeted enroll.)*</b>	<b>665</b>	<b>793</b>	<b>933</b>	<b>1,100</b>	<b>1,257</b>	<b>1,414</b>	<b>1,440</b>
<b>STUDENTS (final enrollment)</b>	<b>667</b>	<b>791</b>	-	-	-	-	-
<b>REVENUES</b>							
Base Per Pupil Revenues	12,252,027	14,431,415	17,071,385	20,677,035	24,337,058	28,198,073	29,578,063
Federal Funding	191,315	201,612	253,582	298,971	341,643	384,314	391,381
Special Education Funding	159,430	39,481	46,703	56,567	66,580	77,143	80,918
Grants/Contributions	-	174,892	921,300	368,000	39,140	40,314	41,524
Food Service	445,950	579,958	648,423	781,062	919,171	1,064,862	1,116,956
Interest Income	799	961	5,000	500	500	500	500
Other Income	41,549	-	-	100	100	100	100
<b>TOTAL REVENUES</b>	<b>13,091,070</b>	<b>15,428,319</b>	<b>18,946,393</b>	<b>22,182,235</b>	<b>25,704,191</b>	<b>29,765,306</b>	<b>31,209,441</b>
<b>EXPENSES</b>							
<b>Personnel</b>							
Employee Salaries	6,440,295	7,402,503	8,886,615	11,672,837	12,823,022	14,262,712	14,715,594
Payroll Taxes	568,964	587,947	799,795	1,050,555	1,154,071	1,283,644	1,324,403
Employee Benefits	1,014,068	1,331,361	1,503,223	2,036,164	2,307,215	2,647,711	2,819,188
<b>Subtotal Personnel</b>	<b>8,023,327</b>	<b>9,321,811</b>	<b>11,189,633</b>	<b>14,759,556</b>	<b>16,284,309</b>	<b>18,194,067</b>	<b>18,859,184</b>
<b>Non-Personnel</b>							
General & Administrative	455,984	547,344	658,000	658,000	677,590	862,917	888,655
Professional Services	230,505	252,263	387,000	356,000	366,080	367,327	377,747
Direct Educational	748,639	600,557	1,092,000	822,000	842,040	907,024	929,464
Operating & Maintenance	739,622	918,811	1,090,399	1,797,476	1,897,816	1,800,308	1,862,130
School Administration Services	663,063	560,000	450,000	463,500	477,405	491,727	506,479
<b>Subtotal Non-Personnel</b>	<b>2,837,813</b>	<b>2,878,975</b>	<b>3,677,399</b>	<b>4,096,976</b>	<b>4,260,931</b>	<b>4,429,303</b>	<b>4,564,475</b>
<b>TOTAL EXPENSES</b>	<b>10,861,140</b>	<b>12,200,786</b>	<b>14,867,032</b>	<b>18,856,532</b>	<b>20,545,239</b>	<b>22,623,371</b>	<b>23,423,659</b>
<b>Net Revenues Available for Debt Service</b>	<b>2,229,931</b>	<b>3,227,533</b>	<b>4,079,360</b>	<b>3,325,703</b>	<b>5,158,952</b>	<b>7,141,935</b>	<b>7,785,782</b>
<b>Senes 2011 Debt Service Payments</b>							
Interest Expense	866,663	857,175	846,863	835,725	823,763	810,563	796,538
Principal	115,000	125,000	135,000	145,000	160,000	170,000	185,000
<b>Total Senes 2011 Debt Service Payments</b>	<b>981,663</b>	<b>982,175</b>	<b>981,863</b>	<b>980,725</b>	<b>983,763</b>	<b>980,563</b>	<b>981,538</b>
<b>Senes 2013 Debt Service Payments+</b>							
Interest Expense	418,416	1,031,709	1,021,568	1,010,693	999,093	986,085	971,933
Principal	-	140,000	150,000	160,000	175,000	185,000	200,000
<b>Total Senes 2013 Debt Service Payments</b>	<b>418,416</b>	<b>1,171,709</b>	<b>1,171,568</b>	<b>1,170,693</b>	<b>1,174,093</b>	<b>1,171,085</b>	<b>1,171,933</b>
<b>Senes 2017 Debt Service Payments+</b>							
Interest Expense	-	-	-	-	-	2,376,867	2,340,293
Principal	-	-	-	-	-	555,000	590,000
<b>Total Senes 2017 Debt Service Payments</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,931,867</b>	<b>2,930,293</b>
<b>Combined Total Debt Service Payments</b>	<b>1,400,078</b>	<b>2,153,884</b>	<b>2,153,430</b>	<b>2,151,418</b>	<b>2,157,855</b>	<b>5,083,515</b>	<b>5,083,763</b>
Lease Payments	432,475	362,763	322,000	374,000	234,537	106,691	-
<b>Total DS &amp; Lease Payments</b>	<b>1,832,553</b>	<b>2,516,647</b>	<b>2,475,430</b>	<b>2,525,418</b>	<b>2,392,392</b>	<b>5,190,206</b>	<b>5,083,763</b>
<b>Debt Service Coverage</b>	<b>1.22x</b>	<b>1.28x</b>	<b>1.65x</b>	<b>1.32x</b>	<b>2.16x</b>	<b>1.38x</b>	<b>1.53x</b>
<b>DAYS CASH ON HAND</b>							
Cash on Hand - Unrestricted	143,029	536,383	1,465,727	1,521,384	3,778,315	5,258,092	7,484,034
Total Expenses	13,202,255	15,259,953	17,994,189	21,988,677	23,611,821	28,932,612	29,668,149
Less Depreciation/Amortization	(962,134)	(1,081,472)	(1,175,727)	(1,235,727)	(1,235,727)	(2,135,727)	(2,135,727)
Operating Expenses less Depreciation	12,240,121	14,178,481	16,818,462	20,752,950	22,376,094	26,796,885	27,532,422
<b>Days Cash on Hand Ratio</b>	<b>4</b>	<b>14</b>	<b>32</b>	<b>27</b>	<b>62</b>	<b>72</b>	<b>99</b>

\* Does not include the additional elementary school enrollment expected with the expansion

+ Net of capitalized interest in the amount of \$1,129,012 for FY 2018 and \$2,376,867 for FY 2019

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**APPENDIX C**  
**BORROWER FINANCIAL STATEMENTS**

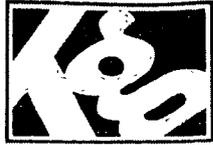
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**THE ACADEMY CHARTER SCHOOL**  
**FINANCIAL STATEMENTS**  
**WITH INDEPENDENT AUDITOR'S REPORT**  
**JUNE 30, 2016**

**THE ACADEMY CHARTER SCHOOL**

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## INDEPENDENT AUDITOR'S REPORT

To the Board of Trustees  
The Academy Charter School

### **Report on the Financial Statements**

We have audited the accompanying financial statements of The Academy Charter School, which comprises the statement of financial position as of June 30, 2016, and the related statements of activities, functional expenses and cash flows for year then ended, and the related notes to the financial statements.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The Academy Charter School as of June 30, 2016, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### **Report on Summarized Comparative Information**

We have previously audited The Academy Charter School's 2015 financial statements, and our report dated October 30, 2015, expressed an unmodified opinion on those audited financial statements. In our opinion, the summarized comparative information presented herein as of and for the year ended June 30, 2015, is consistent, in all material respects, with the audited financial statements from which it has been derived.

### **Other Reporting Required by *Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated October 18, 2016, on our consideration of The Academy Charter School's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering The Academy Charter School's internal control over financial reporting and compliance.

New York, New York  
October 18, 2016

*Loeb Group + Company, LLP*  
Certified Public Accountants

**THE ACADEMY CHARTER SCHOOL**  
**STATEMENT OF FINANCIAL POSITION**  
**JUNE 30, 2016**  
(With Comparative Totals as of June 30, 2015)

**ASSETS**

	2016	2015
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 617,591	\$ 143,014
Accounts receivable, net	464,660	417,760
Other receivables	111,426	299,026
Prepaid expenses	-	43,543
	1,193,677	903,343
<b>PROPERTY AND EQUIPMENT, net</b>	21,919,966	22,643,106
<b>OTHER ASSETS</b>		
Deferred expenses, net	1,462,159	1,517,886
Restricted cash and escrow reserves	2,928,038	3,414,980
Security deposits	32,420	32,420
	\$27,536,260	\$28,511,735

**LIABILITIES AND NET ASSETS**

<b>CURRENT LIABILITIES</b>		
Bonds payable - current portion	\$ 285,000	\$ 265,000
Accounts payable	459,610	497,851
Accrued expenses	1,034,338	803,066
Accrued interest payable	787,029	787,038
Loan payable - bank	1,875	-
Construction costs payable	-	257,901
Due to management company	-	541,889
Obligations under capital leases - current portion	297,427	273,951
	2,865,279	3,426,696
Bonds payable, less current portion	23,355,000	23,640,000
Obligations under capital leases, less current portion	598,801	896,228
	26,819,080	27,962,924
<b>NET ASSETS - UNRESTRICTED</b>	717,180	548,811
	\$27,536,260	\$28,511,735

See notes to financial statements.

**THE ACADEMY CHARTER SCHOOL**  
**STATEMENT OF ACTIVITIES**  
**YEAR ENDED JUNE 30, 2016**  
(With Summarized Totals for the year ended June 30, 2015)

**UNRESTRICTED NET ASSETS**

	2016	2015
<b>REVENUE, GAINS AND OTHER SUPPORT</b>		
Public School District		
Resident student enrollment	\$ 14,470,896	\$ 12,411,457
Grants and Contracts		
State and local	162,129	-
Federal - Title and IDEA	201,612	191,315
Food Service and Child Nutrition Program	579,958	445,950
Real estate tax refund	53,014	204,237
Interest and other income	13,723	42,348
	15,481,332	13,295,307
<b>EXPENSES</b>		
Program Expenses		
Regular education	11,292,285	10,468,857
Special education	870,967	910,292
Food service	658,907	581,242
	12,822,159	11,960,391
Supporting Services		
Management and general	2,490,804	2,059,406
	2,490,804	2,059,406
Total Expenses	15,312,963	14,019,797
<b>CHANGE IN NET ASSETS</b>	168,369	(724,490)
<b>NET ASSETS - UNRESTRICTED</b>		
Beginning of year	548,811	1,273,301
End of year	\$ 717,180	\$ 548,811

See notes to financial statements.

**THE ACADEMY CHARTER SCHOOL**

**STATEMENT OF FUNCTIONAL EXPENSES**

YEAR ENDED JUNE 30, 2016

(With Summarized Totals for the year ended June 30, 2015)

	No. of position	Regular Education	Special Education	Food Service	Total Programs	Management & General	Total 2016	Total 2015
<u>Personnel Services Costs</u>								
Administrative staff personnel	19	\$ 1,476,182	\$ 118,095	\$ -	\$ 1,594,277	\$ 373,966	\$ 1,968,243	\$ 1,410,808
Instructional personnel	80	4,174,718	311,739	-	4,486,457	-	4,486,457	4,243,109
Non-instructional personnel	21	49,404	-	179,496	228,900	718,902	947,802	786,378
Total Personnel Services Costs		<u>5,700,304</u>	<u>429,834</u>	<u>179,496</u>	<u>6,309,634</u>	<u>1,092,868</u>	<u>7,402,502</u>	<u>6,440,295</u>
<u>Operating Expenses</u>								
Payroll taxes and fringe benefits		1,254,047	94,562	39,488	1,388,097	240,427	1,628,524	1,330,688
Retirement		133,143	10,040	4,193	147,376	25,526	172,902	120,688
Contracted services								
- financial and administrative		280,000	25,000	-	305,000	255,000	560,000	663,063
Administrative		48,708	3,673	-	52,381	10,872	63,253	68,114
Marketing and recruitment		15,507	1,169	-	16,676	3,461	20,137	2,997
Insurance		164,594	12,411	-	177,005	36,739	213,744	222,624
Legal and professional		114,968	8,669	-	123,637	108,458	232,095	138,382
Repairs and maintenance		276,836	20,875	8,717	306,428	53,075	359,503	322,952
Equipment leasing and maintenance		354,873	26,759	-	381,632	79,211	460,843	406,070
Staff development		141,241	10,650	-	151,891	31,526	183,417	284,496
Food costs		-	-	316,501	316,501	-	316,501	298,593
Student services		38,412	11,471	-	49,883	-	49,883	86,100
Supplies and instructional materials		122,038	9,202	-	131,240	27,240	158,480	258,862
Telephone and internet services		63,018	4,752	-	67,770	14,066	81,836	63,623
Utilities		132,974	10,027	-	143,001	29,681	172,682	195,953
Other expenses		136,680	10,306	4,304	151,290	26,204	177,494	161,880
Interest expense - facilities loans		1,416,663	113,333	75,555	1,605,551	283,333	1,888,884	1,898,379
Interest expense - equipment lease		66,608	5,329	3,552	75,489	13,322	88,811	93,904
Depreciation		789,876	59,561	24,872	874,309	151,436	1,025,745	904,592
Amortization		41,795	3,344	2,229	47,368	8,359	55,727	57,542
Total Operating Expenses		<u>5,591,981</u>	<u>441,133</u>	<u>479,411</u>	<u>6,512,525</u>	<u>1,397,936</u>	<u>7,910,461</u>	<u>7,579,502</u>
<b>TOTAL EXPENSES</b>		<u><b>\$ 11,292,285</b></u>	<u><b>\$ 870,967</b></u>	<u><b>\$ 658,907</b></u>	<u><b>\$ 12,822,159</b></u>	<u><b>\$ 2,490,804</b></u>	<u><b>\$ 15,312,963</b></u>	<u><b>\$ 14,019,797</b></u>

See notes to financial statements

**THE ACADEMY CHARTER SCHOOL**

STATEMENT OF CASH FLOWS  
YEAR ENDED JUNE 30, 2016

(With Summarized Totals for the year ended June 30, 2015)

	2016	2015
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Changes in net asset	\$ 168,369	\$ (724,490)
<b>ADJUSTMENTS TO RECONCILE CHANGE IN NET ASSETS TO NET CASH FROM OPERATING ACTIVITIES</b>		
Depreciation	1,025,745	904,592
Amortization	55,727	57,542
Changes in Operating Assets and Liabilities		
Accounts receivable	(46,900)	49,114
Other receivables	187,600	(258,060)
Prepaid expenses	43,543	(20,291)
Accounts payable	(38,241)	287,831
Accrued expenses	231,272	288,036
Accrued interest payable	(9)	357,156
	1,627,106	941,430
Net cash from operating activities		
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Restricted cash and escrow reserves	486,942	2,869,765
Acquisition of fixed assets	(302,605)	(5,527,191)
	184,337	(2,657,426)
Net cash from investing activities		
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Bonds payable	(265,000)	(115,000)
Construction costs payable	(257,901)	5,813
Loan payable - bank	1,875	-
Due to management company	(541,889)	531,279
Obligations under capital leases	(273,951)	1,082,571
	(1,336,866)	1,504,663
Net cash from financing activities		
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS</b>	474,577	(211,333)
<b>CASH AND CASH EQUIVALENTS</b>		
Beginning of year	143,014	354,347
End of year	\$ 617,591	\$ 143,014
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</b>		
Interest paid - expensed	\$1,977,695	\$ 876,263
Interest paid - capitalized	\$ -	\$ 108,903

See notes to financial statements.

# THE ACADEMY CHARTER SCHOOL

## NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2016

### 1. **Organization**

The Academy Charter School (The “School”), a 501 (c)(3) tax-exempt organization, is a public charter school located in Hempstead, New York. The School opened in February 2009 and commenced operating classes for kindergarten through second grade in September 2009, and added third through eighth grade classes in 2010 through 2015. The School’s charter was renewed in 2014 for an additional five years. The mission of the school is to offer an interdisciplinary curriculum in a technology rich environment that challenges students to explore connections across subjects and use experiential learning to bridge the gaps between theory and practice. Enrollment is open to all potential student candidates, with those residing in the immediate area given first preference.

### 2. **Summary of Significant Accounting Policies**

#### *Basis of Presentation and Use of Estimates*

The financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“U.S. GAAP”), which requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

#### *Net Asset Presentation*

Net assets, revenues, gains and losses are classified based on the existence or absence of donor-imposed restrictions. Unrestricted amounts are those currently available at the discretion of the board for use in the operations of the School. Temporarily restricted amounts are restricted by donor imposed restrictions as to use or time restricted. When a restriction expires, temporarily restricted net assets are re-classified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. Permanently restricted amounts contain donor imposed restrictions to be maintained permanently by the School.

There are no temporarily or permanently restricted net assets at June 30, 2016.

#### *Cash and Cash Equivalents*

For purposes of the statement of cash flows, the School considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

## THE ACADEMY CHARTER SCHOOL

### NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2016

#### 2. Summary of Significant Accounting Policies (Continued)

##### *Revenue Recognition*

Tuition revenue is from state and local government sources for student tuition and other school-related income. The School recognizes tuition and other school-related income as revenue during the applicable school year in which the revenue is earned.

Grants and contracts revenue is recognized when qualifying expenditures are incurred and/or services are provided to the students during the applicable school year. Funds received in advance or any unspent funds for which qualifying expenditures have not been incurred are recorded as refundable advances. Any unspent amounts might be returned to the granting agency or the granting agency can approve that those amounts be applied to a future grant period.

##### *Accounts and Grants Receivable*

Accounts and grants receivable are recorded at net realizable value and do not bear interest. The allowance for doubtful accounts is the School's best estimate of the amount of probable credit losses in existing receivables. Management determines the allowance based on historical write-off experience and reviews its allowance for doubtful accounts periodically. Past due balances are reviewed individually for collectability. Allowances recorded at June 30, 2016 are \$95,369.

##### *Property and Equipment*

Property and equipment are recorded at cost. Donated assets are capitalized at the estimated fair value at date of receipt. Maintenance and repairs are charged to expense as incurred; significant improvements are capitalized. The School capitalizes additions and significant improvements in excess of \$500. Depreciation is computed using the straight-line method over estimated useful lives of the respective asset; 3-7 years for furniture and equipment and 39 ½ years for building and improvements. Depreciation charges for computer equipment financed through capitalized lease obligations are included in depreciation expense.

**THE ACADEMY CHARTER SCHOOL**

**NOTES TO FINANCIAL STATEMENTS**

**JUNE 30, 2016**

**2. Summary of Significant Accounting Policies (Continued)**

*Restricted Cash and Escrow Reserves*

Restricted cash and escrow reserves relate to required reserve and escrow accounts that are required to be maintained by the School in accordance with the bond indenture and charter requirements.

*Deferred Expenses*

Deferred expenses consist of various closing costs and professional fees related to obtaining the bond financing and are amortized using the interest method over the period the obligations are outstanding. For the year ended June 30, 2016, amortization expense totaled \$55,727 and accumulated amortization at June 30, 2016 is \$209,659.

*Donated Goods and Services*

The School receives donated services from unpaid volunteers. No amounts have been recognized in the statement of activities since the services do not meet the specialized skill criteria for recognition under U.S. GAAP.

*Functional Allocation of Expenses*

Expenses have been charged to program and supporting services, either directly when identifiable to a specific program, or indirectly based on management's estimate of the functional area benefited.

*Income Taxes*

In December 2010, the School filed and received approval of its application for tax exempt status from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue code and has been classified as a publicly supported organization as described in Internal Revenue Code section 509 (A)(1) and 170 (B)(1)(A)(II).

Management has determined that the School had no uncertain tax positions that would require financial statement recognition. The School is no longer subject to income tax examination by federal, state or local tax authorities for years before June 30, 2012.

**THE ACADEMY CHARTER SCHOOL**

NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2016

**2. Summary of Significant Accounting Policies (Continued)**

*Prior Year Summarized Comparative Information*

Information as of and for the year ended June 30, 2015 is presented for comparative purposes only. The notes to the financial statements and certain activity by net asset classification are not included in this report. Accordingly, such information does not include sufficient detail to constitute a presentation in conformity with accounting principles generally accepted in the United States of America. Accordingly, such information should be read in conjunction with the School's financial statements as of and for the year ended June 30, 2015, from which the summarized comparative information was derived.

*Reclassifications*

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

*Subsequent Events*

Management has evaluated subsequent events for disclosure and/or recognition in the financial statements through the date that the financial statements were available to be issued, which date is October 18, 2016.

**3. Restricted Cash and Escrow Reserves**

Restricted cash and escrow reserve accounts at June 30, 2016 consist of:

Restricted cash – contingency	\$ 77,968
Restricted cash – held by trustee	156,771
Interest reserve	500,962
Debt service	2,158,997
Repairs and replacement	<u>33,340</u>
	<u>\$ 2,928,038</u>

**THE ACADEMY CHARTER SCHOOL**

**NOTES TO FINANCIAL STATEMENTS**

**JUNE 30, 2016**

**4. Property and Equipment**

At June 30, 2016, property and equipment consisted of the following:

Building	\$17,507,416
Land	790,000
Building improvements	3,908,569
Furniture and fixtures	1,831,065
Machinery and equipment	5,000
Computer and office equipment	<u>1,333,838</u>
	25,375,888
Less: Accumulated depreciation	<u>(3,455,922)</u>
	<u>\$21,919,966</u>

The School is the lessee of furniture and fixtures and computer equipment under capital leases expiring in 2018 and 2019. The assets and liabilities under capital leases are recorded at the present value of the minimum lease payments of the fair value of the assets. Included in furniture and fixtures and computer equipment as of June 30, 2016 is approximately \$1,421,000 of assets purchased under capital lease agreements, respectively. Accumulated depreciation of such assets approximates \$284,229 as of June 30, 2016.

**5. Accrued Expenses**

Accrued expenses consist primarily of amounts due to staff for payroll earned during the school year, but paid out over the summer months.

**6. Defined Contribution Plan**

The School offers a 401(k) plan for all employees. Employees are eligible for the plan immediately upon employment and participation in the plan is voluntary. Employees can make pretax contributions up to a maximum of 100% of their annual compensation, subject to IRS restrictions. The School matches the employee contribution up to 4% of the employee's annual compensation. The School's contribution recognized in the statement of activities was \$172,901 and \$120,688 for the years ended June 30, 2016 and 2015. Plan assets are held in a separate trust and are not included in the accompanying financial statements. All plan assets are held for the exclusive benefit of the Plan's participants and beneficiaries.

**THE ACADEMY CHARTER SCHOOL**

NOTES TO FINANCIAL STATEMENTS  
JUNE 30, 2016

**7. Bonds Payable**

On March 23, 2011, the Town of Hempstead Local Development Corporation provided financing through the issuance of \$10,505,000 in Tax-Exempt Education Revenue Bonds (the “Series 2011A Bonds”), bearing interest at 8.25% per annum with principal due at varying amounts annually through maturity on February 1, 2041, and \$235,000 in Taxable Education Revenue Bonds (the “Series 2011B Bonds”), bearing interest at 8% per annum with principal due at varying amounts annually through maturity on February 1, 2041. The proceeds of the bonds were used to purchase and renovate a two-story building at Hempstead, New York to be used as classroom, cafeteria, kitchen and administration space.

On December 23, 2013, The Town of Hempstead Local Development Corporation provided financing through the issuance of \$12,970,000 in Tax-Exempt Education Revenue Bonds (the “Series 2013A Bonds”), bearing interest at 7.65% per annum with principal due at varying amounts annually through maturity on February 1, 2044, and \$545,000 in Taxable Education Revenue Bonds (the “Series 2013B Bonds”), bearing interest rate at 7.25% per annum with principal due at varying amounts annually through maturity on February 1, 2019. The proceeds of the bonds were used to purchase and renovate a four-story building at Hempstead, New York to be used as classroom and administration space.

Future minimum principal payments for the next five years are as follows:

Fiscal year ending June 30

2017	\$ 285,000
2018	305,000
2019	335,000
2020	355,000
2021	385,000
2022 and thereafter	<u>21,975,000</u>
	<u>\$ 23,640,000</u>

*Debt Service Coverage Ratio*

Pursuant to the loan agreement, the School is required to maintain ongoing debt service coverage ratio greater than 1.0.

**THE ACADEMY CHARTER SCHOOL**

**NOTES TO FINANCIAL STATEMENTS**

**JUNE 30, 2016**

**8. Capital Leases**

In August and September 2014, the School entered into capital lease agreements for furniture and fixtures and computer equipment. The leases totaling \$1,421,144 require monthly payments of \$30,230, including interest calculated at 8.25%, maturing in September 2018 and August 2019.

Future lease payments under these capital leases are as follows:

Year ended June 30,

2017	\$ 362,760
2018	362,760
2019	255,813
2020	<u>34,714</u>
	1,016,047
Less: effective interest at 8.25%	<u>119,819</u>
Present value of capital lease	896,228
Less: current portion	<u>297,427</u>
Non-current portion	<u>\$ 598,801</u>

**9. Loan Payable – Bank**

The School obtained a line of credit with Capital One bank in the amount of \$250,000 at the rate of 3.5% per annum. At June 30, 2016, the loan balance was \$1,875.

**10. Management**

The School entered into an agreement with Victory Schools, Inc. d/b/a Victory Education Partners (VEP) in June 2009, which was amended in August 2012 to provide services related to certain education and operational aspects of the School. VEP serves as an advisor regarding functions associated with the educational services to be provided to the students at the School and consults with the School with respect to its legal and operational compliance in accordance with the terms of the charter and the Charter School Act.

For the years ended June 30, 2016 and 2015 the service fee was \$560,000 and \$663,062

**THE ACADEMY CHARTER SCHOOL**

**NOTES TO FINANCIAL STATEMENTS**

JUNE 30, 2016

**11. Concentration of Credit Risk**

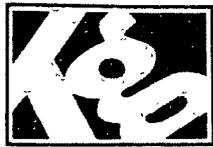
The School maintains its cash in bank deposit accounts, which, at times, may exceed federally insured limits. The School has not experienced any losses in such accounts. The School believes it is not exposed to significant credit risk on cash and cash equivalents.

The School receives a substantial portion of its support and revenue from the New York State Department of Education. If the charter school laws were modified, reducing or eliminating these revenues, which might have a material impact on the School's financial position, results of operations and cash flows.

**12. Contingency**

The School participates in a number of federal and state programs. These programs require that the School comply with certain requirements of laws, regulations, contracts, and agreements applicable to the programs in which it participates. All funds expended in connection with government grants and contracts are subject to audit by government agencies. While the ultimate liability, if any, from such audits of government and contracts by government agencies is presently not determinable, it should not, in the opinion of the management, have a material effect on the financial position or results of operations. Accordingly, no provision for any such liability that may result has been made in the accompanying financial statements.

The School periodically has claims arising from the conduct of its business. The School believes, after consultation with legal counsel and considering the factors that gave rise to such claims, that the overall results there from would not have a material adverse effect on the financial condition, results of operations and cash flows of the School.



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**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

To the Board of Trustees of  
The Academy Charter School

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of The Academy Charter School, which comprise the statement of financial position as of June 30, 2016, and the related statements of activities, functional expenses and cash flows for the year then ended, and the related notes to the financial statements, and have issued our report thereon dated October 18, 2016.

**Internal Control Over Financial Reporting**

In planning and performing our audit of the financial statements, we considered The Academy Charter School's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of The Academy Charter School's internal control. Accordingly, we do not express an opinion on the effectiveness of The Academy Charter School's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

## **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether The Academy Charter School's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audits, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

## **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the organization's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the organization's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

*Koch Group + Company, LLP*  
Certified Public Accountants

New York, New York  
October 18, 2016

## APPENDIX D

### GLOSSARY AND SUMMARY OF CERTAIN DOCUMENTS

#### DEFINITIONS OF CERTAIN TERMS

*As used in the Official Statement, the following terms shall have the respective meanings set forth below, except as the context otherwise requires:*

“Act” means, collectively, the New York Membership Corporation Law as in effect in 1966, as amended and supplemented by Section 1411 of the New York Not-For-Profit Corporation Law.

“Act of Bankruptcy” means the filing of a petition in bankruptcy (or other commencement of a bankruptcy or similar proceeding) by or against the School or the Issuer under any applicable bankruptcy, reorganization, insolvency or similar law as is now or hereafter in effect.

“Additional Bonds” or “Series of Additional Bonds” means any Series of Additional Bonds issued by the Issuer on behalf of the School pursuant to the Indenture.

“Additional Indebtedness” means with respect to the School (A) all indebtedness, whether or not represented by bonds, debentures, notes or other securities, for the repayment of money borrowed, (B) all deferred indebtedness for the payment of the purchase price of property or assets purchased, including, without limitation, capitalized leases, (C) all guaranties, endorsements, assumptions and other contingent obligations in respect of, or to purchase or otherwise acquire, indebtedness of others, and (D) all indebtedness secured by any mortgage, pledge or Lien existing on property owned, subject to such mortgage, pledge or Lien, whether or not indebtedness secured thereby shall have been assumed. In computing the amount of Additional Indebtedness at any time there shall be excluded (X) any operating leases, (Y) all indebtedness subordinate to the Bonds and (Z) any particular item of Indebtedness if before the maturity thereof there shall be been deposited with the lender, creditor, trustee or other proper depository the necessary funds (or evidences of such Additional Indebtedness) for the payment, redemption or satisfaction of such item of Additional Indebtedness (and such funds or evidences of such Additional Indebtedness shall thereafter be excluded from any computation of the assets of the School).

“Additional Parity Indebtedness” means any Additional Indebtedness including Additional Bonds issued pursuant to the Indenture and Indebtedness by the School pursuant to the Loan Agreement which is secured by a parity lien on the Mortgaged Property.

“Affiliate” shall mean a corporation, partnership, association, limited liability company, joint venture, business trust or similar entity organized under the laws of any state that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common contract with, the School.

“Annual Compliance Fee” means the \$1,500 Annual Compliance Fee to be paid by the School to the Issuer on or before January 1 of each year pursuant to the Loan Agreement.

“Applicable Elected Representative” means any Person constituting an “applicable elected representative” within the meaning given to the term in Section 147(f)(2)(E) of the Code.

“Architect” means Combined Resources Construction and Design, Inc.

“Assignment of Building Loan Mortgage” means the Assignment of Building Loan Mortgage and Security Agreement, dated as of the Closing Date, given by the Mortgagee to the Trustee, as the same may be amended, modified or assigned thereto from time to time.

“Assignment of Collateral Mortgages” means collectively, (i) the Series 2011 Assignment of Collateral Mortgage, (ii) the Series 2013 Assignment of Collateral Mortgage, (iii) the Series 2017 Assignment of Collateral Mortgage, and (iv) the assignment of any other Collateral Mortgages, from the Issuer to the Trustee and the Series 2011 Trustee to secure any Series of Additional Bonds.

“Assignment of Project Loan Mortgage” means the Assignment of Project Loan Mortgage and Security Agreement, dated as of the Closing Date, given by the Mortgagee to the Trustee, as the same may be amended, modified or assigned thereto from time to time.

“Assignment of Mortgages” means collectively, (i) the Assignment of Project Loan Mortgage, (ii) the Assignment of Building Loan Mortgage, and (iv) the assignment of any other Mortgages, from the Issuer to the Trustee to secure any Series of Additional Bonds.

“Assignment of Series 2011 Collateral Mortgage” means the Assignment of Collateral Mortgage and Security Agreement, dated as of the Closing Date, given by the Issuer to the Trustee, as the same may be amended, modified or assigned thereto from time to time.

“Assignment of Series 2013 Collateral Mortgage” means the Assignment of Collateral Mortgage and Security Agreement, dated as of the Closing Date, given by the Issuer to the Trustee, as the same may be amended, modified or assigned thereto from time to time.

“Assignment of Series 2017 Collateral Mortgage” means the Assignment of Collateral Mortgage and Security Agreement, dated as of the Closing Date, given by the Issuer to the Series 2011 Trustee, as the same may be amended, modified or assigned thereto from time to time.

“Authorized Investments” means:

- 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)

Direct obligations are fully guaranteed certificates of beneficial ownership

2. Farmers Home Administration (FmHA)

Certificates of beneficial ownership

3. Federal Financing Bank

4. Federal Housing Administration Debentures (FHA)

5. General Services Administration

Participation Certificates

6. Government National Mortgage Association (GNMA or “Ginnie Mae”)

GNMA – guaranteed mortgage-backed bonds

GNMA – guaranteed pass-through obligations

(not acceptable for certain cash-flow sensitive issues)

7. U.S. Maritime Administration

Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)

Project Notes

Local Authority Bonds

New Communities Debentures – U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds – U.S. government guaranteed public housing notes and bonds

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  
Senior debt obligations
  2. Federal Home Loan Mortgage Corporation (“FHLMC” or “Freddie Mac”)  
Participation Certificates  
Senior debt obligations
  3. Federal National Mortgage Association (“FNMA” or “Fannie Mae”)  
Mortgage-backed securities and senior debt obligations
  4. Student Loan Marketing Association (“SLMA” or “Sallie Mae”)  
Senior debt obligations
  5. Resolution Funding Corp. (REFCORP) obligations
  6. Farm Credit System  
Consolidated systemwide bonds and notes
- D. S.E.C. registered money market mutual funds conforming to Rule 2a-7 of the Investment Company Act of 1940 that invest primarily in direct obligations issued by the U.S. Treasury and repurchase agreements backed by those obligations, including funds for which the Trustee or an Affiliate of the Trustee acts as an advisor, and rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service, Inc.
- 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 Trustee 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 provided by banks and other institutions rated AAA by S&P and Aaa by Moody's or secured by collateral and structured as described in (A), (B) and (E) above.
- H. Commercial paper rated, at the time of purchase, Prime – 1 by Moody's and A-1 or better by S&P.

- I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P 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 S&P.
- K. Repurchase agreements providing for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the municipal entity in exchange for the securities at a specified date.
  - 1. Repurchase agreements must be between the Issuer and a dealer bank or securities firm.
    - a. Primary dealers on a Federal Reserve reporting dealer list which are rated A or better by S&P and Moody's or
    - b. Banks rated A or above by S&P, Fitch and Moody's.
  - 2. The written repurchase agreements contract must include the following:
    - a. Securities which are acceptable for transfer are:
      - (1) Direct U.S. governments, or
      - (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA and FHLMC)
    - b. The term of the repurchase agreements may be up to 30 days.
    - c. The collateral must be delivered to the Issuer, the Trustee (if the 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:
      - (1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.
        - (a) 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 repurchase agreements 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%.

3. Legal opinion which must be delivered to the Issuer:

- a. Repurchase agreements meet guidelines under state law for legal investment of public funds.

“Authorized Representative” means, in the case of the Issuer, the Chairman, the Vice Chairman, the Executive Director and Chief Executive Officer, Deputy Executive Director and Chief Financial Officer, the Secretary or the Assistant Secretary of the Issuer; in the case of the School, the President, the Board Chair or the Treasurer of the School; and, in the case of either of the Issuer and the School, such additional persons as, at the time, are designated to act on behalf of the Issuer or the School, as the case may be, by written certificate furnished to the Trustee, the Issuer or the School, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Issuer by the Chairman, the Vice Chairman, the Executive Director and Chief Executive Officer, Deputy Executive Director and Chief Financial Officer, the Secretary or the Assistant Secretary of the Issuer, or (ii) the School by the President, the Board Chair or the Treasurer of the School.

“Balloon Indebtedness” is Long-Term Indebtedness of which 25% or more in principal amount matures, or is required to be purchased by the School (either automatically or at the option of the holder of such Balloon Indebtedness) in any one year.

“Bankruptcy Code” means the United States Bankruptcy Code, as amended from time to time.

“Bond” or “Bonds” or “Series of Bonds” means collectively the Series 2017A Bonds, the Series 2017B Bonds and any Series of Additional Bonds.

“Bond Counsel” means the law firm of Nixon Peabody LLP or an attorney or other firm of attorneys whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized.

“Bond Documents” means the Bond Purchase Agreement, the Indenture, the Loan Agreement, the Tax Regulatory Agreement, the First Supplemental Intercreditor Agreement, the Mortgages, the Collateral Mortgages, the Assignment of Mortgages, the Assignment of Collateral Mortgages, the Note, the Building Loan Agreement, the Continuing Disclosure Agreement, the Environmental Compliance and Indemnification Agreement, the Preliminary Official Statement and the Official Statement.

“Bond Fund” means the fund so designated which is established by the Indenture.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated July 31, 2017, among the Issuer, the School and the Underwriter, as the same may be amended from time to time.

“Bond Proceeds” means the aggregate amount, including any accrued interest, paid to the Issuer by the Bondholders pursuant to the Indenture as the purchase price of the Series 2017 Bonds.

“Bond Rate” means the tax-exempt rate of interest from time to time payable on any of the Series 2017A Bonds as defined therein.

“Bond Resolution” means the resolution duly adopted by the Issuer on June 22, 2017, as amended on July 27, 2017, authorizing the issuance, execution, sale and delivery of the Series 2017 Bonds and the execution and delivery of Issuer Documents, as such resolution may be amended or supplemented from time to time.

“Bond Year” with respect to the Series 2017A Bonds shall have the meaning given such term in the Tax Regulatory Agreement for the Series 2017A Bonds.

“Bondholder” means Owner.

“Building Loan Agreement” means the Building Loan Agreement, dated as of August 1, 2017, by and among the Issuer, the School and the Trustee.

“Building Loan Mortgage” means the Building Loan Mortgage and Security Agreement, dated as of August 1, 2017, from the School to the Issuer, as the same may be amended, modified or assigned from time to time.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York or any city in which the principal office of the Trustee or any Paying Agent is located are authorized by law or executive order to remain closed.

“Cash on Hand” means the sum of cash, cash equivalents, liquid investments, and unrestricted marketable securities (valued at the lower of cost or market) of the School.

“Certificate of Authentication of the Trustee” and “Trustee’s Certificate of Authentication” means the certificate executed by an authorized signatory of the Trustee certifying the due authentication of each of the Series 2017 Bonds issued under the Indenture.

“Closing Date” means the date of sale and delivery of the Series 2017 Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, and the final, temporary and proposed rules, regulations, rulings and interpretations of the Department of the Treasury promulgated thereunder.

“Collateral Agent” means (i) Manufacturers and Traders Trust Company, a banking corporation having trust powers duly organized and existing under the laws of the State of New York, having an office at 1 M&T Plaza, 7th Floor, Buffalo, New York 14203 and (ii) its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party.

“Collateral Mortgage” or “Collateral Mortgages” shall mean collectively, the Series 2011 Collateral Mortgage, the Series 2013 Collateral Mortgage, and the Series 2017 Collateral Mortgage.

“Completion Certificate” means the Completion Certificate delivered by the School to the Issuer and the Trustee pursuant to the Loan Agreement.

“Completion Date” means the date of completion of the Facility as certified to pursuant to the Loan Agreement.

“Computation Period” means “Computation Period” as defined in the Tax Regulatory 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 entity or other Person acting under governmental authority.

“Construction Account” means the Construction Account within the Project Fund which is established by the Indenture.

“Construction Costs” shall have the meaning assigned thereto in the Tax Regulatory Agreement.

“Construction Period” means, with respect to the Facility, the period (i) beginning on the date of commencement of renovation, construction, equipping and furnishing of the Facility, which date shall not be prior to May 18, 2017, and (ii) ending on the Completion Date with respect to the Facility.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement, dated as of August 1, 2017, between the School and the Trustee.

“Cost of the Project” or “Costs of the Project” means all those costs and items of expense listed in the Loan Agreement.

“Custodian” means Manufacturers and Traders Trust Company, as custodian under the Amended and Restated Custody Agreement.

“Custody Agreement” means the Second Amended and Restated Custody Agreement

“Custody Agreement Notice” means the notice prepared by the Trustee in accordance with the provisions of the Amended and Restated Custody Agreement and the Indenture. The form of Custody Agreement Notice shall be in the form set forth in Exhibit A to the Custody Agreement.

“Debt Service Payment” means, with respect to any Debt Service Payment Date, (i) the interest payable on such Debt Service Payment Date on all Series 2017 Bonds then Outstanding, plus (ii) the principal or Redemption Price, if any, payable on such Debt Service Payment Date on all such Series 2017 Bonds.

“Debt Service Payment Date” means any date on which each Debt Service Payment shall be payable on any of the Series 2017 Bonds so long as the Series 2017 Bonds shall be outstanding.

“Debt Service Reserve Fund” means the fund so designated with respect to the Series 2017A Bonds and the Series 2017B Bonds which is created by the Indenture.

“Debt Service Reserve Fund Requirement” means (a) with respect to the Series 2017A Bonds the lesser of (i) the Maximum Annual Debt Service, (ii) one-hundred twenty five percent (125%) of the School’s average annual debt service, or (iii) ten percent (10%) of the Principal Amount (as defined in the Tax Regulatory Agreement for the Series 2017A Bonds) of the Series 2017A Bonds, or such lesser amount as may be required in a Supplemental Indenture authorizing a series of Additional Bonds; and (b) with respect to the Series 2017B Bonds \$0.00, or (iii) ten percent (10%) of the par amount of the Series 2017B Bonds, or such lesser amount as may be required in a Supplemental Indenture authorizing a series of Additional Bonds.

“Default Rate” shall have the meaning assigned thereto in the Series 2017 Bonds.

“Demand Indebtedness” means any Long Term Indebtedness the principal of and accrued interest on are payable by the School upon demand of the holder of such Indebtedness.

“Disability Aid” shall mean those certain federal and State payments payable to the School attributable to students with disabilities.

“DTC” means The Depository Trust Company, New York, New York.

“DTC Letter of Representation” means the Letter of Representation from the Issuer to DTC.

“Education Aid” shall mean, collectively, all State Education Operating Aid, Disability Aid and any Other Education Aid payable to the School pursuant to the New York State Education Law or federal law for the payment of operations of the School.

“Environmental Compliance and Indemnification Agreement” means the Environmental Compliance and Indemnification Agreement, dated as of August 1, 2017, from the School to the Issuer and the Trustee.

“Equipment” means all machinery, equipment and other personal property used and to be used in connection with the Project and financed with Bond Proceeds.

“Event of Default” (i) when used with respect to the Indenture means any of those events defined as an Event of Default by the Indenture, and (ii) when used with respect to the Loan Agreement, means any of the events defined as Events of Default by the Loan Agreement.

“Event of Taxability” means:

(i) a final determination by any court of competent jurisdiction or a final determination by the Internal Revenue Service to which the School shall consent or from which no timely appeal shall be taken to the effect that interest on the Series 2017A Bonds is includible in the gross income of the owner thereof under Section 61 of the Code; or

(ii) the delivery to the School and to the Issuer of an opinion of Bond Counsel (reasonably satisfactory to the School) to the effect that interest on the Series 2017A Bonds is includible in the gross income of the owner thereof under Section 61 of the Code.

“Excess Fund Balance” means a fund balance/net asset balance in excess of the minimum required under the Loan Agreement.

“Excess Net Revenues” means Gross Revenues, less Operating Expenses, annual debt service on Long-Term Indebtedness, payments on any capital leases, and Debt Service Reserve Fund deficiency payments.

“Exempt Organization” means an organization described in Section 501(c)(3) of the Code and which is exempt from federal income taxation pursuant to Section 501(a) of the Code.

“Extraordinary Services” and “Extraordinary Expenses” means all services rendered and all fees and expenses incurred by or due to the Trustee or any Paying Agent under the Indenture other than Ordinary Services and Ordinary Expenses, including reasonable fees and disbursements of Trustee’s counsel.

“Facility” shall have the meaning ascribed thereto in the recitals to the Indenture.

“Fiscal Year” means the twelve (12) month period beginning on July 1 in any year or such other fiscal year as the School may select from time to time.

“Fitch” means Fitch Ratings and its successors and assigns.

“Government Obligations” means:

1. U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – “SLGS”).

2. Direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities.

3. Resolution Funding Corp. (REFCORP). Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable.

4. Pre-refunded municipal bonds rated Aaa by Moody’s and AAA by S&P. If however, the issue is only rated by S&P (i.e., there is no Moody’s rating), then the pre-refunded bonds must have been pre-refunded with cash, direct U.S. or U.S. guaranteed obligations or AAA rated pre-refunded municipals to satisfy this condition.

5. Obligations issued by the following agencies which are backed by the full faith and credit of the U.S.:

a. U.S. Export-Import Bank (Eximbank)

Direct obligations are fully guaranteed certificates of beneficial ownership

b. Farmers Home Administration (FmHA)

Certificates of beneficial ownership

c. Federal Financing Bank

d. General Services Administration

Participation Certificates

e. U.S. Maritime Administration

Guaranteed Title XI financing

f. U.S. Department of Housing and Urban Development (HUD)

Project Notes

Local Authority Bonds

New Communities Debentures – U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds – U.S. government guaranteed public housing notes and bonds

“Gross Revenues” means, regardless of the source, all revenues, rentals, fees, third-party payments, receipts, donations, contributions or other income of the School, to the extent permitted thereby and by law, including accounts receivables or other rights to receive such revenues, including, without limitation, Education Aid, proceeds derived from insurance, condemnation proceeds, accounts, contract rights and other rights and assets, whether now or hereafter owned, held or possessed by the School; and all gifts, grants, bequests and contributions (including income and profits therefrom) to the extent permitted by the terms thereof and by law.

“Hazardous Substance” means, without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, or toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15

U.S.C. Sections 2601, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

“Holder” means Owner.

“Improvements” means all those buildings, improvements, structures and other related facilities (i) financed with Bond Proceeds or of any payment by the School pursuant to the Loan Agreement, and (ii) not part of the Equipment, all as they may exist from time to time.

“Indebtedness” means, without duplication, indebtedness for borrowed money incurred or guaranteed by the School, whether or not evidenced by notes, bonds, debentures or other similar evidences of indebtedness, including guaranties, reimbursement obligations, indebtedness under purchase money mortgages, capital leases, installment sales agreements and similar security arrangements which appear as debt on the audited balance sheet of the School in accordance with generally accepted accounting principles then applicable to the School.

“Indenture” means the Indenture of Trust, dated as of August 1, 2017, by and between the Issuer and the Trustee, entered into in connection with the issuance, sale, delivery and payment of the Series 2017 Bonds and the security therefor as the same may be amended or supplemented from time to time.

“Independent Counsel” means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Issuer, the School or the Trustee.

“Information Report” means Form 8038 used by the issuers of certain tax-exempt bonds to provide the Internal Revenue Service with the information required to monitor the State volume limitations.

“Initial Bondholder” means Cede & Co., as nominee for DTC, as the initial owner of the Series 2017 Bonds.

“Initial Compliance Fee” means the Initial Compliance Fee in the amount of \$3,000 paid by the School to the Issuer on the Closing date pursuant to the Loan Agreement.

“Issuer” means (i) the Town of Hempstead Local Development Corporation, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Issuer or its successors may be a party.

“Issuer Documents” means the Bond Purchase Agreement, the Series 2017A Bonds, the Series 2017B Bonds, the Loan Agreement, the Indenture, the Mortgages, the Assignment of Mortgages, the Note (Tax Exempt Series), the Note (Taxable Series), the Building Loan Agreement, the Tax Regulatory Agreement, the Information Report, the Preliminary Official Statement and the Official Statement.

“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 the

security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” also means any reservations, exceptions, encroachments, 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, carriers’ and other similar encumbrances affecting real property. For the purposes of this definition, 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 Agreement” means the Series 2017 Loan Agreement or any other Loan Agreement entered into in connection with any Series of Additional Bonds.

“Loan Term” means the duration of the loan term created in the Loan Agreement.

“Long-Term Debt Service Coverage Ratio” means for any Fiscal Year of the School, or other specified period, the ratio determined by dividing the Net Income Available for Debt Service by the debt service due that Fiscal Year. When calculating the Long-Term Debt Coverage Ratio, capitalized interest shall be counted as income.

“Long-Term Indebtedness” means Indebtedness with a term greater than one (1) year.

“Management Consultant” means an Independent consulting firm which is appointed by the School for the purpose of passing on questions relating to the financial affairs, management or operations of the School and (i) has a favorable reputation for skill and experience in performing similar services in respect of entities of a comparable size and nature and (ii) is not unsatisfactory to the Trustee.

“Maximum Annual Debt Service” means the highest amount of principal and interest payable with respect to the School’s Long-Term Indebtedness during the then current or any succeeding Bond Year over the remaining term of any Bonds. For purposes of calculating Maximum Annual Debt Service, (i) variable rate Indebtedness is deemed to bear interest at the most recent Bond Buyer 25 Revenue Bond Index (if tax-exempt) or the 30-year United States Treasury Rate (if taxable) and (ii) the principal of Balloon Indebtedness will be deemed to mature in equal annual installments over a term equal to the lesser of (x) twenty years or (y) the actual term of such Indebtedness.

“Moody’s” means Moody’s Investor Service.

“Mortgage” or “Mortgages” shall mean collectively, the Building Loan Mortgage, the Project Loan Mortgage, the Series 2011 Collateral Mortgage, the Series 2013 Collateral Mortgage, the Series 2017 Collateral Mortgage, any mortgage and security agreement granted by the School to secure any Additional Bonds or Additional Parity Indebtedness, and shall include any and all amendments thereof and supplements thereto and assignment of interests therein hereafter made in conformity therewith, and with the Indenture and the Loan Agreement.

“Mortgaged Property” has the meaning set forth in the Mortgages.

“Net Income Available for Debt Service” means, for any period of determination thereof, Gross Revenues of the School for such period, plus all interest earnings on moneys held in the Debt Service Reserve Fund established under the Indenture and any Excess Fund Balance, minus the School’s total Operating Expenses for such period but excluding (i) any profits or losses which would be regarded as extraordinary items under GAAP, (ii) cancellation of indebtedness income, (iii) proceeds of Bonds or any other Indebtedness permitted by the Agreement, (iv) proceeds of insurance policies, other than the policies for business interruption insurance, maintained by or for the benefit of the School, the proceeds of any sale, transfer or other disposition of the Facility or any other of the School’s assets by the School, and any condemnation or any other damage award received by or owing to the School and (v) unrestricted cash, restricted cash on the School’s Balance Sheet, (including, but not limited to moneys in the Debt Service Reserve Fund or Renewal and Replacement Fund) and access to any lines of credit.

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

“Notes” or “Promissory Notes” means, collectively, (i) with respect to the Series 2017A Bonds, the Promissory Note, dated the Closing Date, from the School to the Issuer, substantially in the form of Exhibit C-1 to the Loan Agreement, and (ii) with respect to the Series 2017B Bonds, the Promissory Note, dated the Closing Date, from the School to the Issuer, substantially in the form of Exhibit C-2 to the Loan Agreement evidencing the School’s obligations to make Loan Payments to the Issuer.

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

“Official Statement” means the Official Statement, dated July 31, 2017, distributed by the Underwriter and the School in connection with the sale of the Series 2017 Bonds.

“Operating Expenses” means fees and expenses of the School, including maintenance, repair expenses, utility expenses, real estate taxes, insurance premiums, administrative and legal expenses, miscellaneous operating expenses, advertising and promotion costs, payroll expenses (including taxes), the cost of material and supplies used for current operations of the School, the cost of vehicles, equipment leases and service contracts, taxes upon the operations of the School not otherwise mentioned in the Indenture, charges for the accumulation of appropriate reserves for current expenses not annually recurrent, but which may be reasonably be expected to be incurred in accordance with Generally Accepted Accounting Principles, all in such amounts as reasonably determined by the School; provided however, “Operating Expenses” shall not include (i) those expenses which are actually paid from any revenues of the School which are not Gross Revenues, (ii) spending for items accounted for as capital expenditures under GAAP or (iii) replenishments of the Debt Service Reserve Fund.

“Ordinary Services” and “Ordinary Expenses” means those services normally rendered and those fees and expenses normally incurred by or due to a trustee or paying agent, as the case may be, under instruments similar to the Indenture, including reasonable fees and disbursements of counsel for the Trustee.

“Other Education Aid” shall mean any federal or State payments, other than State Education Operating Aid or Disability Aid, payable to the School for the purpose of funding operations of the School.

“Outstanding” or “Bonds Outstanding” or “Outstanding Bonds” means all bonds which have been authenticated by the Trustee and delivered by the Issuer under the Indenture, or any supplement thereto, except: (i) any Bond cancelled by the Trustee because of payment or redemption prior to maturity; (ii) any bond deemed paid in accordance with the provisions of the Indenture, except that any such Bond shall be considered Outstanding until the maturity date thereof only for the purposes of being exchanged or registered; and (iii) any Bond in lieu of or in substitution for which another Bond shall have been authenticated and delivered pursuant to the Indenture, unless proof satisfactory to the Trustee is presented that any Bond, for which a Bond in lieu of or in substitution therefor shall have been authenticated and delivered, is held by a bona fide purchaser, as that term is defined in Article 8 of the Uniform Commercial Code of the State, as amended, in which case both the Bond so substituted and replaced and the Bond or Bonds so authenticated and delivered in lieu thereof or in substitution therefor shall be deemed Outstanding.

“Owner” means the registered owner of any Bond as shown on the registration books maintained by the Trustee pursuant to the Indenture.

“Parity Indebtedness” means any Indebtedness including Additional Bonds issued pursuant to the Indenture and Indebtedness by the School pursuant to the Loan Agreement which is secured by a parity lien on the Mortgaged Property.

“Paying Agent” means the Trustee, acting as such, and any additional paying agent for the Series 2017 Bonds appointed pursuant to the Indenture, their respective successors and any other corporation which may at any time be substituted in their respective places pursuant to the Indenture.

“Paymaster” means an individual or firm with experience in monitoring, approving and paying construction requisitions and appointed by the School and acceptable to the Issuer.

“Permitted Encumbrances” means (i) the Loan Agreement, (ii) the Mortgages, (iii) the Assignment of Mortgages (iv) the Building Loan Agreement and (x) any Permitted Liens.

“Permitted Liens” means: (i) any judgment lien or notice of pending action against the School as to which the School is insured as to the full amount of potential liability, or if the School is uninsured or underinsured, so long as such judgment or pending action is being contested and execution thereon is stayed; (ii)(A) rights reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license, permit or provision of law, affecting any Property, to (1) terminate such right, power franchise, grant, license or permit, provided that the exercise of such right would not materially impair the use of the Property or materially and adversely affect the value thereof, or (2) purchase, condemn, appropriate or recapture, or designate a purchaser of, such Property; (B) any Liens on any Property for taxes, assessments, levies, fees, water and sewer rents, and other governmental and similar charges and any Liens of mechanics, materialmen, laborers, suppliers or vendors for work or services

performed or materials furnished in connection with such Property, which are not due and payable or which are not delinquent or which, or the amount of validity of which, are being contested and execution thereon is stayed or, with respect to Liens of mechanics, materialmen, and laborers, have been due for less than sixty (60) days; and (C) easements, utility, access and other easements, rights-of-way, servitudes, restrictions and other minor defects, encumbrances, and irregularities in the title to any Property which do not materially impair the use of such Property or materially and adversely affect the value thereof; (iii) any Lien which will come into existence on or is existing on the Closing Date provided that no such Lien (or the amount of Indebtedness secured thereby) may be increased, extended, renewed or modified to apply to any Property of the School not subject to such Lien on such date, unless such Lien as so increased, extended, renewed or modified otherwise qualifies as a Permitted Lien under the Indenture; (iv) purchase money security interests and security interests existing on any Property prior to the time of its acquisition through purchase, merger, consolidation or otherwise, or placed upon Property to secure a portion of the purchase price thereof, or lessor's interests in leases required to be capitalized in accordance with generally accepted accounting principles; provided that the aggregate principal amounts secured by any such interests shall not exceed at the time of incurrence or assumption the fair market value of such Property subject to such security interests and equipment leases of less than one (1) year; (v) liens arising by reason of good faith deposits in connection with leases of real estate, bids or contracts (other than contracts for the payment of money), deposits to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges; (vi) any Lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to secure letters or lines of credit issued to fulfill statutory obligations including bonds for the performance of any employer's obligations under worker's compensation self insurance programs, or to enable the School to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workers' compensation, unemployment insurance, pension or profit-sharing plans or other similar arrangements, or to share in the privileges or benefits required for companies participating in such arrangements, or in favor of a bank or trust company on deposits with such bank or trust company or to enable a bank or trust company to use deposits with such bank or trust company for set-off of Indebtedness of the School to such bank or trust company; (vii) any Lien arising by reason of an irrevocable deposit; (viii) any Lien in favor of a trustee on the proceeds of Indebtedness prior to the application of such proceeds or on moneys to repay Indebtedness while held in a debt service fund, debt service reserve fund or a redemption fund, or on any moneys to secure payment of the trustee's fees; (ix) liens for taxes or special assessments not then delinquent or which are being contested in good faith; (x) liens on Property due to rights of third-party payors for set-off or recoupment of amounts paid to the School; (xi) any Lien arising solely by reason of a lease of Property to others which lease (A) would not have any material adverse effect upon (1) the security for the Series 2017 Bonds, (2) the operations of the Property, or (3) the amount of gross revenues, or (B) is of a customary type such as office space for educational institutions, food service facilities, book store, gift shops or other special services, and similar departments; and (xii) other Liens and encumbrances in favor of the Issuer or the Trustee.

“Person” or “Persons” means an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision or branch thereof.

“Plans and Specifications” means those plans and specifications, if any, for the Improvements, as may be from time to time prepared for the School, as revised from time to time in accordance with the Loan Agreement.

“Project” or “2017 Project” means the Project as more particularly described in the Loan Agreement financed by the School with the proceeds of the Bonds loaned by the Issuer to the School under the Loan Agreement.

“Project Fund” means the fund so designated which is created by the Indenture.

“Project Loan Mortgage and Security Agreement” means the Project Loan Mortgage and Security Agreement, dated as of August 1, 2017, as the same may be amended, modified or assigned thereto from time to time.

“Project Monitor” means collectively the Architect and the Paymaster.

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

“Rating Agency” means Moody’s, Fitch, S&P or such other nationally recognized rating agency which shall have issued and is maintaining a rating on the Series 2017 Bonds.

“Rating Agency Letter” means the rating letter from each Rating Agency assigning a rating on the Series 2017 Bonds.

“Rebate Amount” means, with respect to the Series 2017 Bonds, the amount computed as described in the Tax Regulatory Agreement.

“Rebate Fund” means the fund so designated pursuant to the Indenture.

“Record Date” means, with respect to any Debt Service Payment Date, the fifteenth (15<sup>th</sup>) day of the month next preceding such Debt Service Payment Date (whether or not a Business Day).

“Redemption Date” means, when used with respect to a Bond, the date of redemption thereof established 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 Indenture.

“Renewal Fund” means the fund so designated and created pursuant to the Indenture.

“Repair and Replacement Fund” means the fund so designated and created pursuant to the Indenture.

“Repair and Replacement Fund Requirement” means a maximum amount equal to \$100,000.

“Responsible Officer”, when used with respect to the Trustee, means any officer of the Trustee with responsibility for the administration of the Series 2017 Indenture and, when used with respect to a particular corporate trust matter, also means any other officer to whom such matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

“Schedule of Definitions” means the words and terms set forth in the Schedule of Definitions attached to the Indenture as the same may be amended from time to time.

“School” means The Academy Charter School, an education corporation duly organized and validly existing under the laws of the State of New York, and its successors and assigns.

“School Districts” means, collectively, at any time, the Town of Hempstead School District and any other public school district which has students residing in such school district then attending the School.

“School Documents” means the Bond Purchase Agreement, the Loan Agreement, the Tax Regulatory Agreement, the Mortgage, the Note, the Building Loan Agreement, the Continuing Disclosure Agreement, the Environmental Compliance and Indemnification Agreement, the Preliminary Official Statement, and the Official Statement.

“Second Amended and Restated Custody Agreement” means the Second Amended and Restated Custody Agreement, dated August 1, 2016, among the Custodian, the Series 2011 Trustee, the 2013 Trustee, the 2017 Trustee, the School, and the Issuer.

“Security Documents” shall mean, collectively, the Loan Agreement, the Promissory Note, the Series 2017 Indenture, the Tax Regulatory Agreement, the Building Loan Agreement, the Mortgages and the Assignment of Mortgages.

“SEQR Act” means the State Environmental Quality Review Act and the regulations thereunder.

“Series 2011 Bonds” means, collectively, the Series 2011A Bonds and the Series 2011B Bonds.

“Series 2011A Bonds” means the Issuer’s Education Revenue Bonds, Series 2011A (The Academy Charter School Project) issued pursuant to the terms of the Series 2011 Indenture on March 30, 2011 in the aggregate principal amount of \$10,505,000.

“Series 2011B Bonds” means the Issuer’s Taxable Education Revenue Bonds, Series 2011B (The Academy Charter School Project) issued pursuant to the terms of the Series 2011 Indenture on March 30, 2011 in the aggregate principal amount of \$235,000.

“Series 2011 Collateral Mortgage” means the Collateral Mortgage and Security Agreement, dated as of August 1, 2017, from the School to the Issuer, as the same may be amended, modified or assigned thereto from time to time, encumbering the 2017 Facility.

“Series 2011 Facility” means the Facility as defined under the Series 2011 Indenture.

“Series 2011 First Amendment to Loan Agreement” means the Series 2011 First Amendment to Loan Agreement, dated as of August 1, 2017, by the Issuer and the School, and consented to by

the Issuer, the School, and the Series 2011 Trustee pursuant to the Series 2011 Waiver and Consent.

“Series 2011 Indenture” means, the Indenture of Trust, dated as of March 1, 2011, between the Issuer and the Series 2011 Trustee, as the same may be amended, modified or assigned thereto from time to time.

“Series 2011 Loan Agreement” means, the Loan Agreement, dated as of March 1, 2011, between the Issuer and the School, as amended by the Series 2011 First Amendment to Loan Agreement, as the same may be further amended, modified or assigned thereto from time to time.

“Series 2011 Mortgages” means, collectively, the Acquisition Loan Mortgage, the Project Loan Mortgage and the Building Loan Mortgage (each as defined in Schedule A of the Series 2011 Indenture) and each from the School to the Issuer as security for the loan proceeds of the Issuer’s Series 2011 Bonds.

“Series 2011 Project” means the Project as defined under the Series 2011 Indenture.

“Series 2011 Trustee” means, Manufacturers and Traders Trust Company, a banking corporation having trust powers duly organized and existing under the laws of the State of New York, having an office at 1 M&T Plaza, 7th Floor, Buffalo, New York 14203 and (ii) its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee under the Series 2013 Indenture.

“Series 2011 Waiver and Consent” means the Series 2011 Waiver and Consent, dated as of August 1, 2017, among the School, the Issuer, and the Series 2011 Trustee.

“Series 2013 Bonds” means, collectively, the Series 2013A Bonds and the Series 2013B Bonds.

“Series 2013A Bonds” means the Issuer’s Education Revenue Bonds, Series 2013A (The Academy Charter School Project) issued pursuant to the terms of the 2013 Indenture on December 23, 2013 in the aggregate principal amount of \$12,970,000.

“Series 2013B Bonds” means the Issuer’s Taxable Education Revenue Bonds, Series 2013B (The Academy Charter School Project) issued pursuant to the terms of the 2013 Indenture on December 23, 2013 in the aggregate principal amount of \$545,000.

“Series 2013 Collateral Mortgage” means the Collateral Mortgage and Security Agreement, dated as of August 1, 2017, from the School to the Issuer, as the same may be amended, modified or assigned thereto from time to time, encumbering the 2017 Facility.

“Series 2013 Facility” means Facility as defined under the 2013 Indenture.

“Series 2013 First Amendment to Loan Agreement” means the Series 2013 First Amendment to Loan Agreement, dated as of August 1, 2017, among the Issuer and the School, and consented to by the Issuer, the School, and the Series 2013 Trustee pursuant to the Series 2013 Waiver and Consent.

“Series 2013 Indenture” means, the Indenture of Trust, dated as of December 1, 2013, between the Issuer and the 2013 Trustee, as the same may be amended, modified or assigned thereto from time to time.

“Series 2013 Loan Agreement” means, the Loan Agreement, dated as of December 1, 2013, between the Issuer and the School, as amended by the Series 2013 First Amendment to Loan Agreement, as the same may be further amended, modified or assigned thereto from time to time.

“Series 2013 Mortgages” means, collectively, the Acquisition Loan Mortgage, the Project Loan Mortgage and the Building Loan Mortgage (each as defined in Schedule A of the 2013 Indenture) and each from the School to the Issuer as security for the loan proceeds of the Issuer’s Series 2013 Bonds.

“Series 2013 Project” means the Project as defined under the 2013 Indenture.

“Series 2013 Trustee” means, Manufacturers and Traders Trust Company, a banking corporation having trust powers duly organized and existing under the laws of the State of New York, having an office at 1 M&T Plaza, 7th Floor, Buffalo, New York 14203 and (ii) its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee under the Series 2013 Indenture.

“Series 2013 Waiver and Consent” means the Series 2013 Waiver and Consent, dated as of August 1, 2017, among the School, the Issuer, and the Series 2013 Trustee.

“Series 2017 Bonds” means, collectively, the Series 2017A Bonds and the Series 2017B Bonds.

“Series 2017A Bonds” means the Issuer’s Education Revenue Bonds, Series 2017A (The Academy Charter School Project) issued pursuant to the terms of the Indenture on August 1, 2017 in the aggregate principal amount of \$35,900,000 and substantially in the form of Exhibit A-1 of the Indenture.

“Series 2017A Bond Proceeds” means the aggregate amount, including any accrued interest, paid to the Issuer by the Bondholders pursuant to the Indenture as the purchase price of the Series 2017A Bonds.

“Series 2017A Bonds Capitalized Interest Account” means the account within the Project Fund which is established by the Indenture.

“Series 2017A Construction Account” means the account within the Project Fund which is established by the Indenture.

“Series 2017B Bonds” means the Issuer’s Taxable Education Revenue Bonds, Series 2017B (The Academy Charter School Project) issued pursuant to the terms of the Indenture on August 1, 2017 in the aggregate principal amount of \$2,685,000 and substantially in the form of Exhibit A-2 of the Indenture.

“Series 2017B Proceeds” means the aggregate amount, including any accrued interest, paid to the Issuer by the Bondholders pursuant to the Indenture as the purchase price of the Series 2017B Bonds.

“Series 2017B Bonds Capitalized Interest Account” means the account within the Project Fund which is established by the Indenture.

“Series 2017B Construction Account” means the account within the Project Fund which is established by the Indenture.

“Series 2017 Collateral Mortgage” means the Collateral Mortgage and Security Agreement, dated as of August 1, 2017, from the School to the Issuer, as the same may be amended, modified or assigned thereto from time to time, encumbering the Series 2011 Facility, Series 2013 Facility.

“Series 2017 Loan Agreement” means the Loan Agreement dated as of August 1, 2017, by and between the Issuer and the School with respect to the Project, as the same may be amended from time to time.

“Series 2017 Tax Regulatory Agreement” means the Tax Regulatory Agreement, dated the Closing Date, between the Issuer and the School, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof and with the terms of the Indenture.

“Short-Term Indebtedness” means Indebtedness with a term of one (1) year or less, but not including accounts payable by the School in the ordinary course of its operations.

“Sinking Fund Payments” means payments made on a Debt Service Payment Date to pay the Redemption Price of bonds called for redemption pursuant to the Indenture.

“S&P” or “Standard & Poor’s” means Standard & Poor’s Ratings Services, a division of The McGraw Hill Companies, Inc.

“State” means the State of New York.

“State Education Operating Aid” shall mean all New York State Education Department operating aid payments appropriated for the purpose of funding operating expenses of the School on a per-pupil basis.

“State Education Operating Aid Payment Dates” means each July 1, September 1, November 1, January 1, March 1 and May 1, or such other dates as may in the future be established as the payment dates for Education Aid.

“Supplemental Indenture” means any indenture supplemental to or amendatory of the Indenture or in connection with the issuance of any Additional Bonds adopted by the Issuer in accordance with the Indenture.

“Tax Regulatory Agreement” means the Series 2017 Tax Regulatory Agreement or any other Tax Regulatory Agreement entered into in connection with any Series of Additional Bonds.

“Tax Incidence Date” means the date from which the interest on the Series 2017 Bonds is deemed to be includible in the gross income of the owner of a Bond by virtue of an Event of Taxability.

“Taxable Facility” means the Elementary School Equipment together with the Elementary School Improvements.

“Tax-Exempt Facility” means collectively the Land, the High School Equipment, and the High School Improvements.

“Title Report” means Certificate of Title No. 478-012838N issued on June 26, 2017 and redated and recertified on the Closing Date, and such other title report concerning the Series 2013 Facility to be issued in connection with the issuance of the Series 2017 Bonds.

“Triggering Event” shall have the meaning assigned thereto in the Loan Agreement.

“Trust Estate” means the rights assigned pursuant to the Indenture and all Property which may from time to time be subject to the Lien of the Indenture.

“Trustee” or “Series 2017 Trustee” means (i) Manufacturers and Traders Trust Company, a banking corporation having trust powers duly organized and existing under the laws of the State of New York, having an office at 1 M&T Plaza, 7th Floor, Buffalo, New York 14203 and (ii) its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee.

“Unassigned Rights” means the rights of the Issuer and moneys payable directly to the Issuer pursuant to and under the Loan Agreement.

“Underwriter” means (i) Robert W. Baird & Co., Incorporated, having an office at 210 University Blvd, Suite 460, Denver, Colorado 80211, or (ii) its successors and assigns.

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## SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE OF TRUST

*The following is a brief summary of certain provisions of the Indenture and should not be considered a full statement thereof. Reference is made to the Indenture for complete details of the terms thereof.*

### **Authentication**

No Series 2017A Bond or Series 2017B Bond shall be valid for any purpose or shall be entitled to any right or benefit under the Indenture unless there shall be endorsed on such Bond a Certificate of Authentication, duly executed by the Trustee, substantially in the form set forth in the Form of Bond included in the Indenture as Exhibit A-1 and Exhibit A-2 respectively attached to the Indenture. Such executed Certificate of Authentication by the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under the Series 2017 Indenture. The Trustee's Certificate of Authentication on any Bond shall be deemed to have been executed by it if signed by an authorized signatory of the Trustee, but it shall not be necessary that the same person sign the Certificate of Authentication on all of the Series 2017 Bonds issued under the Indenture.

### **Mutilated, Lost, Stolen or Destroyed Bonds**

(a) In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and, upon its request, the Trustee shall authenticate and deliver, a new Bond of like maturity, series, interest rate and principal amount and bearing the same number (or such number as the Trustee shall permit) as the mutilated, destroyed, lost or stolen Bond, in exchange for the mutilated Bond, or in substitution for the Bond so destroyed, lost or stolen. In every case of exchange or substitution, the applicant shall furnish to the Issuer and to the Trustee (i) such security or indemnity as may be required by them to hold each of them harmless from all risks, however remote, and (ii) evidence to their satisfaction of the mutilation, destruction, loss or theft of the applicant's Bond and of the ownership thereof. Upon the issuance of any Bond upon such exchange or substitution, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees, of the Issuer or the Trustee. In case any Bond which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Issuer may, instead of issuing a Bond in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond) if the applicant for such payment shall furnish to the Issuer and to the Trustee such security or indemnity as they may require to hold them harmless and evidence to the satisfaction of the Issuer and the Trustee of the mutilation, destruction, loss or theft of such Bond and of the ownership thereof.

(b) Every new Bond issued pursuant to the provisions of the Indenture shall constitute an additional contractual, special obligation of the Issuer (whether or not the destroyed, lost or stolen Bond shall be found at any time after the issuance of such new Bonds, in which case the destroyed, lost or stolen Bond shall be void and unenforceable) and shall be entitled to all the benefits of the Series 2017 Indenture equally and proportionately with any and all other Bonds duly issued under the Series 2017 Indenture.

(c) All Bonds shall be held and owned upon the express condition that the provisions of the Indenture are exclusive, with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds, and shall preclude all other rights or remedies, notwithstanding any law or statute existing or hereinafter enacted to the contrary.

### **Establishment of Funds**

The following trust funds are established with the Trustee and shall be held, maintained and administered by the Trustee on behalf of the Issuer in accordance with the Series 2017 Indenture:

(a) Town of Hempstead Local Development Corporation Bond Fund – The Academy Charter School (the “**Bond Fund**”), and within such Bond Fund, an “Interest Account” and a “Principal Account” and within such Interest Account and Principal Accounts, Sub-Accounts for the Series 2017A Bonds and the Series 2017B Bonds.

(b) Town of Hempstead Local Development Corporation Project Fund – The Academy Charter School (the “**Project Fund**”), and within such Project Fund, a “Series 2017 Bonds Capitalized Interest Account”, a “Capitalized Interest Account” for any series of Additional Bonds issued under the Indenture, if applicable, and within such Capitalized Interest Account, separate Sub-Accounts for the Series 2017A Bonds and the Series 2017B Bonds, and a “Construction Account”, and within such Construction Account, separate Sub-Accounts for the Series 2017A Bonds and the Series 2017B Bonds.

(c) Town of Hempstead Local Development Corporation Rebate Fund – The Academy Charter School (the “**Rebate Fund**”).

(d) Town of Hempstead Local Development Corporation Renewal Fund – The Academy Charter School (the “**Renewal Fund**”).

(e) Town of Hempstead Local Development Corporation Debt Service Reserve Fund – The Academy Charter School (the “**Debt Service Reserve Fund**”).

(f) Town of Hempstead Local Development Corporation Repair and Replacement Fund – The Academy Charter School (the “**Repair and Replacement Fund**”).

(g) Town of Hempstead Local Development Corporation Key Person Life Insurance Proceeds Fund – The Academy Charter School (the “**Key Person Life Insurance Proceeds Fund**”).

(h) Upon the issuance of any series of Additional Bonds pursuant to the Indenture, the Supplemental Indenture entered into with such series of Additional Bonds shall create such Funds and Accounts and/or subaccounts within any Account with respect to such series of Bonds.

### **Moneys to Be Held in Trust**

All moneys deposited with, paid to or received by the Trustee for the accounts of the Issuer (other than amounts deposited in the Rebate Fund) shall be held by the Trustee in trust, and shall be subject to the lien of the Series 2017 Indenture and held for the security of the Owners of the particular Series of Bonds until paid in full; provided, however, that moneys which have been deposited with, paid to or received by the Trustee (i) for the redemption of a portion of the particular Series of Bonds, notice of the redemption of which has been given, or (ii) for the payment of the particular Series of Bonds or interest thereon due and payable otherwise than upon acceleration by declaration, shall be held in trust for and subject to a Lien in favor of only the Owners of such Series of Bonds so called for redemption or so due and payable. Upon the issuance of any series of Additional Bonds pursuant to the Indenture or the Supplemental Indenture entered into with such series of Additional Bonds shall create such Funds and Accounts and/or subaccounts within any Account with respect to such series of Bonds.

### **Use of the Moneys in Project Fund**

(a) Moneys in the Project Fund shall be applied and expended by the Trustee in accordance with the provisions of the Indenture and of the Loan Agreement.

(b) On each Debt Service Payment Date during the Construction Period, the Trustee is authorized and directed to transfer (i) from the Series 2017A Capitalized Interest Account to the Series 2017A Interest Sub-Account of the Interest Account of the Bond Fund an amount necessary to pay interest on the Series 2017A Bonds on such Debt Service Payment Date, and (ii) from the Series 2017B Capitalized Interest Account to the Series 2017B Interest Sub-Account of the Interest Account of the Bond Fund an amount necessary to pay interest on the Series 2017B Bonds on such Debt Service Payment Date. The Trustee shall maintain adequate records pertaining to the Capitalized Interest Account of Project Fund and all disbursements therefrom.

(c) Except as otherwise provided in paragraphs (a) and (b) above, the Trustee is directed to issue its checks for each disbursement from the Series 2017A Construction Account and the Series 2017B Construction Account of the Project Fund upon being furnished with a written requisition therefor certified by an Authorized Representative of the School, the Architect and the Paymaster together as the Project Monitor, substantially in the form of Exhibit B-1, with respect to funds disbursed from the Series 2017A Construction Account and Exhibit B-2, with respect to the funds disbursed from the 2017B Construction Account annexed to the Indenture to pay the Costs of the Project. The Trustee shall maintain adequate records pertaining to the Project Fund and all disbursements therefrom.

(d) The completion of the Project and payment or provision for payment of all Costs of the Project shall be evidenced by the filing with the Trustee of the Completion Certificate

required by the Loan Agreement. As soon as practicable and in any event not more than sixty (60) days after the date of the filing with the Trustee of the Completion Certificate referred to in the preceding sentence, any balance remaining in the Construction Account of the Project Fund, except amounts the School shall have directed the Trustee, in writing, to retain for any Cost of the Project not then due and payable, and after the making of any transfer to the Rebate Fund that the School shall have directed the Trustee, in writing, to make as required by the Tax Regulatory Agreement and the Indenture, shall without further authorization be transferred to the Bond Fund and thereafter applied as provided in the Indenture.

(e) Within sixty (60) days after transfer of the balance in the Project Fund relating to the Series 2017 Bonds to the Bond Fund, the Trustee shall file an accounting thereof with the Issuer and the School and the Trustee shall apply such transferred amounts as provided in the Indenture.

(f) All earnings on amounts held in the Project Fund shall be retained in the respective account of the Project Fund until the Completion Date. Any transfers by the Trustee of amounts to the Rebate Fund (only at the direction of the School) shall be drawn by the Trustee from the Project Fund.

(g) If an Event of Default under the Indenture shall have occurred and the outstanding principal amount of the Series 2017 Bonds shall have been declared due and payable, the entire balance remaining in the Project Fund, after making any transfer to the Rebate Fund directed to be made by the School pursuant to the Tax Regulatory Agreement and the Indenture, shall be transferred to the Bond Fund for the redemption of the Series 2017 Bonds.

### **Payments into Bond Fund**

In addition to the payment into the Bond Fund of the accrued interest, if any, on the Series 2017 Bonds pursuant to the Indenture, there shall be deposited in the Bond Fund, as and when received (a) all payments received by the Trustee under the Loan Agreement or any similar provision in any Loan Agreement with respect to the payment of debt service on any series of Additional Bonds and the Custody Agreement; (b) amounts transferred from the Capitalized Interest Account to the applicable interest subaccount of the Interest Account pursuant to the Indenture; (c) the balance in the Project Fund and the Renewal Fund to the extent specified in the Series 2017 Indenture; (d) amounts transferred from the Debt Service Reserve Fund pursuant to the Indenture with respect to the Series 2017A Bonds or with respect to any other Series of Bonds for which a Debt Service Reserve Fund account has been established and funded; (e) the amount of net income or gain received from the investments of moneys in the Bond Fund and all Funds and Accounts (other than the Rebate Fund) held under the Series 2017 Indenture after the Completion Date; (f) amounts transferred pursuant to the Loan Agreement and (g) all other moneys received by the Trustee pursuant to any of the provisions of the Loan Agreement or the Series 2017 Indenture and designated for deposit in the Bond Fund.

### **Use of Moneys in Bond Fund**

(a) Except as otherwise expressly provided in the Series 2017 Indenture, moneys in the Bond Fund shall be used solely for the purchase or redemption of Series 2017 Bonds and any Series of Additional Bonds as provided in the Indenture. Moneys deposited in the Bond Fund in

accordance with the provisions of the Indenture, however, may not be used for the payment of interest on the Series 2017 Bonds and any Series of Additional Bonds.

(b) The Trustee shall, on or before each Debt Service Payment Date of the Series 2017 Bonds, pay out of the monies then held for the credit of the Interest Account the amounts required for the payment of interest becoming due on the respective series of the Series 2017 Bonds and any Series of Additional Bonds on such Debt Service Payment Date, and such amounts so withdrawn are irrevocably dedicated for and shall be applied to the payment of interest.

(c) The Trustee shall, on or before each Debt Service Payment Date, when principal of the Series 2017 Bonds and any Series of Additional Bonds or Sinking Fund Payments are due, pay out of the monies then held for the credit of the Principal Account the amounts required for the payment of principal or Sinking Fund Payments becoming due at maturity, on a Sinking Fund Payment Date, or upon redemption of the respective series of the Series 2017 Bonds and any Series of Additional Bonds on such Debt Service Payment Date or Sinking Fund Payment Date and such amounts so withdrawn are irrevocably dedicated for and shall be applied to the payment of principal or Sinking Fund Payments.

(d) Moneys transferred to the Bond Fund from the Project Fund pursuant to the Indenture, from the Renewal Fund pursuant to the Indenture or transferred to the Bond Fund pursuant to the Loan Agreement shall be invested, at the written direction of the School in investments that satisfy the requirements of the Code so as not to cause the interest to be earned on the Series 2017A Bonds to be taxable, with yield not in excess of (i) the yield on the Series 2017 Bonds or (ii) yield on tax-exempt obligations as described in Section 148(b)(3) of the Code, subject to limitations on earnings as set forth in the Tax Regulatory Agreement, and subject to the Indenture upon the occurrence and continuation of an Event of Default under the Indenture, and such moneys and earnings thereon shall be applied only to pay the Redemption Price of Bonds subject to redemption pursuant to the Indenture, or if the Bonds are not subject to redemption under such sections, then to the principal of the Series 2017 Bonds (first to the Series 2017A Bonds, then to the Series 2017B Bonds) and any Series of Additional Bonds as they become due and payable, unless, in the opinion of Bond Counsel, such amounts are to be applied in a different manner to preserve the exclusion from gross income of interest on the Bonds, if applicable.

(e) In the event there shall be on any Debt Service Payment Date, a deficiency in the Bond Fund (a “**Payment Deficiency**”), with respect to any Bond or Series of Bonds, the Trustee shall make up any such deficiency from the Debt Service Reserve Fund to the extent of the amounts in the Debt Service Reserve Fund, by the withdrawal of monies from the Debt Service Reserve Fund, to the extent available and by the sale or redemption of securities held in the Debt Service Reserve Fund sufficient to make up any deficiency.

(f) The Trustee shall call the Series 2017 Bonds for redemption according to the Indenture, upon written direction of the Issuer or the School to the Trustee, on or after the date the Series 2017 Bonds are subject to optional redemption pursuant to the Indenture, whenever the assets of the Bond Fund shall be sufficient in the aggregate to provide monies to pay, redeem or retire all the Series 2017 Bonds then Outstanding or to redeem the Series 2017 Bonds in part

pursuant to the Indenture, including accrued interest thereon to the Redemption Date. The Trustee shall call any series of Additional Bonds for redemption in accordance with the Supplemental Indenture providing for the issuance of such series of Additional Bonds.

(g) Moneys in the Bond Fund shall be used by the Trustee, upon request of an Authorized Representative of the School, to purchase the Series 2017 Bonds and any Series of Additional Bonds on the most advantageous terms obtainable with reasonable diligence, provided that no such purchase shall be made:

(i) if an Event of Default under the Loan Agreement or the Mortgage has occurred and is continuing;

(ii) within forty-five (45) days prior to any date on which Series 2017 Bonds or any Series of Additional Bonds are subject to redemption pursuant to the Series 2017 Indenture;

(iii) if the amount remaining in the Bond Fund, after giving effect to such purchase, is less than the amount required for the payment of the principal or Redemption Price of the Series 2017 Bonds or any Series of Additional Bonds theretofore matured or called for redemption, plus interest to the date of maturity or the Redemption Date, as the case may be, in all cases where such Series 2017 Bonds or any Series of Additional Bonds have not been presented for payment; or

(iv) at a price in excess of that specified by the School in its request to the Trustee, plus accrued interest to the date of purchase.

The Trustee shall promptly notify the Issuer and the School of the principal amount and the maturity of each Series of Bond so purchased and the balance held in the Bond Fund after such purchase. The Trustee shall not, however, be subject to any liability to any Owner, the Issuer, the School or any other person by reason of its failure to mail the notice required under this heading. The Series 2017 Bonds so purchased by the School or any affiliate shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase unless the School shall deliver to the Trustee and the Issuer an opinion of Bond Counsel to the effect that the failure to surrender such Series 2017 Bonds by such date will not affect the exclusion of the interest on any Bonds then Outstanding from gross income for federal income tax purposes.

(h) In connection with the purchase of Series 2017 Bonds with moneys on deposit in the Bond Fund as provided in the Series 2017 Indenture, the Trustee shall negotiate or arrange for such purchases in such manner (through brokers or otherwise and with or without receiving tenders) as it shall in its discretion determine.

(i) If the balance in the Bond Fund, not otherwise required for scheduled payments of principal of, Redemption Price or interest on the Series 2017 Bonds or any Series of Additional Bonds, forty-five (45) days prior to any date on which Series 2017 Bonds or any Series of Additional Bonds are subject to redemption pursuant to the Series 2017 Indenture equals or exceeds \$50,000, the Trustee shall, upon request of an Authorized Representative of the School, apply as much of such balance as can be so applied to the redemption of Series 2017 Bonds or any Series of Additional Bonds on such next succeeding Redemption Date in the manner

provided in the Indenture. The Trustee shall promptly notify the Issuer and the School of the principal amount and maturity of each Series 2017 Bond or any Series of Additional Bonds so redeemed and the balance held in the Bond Fund after such redemption.

(j) Whenever the amount in the Bond Fund is sufficient to redeem all of the Outstanding Series 2017 Bonds or any Series of Additional Bonds and to pay accrued interest to maturity or the date of redemption, the Trustee shall, upon request of an Authorized Representative of the School, take and cause to be taken the necessary steps to redeem all such Series 2017 Bonds or any Series of Additional Bonds on the next succeeding Redemption Date for which the required redemption notice may be given or on such later Redemption Date as may be specified by the School.

#### **Payments into Renewal Fund; Application of Renewal Fund**

(a) The Net Proceeds resulting from any insurance award, condemnation award or recovery from any contractor or subcontractor with respect to the Facility shall be deposited in the Renewal Fund. The amounts in the Renewal Fund shall be subject to a security interest, lien and charge in favor of the Trustee until disbursed as provided in the Indenture.

(b) If the School elects to replace, repair, rebuild, restore or relocate the Facility pursuant to the Loan Agreement, the Trustee shall, at the written direction of the School, apply the amounts on deposit in the Renewal Fund, after making any transfer to the Rebate Fund, at the written direction of the School, as required by the Tax Regulatory Agreement and the Indenture, to such replacement, repair, rebuilding, restoration or relocation. Upon the completion of such replacement, repair, rebuilding, restoration or relocation, and after making any transfer to the Rebate Fund, at the written direction of the School, as required by the Tax Regulatory Agreement and the Indenture, any balance remaining in the Renewal Fund shall without further authorization be transferred to the Bond Fund and applied as provided in the Indenture. If the School elects not to replace, repair, restore or relocate the Facility pursuant to the Loan Agreement, any balance remaining in the Renewal Fund shall without further authorization be transferred to the Bond Fund and applied as provided in the Indenture.

(c) If any Event of Default shall exist at the time of the receipt by the Trustee of the Net Proceeds in the Renewal Fund and be continuing, the Trustee, unless it exercises the remedy provided by the Loan Agreement, shall, after making any transfer to the Rebate Fund, at the written direction of the School, as required by the Tax Regulatory Agreement and the Indenture, transfer the amounts deposited in the Renewal Fund to the Bond Fund to be applied in accordance with the Indenture.

(d) If the School elects to replace, repair, rebuild, restore or relocate the Facility pursuant to the Loan Agreement, the Trustee is authorized to apply the amounts in the Renewal Fund to the payment (or reimbursement to the extent the same shall have been paid by or on behalf of the School or the Issuer) of the costs required for the replacement, repair, rebuilding, restoration or relocation of the Facility. The Trustee is further authorized and directed to issue its checks for each disbursement from the Renewal Fund upon a requisition submitted to the Trustee and signed by an Authorized Representative of the School. Such requisition shall be in the same form and subject to the same conditions as requisitions from the Project Fund.

### **Investment Earnings on Funds; Application of Investment Earnings on Funds**

(a) All investment income or earnings on amounts held in the Project Fund, the Renewal Fund, the Bond Fund or any other special fund held under any of the Bond Documents (other than the Rebate Fund) prior to the Completion Date shall be deposited upon receipt by the Trustee into the Project Fund and used for the purposes set forth in the Indenture and after the Completion Date shall be used to pay any remaining sums due for costs of the Project not previously paid, or deposited by the Trustee into the Interest Account of the Bond Fund and used to pay the interest component of the next upcoming Debt Service Payment. The Trustee shall keep separate accounts of all investment earnings from each fund and account under the Indenture to indicate the source of the income or earnings.

(b) Within thirty (30) days after the end of each Computation Period, the Trustee, at the written direction of an Authorized Representative of the School, shall transfer to the Rebate Fund instead of the Project Fund or the Interest Account of the Bond Fund an amount of the investment earnings on the funds and accounts under the Indenture, such that the amount transferred to the Rebate Fund is equal to that amount as is set forth as the Rebate Amount in a written certificate delivered by the School to the Trustee pursuant to the Tax Regulatory Agreement and the Indenture.

### **Payments into Rebate Fund; Application of Rebate Fund**

(a) The Rebate Fund and the amounts deposited therein shall not be subject to a security interest, pledge, assignment, lien or charge in favor of the Trustee or any Owner of any Series of Bond or any other Person.

(b) The Trustee, upon the receipt of a certification of the Rebate Amount from an Authorized Representative of the School, shall transfer, from moneys in the Project Fund or the Renewal Fund, or from any other moneys paid by the School under the Tax Regulatory Agreement, into the Rebate Fund, within thirty (30) days after the end of each Bond Year, an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of the last day of the immediately preceding Bond Year. If there has been delivered to the Trustee a certification of the Rebate Amount in conjunction with the completion of the Facility pursuant to the Loan Agreement at any time during a Bond Year, the Trustee shall deposit in the Rebate Fund within thirty (30) days of the Completion Date an amount received from the School such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated at the completion of the Facility. The amount deposited in the Rebate Fund pursuant to this paragraph shall be paid by the School pursuant to the Tax Regulatory Agreement.

(c) In the event that on the first day of any Bond Year the amount on deposit in the Rebate Fund exceeds the Rebate Amount, the Trustee, upon the receipt of written instructions from an Authorized Representative of the School, shall withdraw such excess amount and deposit it in the Project Fund until the completion of the Facility or, after the Completion Date, deposit it in the Bond Fund.

(d) The Trustee, upon the receipt of written instructions from an Authorized Representative of the School, shall pay to the United States, out of amounts in the Rebate Fund, (i) not later than thirty (30) days after the last day of the fifth Bond Year and after every fifth

Bond Year thereafter, an amount such that, together with prior amounts paid to the United States, the total paid to the United States is equal to ninety percent (90%) of the Rebate Amount with respect to the Series 2017 Bonds as of the date of such payment, and (ii) notwithstanding any other provision of the Indenture, not later than thirty (30) days after the date on which all Series 2017 Bonds have been paid in full, one hundred (100%) percent of the Rebate Amount as of the date of payment.

(e) The Trustee shall have no obligation under the Series 2017 Indenture to transfer any amounts to the Rebate Fund unless the Trustee shall have received specific written instructions from the School to make such transfer.

#### **Payments into Debt Service Reserve Fund; Application of Debt Service Reserve Fund**

(a) Upon the issuance, sale and delivery of the Series 2017A Bonds, the Issuer shall transfer to the Trustee for deposit into the applicable account of the Debt Service Reserve Fund an amount equal to the Debt Service Reserve Fund Requirement with respect to the Series 2017A Bonds, to the extent such moneys are available for such purpose from the proceeds of the sale of the Series 2017A Bonds. The Trustee shall deposit into the Debt Service Reserve Fund all payments made by the School pursuant to the Loan Agreement and the Second Amended and Restated Custody Agreement.

(b) Upon the issuance, sale and delivery of the Series 2017B Bonds, the Issuer shall transfer to the Trustee for deposit into the applicable account of the Debt Service Reserve Fund an amount equal to zero dollars (\$0.00), the Debt Service Reserve Fund Requirement with respect to the Series 2017B Bonds. The Trustee shall deposit into the Debt Service Reserve Fund all payments made by the School pursuant to the Loan Agreement and the Custody Agreement.

(c) Moneys and securities held for credit in the Debt Service Reserve Fund shall be transferred by the Trustee to the Interest Account and the Principal Account of the Bond Fund at the times and in the amounts required pursuant to the Indenture.

(d) Whenever the Trustee shall determine that the moneys and securities in the Debt Service Reserve Fund with respect to the Series 2017A Bonds, will be equal to or in excess of the Redemption Price of all of the Outstanding Bonds of such Series 2017A Bonds plus accrued interest to the Redemption Date, the Trustee shall use and apply the amounts on deposit in the Debt Service Reserve Fund to the redemption of all Outstanding Bonds of such Series 2017A Bonds on the first date thereafter that such Series 2017A Bonds are subject to optional redemption pursuant to the Indenture.

(e) Any income or interest earned by, or increment to, the Debt Service Reserve Fund shall be transferred by the Trustee and deposited (i) prior to the Completion Date, to the Project Fund and applied to pay costs of the Project, and (ii) after the Completion Date, to the Interest Account of the Bond Fund with respect to such Series of Bonds and applied to the payment of the interest component of the next upcoming Debt Service Payments with respect to such Series of Bonds, and the School's obligations under the Loan Agreement shall be adjusted accordingly.

(f) In order to ensure the maintenance of the Debt Service Reserve Fund Requirement with respect to the Series 2017A Bonds, the Trustee, upon the determination of any deficiency in the Debt Service Reserve Fund, shall make and deliver to the Issuer and the School at the intervals required pursuant to the Indenture, a certificate stating the amount required to restore the amount of the Debt Service Reserve Fund to the amount of the Debt Service Reserve Fund Requirement, and the Trustee shall collect such deficiency from the School as a special rental payment, as provided in the Loan Agreement.

(g) The money on deposit in the Series 2017A Debt Service Reserve Fund is held solely for the benefit of the Series 2017A Bond holders and no portion of the Series 2017A Debt Service Reserve Fund may be used to pay Debt Service Payments on the Series 2017B Bonds.

**Payments into Repair and Replacement Fund; Application of Repair and Replacement Fund**

(a) There shall be deposited into the Repair and Replacement Fund as and when received (a) all payments by the School pursuant to the Loan Agreement, (b) all other moneys deposited into the Repair and Replacement Fund pursuant to the Loan Agreement or the Series 2017 Indenture, and (c) all other moneys received by the Trustee when accompanied by directions not inconsistent with the Loan Agreement or the Series 2017 Indenture that such moneys are to be paid into the Repair and Replacement Fund. There shall also be retained in the Repair and Replacement Fund, interest and other income received on investment of moneys in the Repair and Replacement Fund to the extent provided under this heading. Any amounts on deposit in the Repair and Replacement Fund in excess of the Repair and Replacement Fund Requirement shall be transferred by the Trustee to the Interest Account of the Bond Fund and applied to the payment of the interest on the Bonds; provided, however, that the amount remaining in the Repair and Replacement Fund immediately after such transfer shall not be less than the Repair and Replacement Fund Requirement.

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

(c) Payments shall be made from the Repair and Replacement Fund upon receipt by the Trustee of a written requisition from an Authorized Representative of the School setting forth the amount and the payee for the purpose of paying the cost of extraordinary maintenance and replacements, capital improvements and renovations and capital projects which may be required to keep the Facility in sound condition, or to improve the Facility, or, to reduce operating costs of the Facility or to maintain or protect the value of the Facility including, but not limited to replacement or upgrading of equipment, replacement or upgrading of any roof or other structural component, exterior painting and the replacement or upgrading of structural or capital renovations or improvements and security systems, upgrading of heating, air conditioning, plumbing and electrical equipment, solar panels or other energy reduction devices, equipment or systems.

(d) Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Repair and Replacement Fund shall be credited to the Repair and Replacement Fund if the amount therein is less than the Repair and Replacement Fund Requirement. If the amount in the Repair and Replacement Fund is greater than the Repair and Replacement Fund Requirement, such amount in excess of the Repair and Replacement Fund Requirement shall be paid monthly into the Interest Account of the Bond Fund.

### **Second Amended and Restated Custody Agreement**

(a) Except as otherwise provided in the Second Amended and Restated Custody Agreement, the Trustee shall deliver the Second Amended and Restated Custody Agreement Notice to the Custodian no later than five (5) Business Days before such State Education Operating Aid Payment Date.

(b) Except as otherwise provided in the Second Amended and Restated Custody Agreement, each Custody Agreement Notice shall be prepared by the Trustee in substantially the form of Exhibit A attached to the Second Amended and Restated Custody Agreement, with respect to each period from and including January 1, 2018 and thereafter and from and including each succeeding State Education Operating Aid Payment Date, through and including the calendar day preceding each subsequent State Education Operating Aid Payment Date (each an "Education Aid Funding Period"), certifying the respective aggregate amounts to be transferred by the Custodian to the Trustee during the applicable Education Aid Funding Period.

(c) Each Custody Agreement Notice shall describe the amount of Education Aid necessary to be paid to the Trustee to satisfy the payment obligations of the School under the Loan Agreement. Accordingly, each Custody Agreement Notice shall contain the following information: (1) a statement of the total amount of Education Aid to be paid over to the Trustee on the applicable State Education Operating Aid Payment Date, and (2) statements describing the portions of such total amount to be deposited into the various funds and accounts held by the Trustee under this Series 2017 Indenture pursuant to the Indenture. The Trustee shall prepare each Custody Agreement Notice in consultation with the School.

(d) The School shall provide the Trustee, in a timely fashion (but at least ten (10) Business Days prior to each State Education Operating Aid Payment Date), the information reasonably needed by the Trustee in order to permit the Trustee to prepare each Custody Agreement Notice.

### **Investment of Moneys**

(a) Moneys held in any fund established pursuant to the Indenture shall be invested and reinvested by the Trustee in Authorized Investments, pursuant to written direction by an Authorized Representative of the School, or pursuant to oral direction promptly confirmed in writing by such Authorized Representative. Such investments shall mature in such amounts and have maturity dates or be subject to redemption at the option of the owners thereof on or prior to the date on which the amounts invested therein will be needed for the purposes of such fund or accounts. The Trustee may at any time sell or otherwise reduce to cash a sufficient amount of such investments whenever the cash balance in such fund or accounts is insufficient for the purposes thereof. Any such investments shall be held by or under control of the Trustee and shall be deemed at all times a part of the fund or the respective account within a fund or special

trust account for which such moneys are invested, and the interest accruing thereon and any profit realized from such investment shall be credited to and held in and any loss shall be charged to the applicable fund.

(b) The Trustee may make any investment permitted under this heading through its own bond department. The Trustee shall not be liable for any depreciation in the value of any investment made pursuant to the Indenture or for any loss arising from any such investment.

(c) Any investment authorized in the Indenture is subject to the condition that no use of the proceeds of any Series 2017A Bonds or of any other moneys shall be made which, if such use had been reasonably expected on the date of issue of such Series 2017A Bonds, would cause such Series 2017A Bonds to be “arbitrage bonds” within the meaning of such quoted term in Section 148 of the Code. The Trustee shall not be liable if such use shall cause the Series 2017A Bonds to be “arbitrage bonds”, provided only that the Trustee shall have made such investment pursuant to the written direction or confirmation by an Authorized Representative of the School as provided in the Indenture.

(d) The Trustee shall compute the amount in the Debt Service Reserve Fund on the third Business Day preceding each Debt Service Payment Date. In computing the amount in the Debt Service Reserve Fund, obligations purchased as an investment of moneys therein shall be valued at the lower of cost or market value, or, if applicable, par. Notwithstanding anything to the contrary contained in the Indenture or any other Bond Document, the weighted average maturity of investments in the Debt Service Reserve Fund at any time may not exceed ten (10) years as of the date of any purchase of an investment. Upon the occurrence of a deficiency in the Debt Service Reserve Fund, such deficiency shall be restored to the extent required under the Loan Agreement, and investments of the moneys in the Debt Service Reserve Fund throughout shall be valued monthly until the deficiency has been fully restored as provided in the Loan Agreement. If, as a result of a valuation, moneys and investments on deposit in the Debt Service Reserve Fund exceed the Debt Service Reserve Fund Requirement, such excess shall be transferred by the Trustee to the Principal Account of the Bond Fund and shall be applied to the principal component of the next upcoming Debt Service Payment, and the School’s obligations under the Loan Agreement shall be adjusted accordingly.

(e) The Trustee shall, at the written direction of the School, sell at the best price obtainable by the Trustee, or present for redemption, any obligation purchased by it as an investment whenever it shall be necessary in order to provide monies to meet any payment or transfer from the Fund or account for which such investment was made.

### **Payment to School upon Payment of Bonds**

Except as otherwise specifically provided in the Indenture, after payment in full of the principal or Redemption Price of and interest on all the Series 2017 Bonds or any Series of Bonds (or after provision for the payment thereof has been made in accordance with the Indenture) and after payment in full of the fees, charges and expenses of the Trustee and any Paying Agent and all other amounts required to be paid under the Indenture, and the fees, charges and expenses of the Issuer and all other amounts required to be paid under the Loan Agreement, all amounts remaining in any fund established pursuant to the Indenture with respect to such Series of Bonds (except the Rebate Fund) or otherwise held by the Trustee and by any

additional Paying Agent for the account of the Issuer or the School under the Indenture or under the Loan Agreement shall be paid to the School.

### **Payments into Key Person Life Insurance Proceeds Fund; Application of Key Person Life Insurance Proceeds Fund**

Pursuant to the Loan Agreement, the School is required to obtain, no later than date of issuance of the Series 2017 Bonds a \$2,000,000 “key person” life insurance policy per person on the lives of Reverend Barrington F.H. Goldson, Chairman of the Board of Trustees and Wayne Haughton, Executive Director until November 1, 2033 which names the Trustee as the primary beneficiary. (See “SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT – Key Person Insurance”) The Key Person Life Insurance Proceeds Fund shall be in the custody of the Trustee and will only be created upon the death of either of the above referenced individuals when the “key person” life insurance proceeds are paid out to the Trustee. The Trustee shall hold the “key person” life insurance policy and make a claim for the proceeds of such life insurance policy in the event of the death of either “key person” named in the Indenture. The receipt of insurance proceeds upon the death of one “key person” named in the Indenture does not void the requirement to maintain “key person” insurance upon the other surviving “key person” named in the Indenture. Insurance proceeds received from the “key person” insurance policies maintained under the Loan Agreement shall be deposited to the Key Person Life Insurance Proceeds Fund. The Trustee shall hold such moneys in the Key Person Life Insurance Proceeds Fund for purposes of an operating reserve to be used by the School only upon the consent of the registered owners of at least a majority of the Outstanding Bonds. So long as the School is in annual compliance with all covenants under the Loan Agreement, the moneys held in the Key Person Life Insurance Proceeds Fund may be used to redeem Bonds with the longest maturity upon the first available call date. To the extent that money will remain in the Key Person Life Insurance Proceeds Fund through the final maturity of the Bonds, such moneys may be deposited in the Debt Service Reserve Fund, Principal Account of the Bond Fund and Interest Account of the Bond Fund, to call the final principal amount of Bonds prior to their final maturity.

### **Failure to Present Bonds**

Subject to the provisions of the Indenture, in the event any Bond shall not be presented for payment when the principal or Redemption Price thereof becomes due, either at maturity or at the date fixed for prior redemption thereof or otherwise, if moneys sufficient to pay such Bond shall be held by the Trustee for the benefit of the Owner thereof, all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged. Thereupon, the Trustee shall hold such moneys, without liability for interest thereon, for the benefit of the Owner of such Bonds, who shall thereafter be restricted exclusively to such moneys for any claim under the Series 2017 Indenture or on, or with respect to, said Bond. If any Bond shall not be presented for payment within the period of two (2) years following the date when such Bond becomes due, whether by maturity or call for prior redemption or otherwise, the Trustee shall return to the Issuer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitations, thereafter be an unsecured obligation of the Issuer. The Trustee shall, at least sixty (60) days prior to the expiration of such two (2) year period, give notice to any Owner who has not presented any Bond for payment that any moneys held for the payment of any such Bond

will be returned as provided under this heading at the expiration of such two (2) year period. The failure of the Trustee to give any such notice shall not affect the validity of any return of funds pursuant to the Indenture.

### **Cancellation**

All Bonds which have been paid, redeemed, purchased or surrendered shall be canceled and delivered by the Trustee to the Issuer. A copy of the canceled Bond or Bonds or other form of notice of such cancellation shall be delivered to the Issuer and to the School upon its written request.

### **Continuing Disclosure Agreement**

Pursuant to the Loan Agreement, the School has undertaken responsibility for compliance with, and the Issuer shall have no liability to the holders of the Series 2017 Bonds or any other person with respect to, any reports, notices or disclosures required by or provided pursuant to the Continuing Disclosure Agreement authorized by the Series 2017 Loan Agreement. The Trustee covenants and agrees with the holders from time to time of the Series 2017 Bonds that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement applicable to the Trustee. Notwithstanding any other provision of the Indenture, failure of the School or the Trustee to perform in accordance with the Continuing Disclosure Agreement shall not constitute a default or an Event of Default under the Indenture, and the rights and remedies provided by the Indenture upon the occurrence of such a default or an Event of Default shall not apply to any such failure, but the Continuing Disclosure Agreement may be enforced only as provided therein. The Trustee covenants and agrees to comply with the continuing disclosure requirements as may be applicable to the Trustee under any Additional Series of Bonds issued under the Indenture; provided, however, such requirements are substantially in accordance with the provisions of the Continuing Disclosure Agreement and the Loan Agreement.

### **Discharge of Lien**

(a) If the Issuer shall pay or cause to be paid to the Owners of any series of Bonds or of all Outstanding Bonds the principal thereof, redemption premium, if any, and interest thereon, at the times and in the manner stipulated therein and in the Series 2017 Indenture, and if there shall have been paid all fees, charges and expenses required to be paid under the Indenture, then the Lien on the Trust Estate created for the benefit of the Owners of such Series of Bonds so paid shall be released, discharged and satisfied. In such event, except as otherwise specifically provided in the Indenture, the Trustee and any additional Paying Agent shall pay or deliver to the School all moneys or securities held by it pursuant to the Series 2017 Indenture which are not required for the payment of such Series of Bonds. The Issuer may pay or cause to be paid any Series of Bonds without at the same time paying or causing to be paid all other Series of Outstanding Bonds. If the Issuer does not pay or cause to be paid, at the same time, all Outstanding Bonds, then the Trustee and any additional Paying Agent shall not return those moneys and securities held under the Series 2017 Indenture as security for the benefit of the Owners of Bonds not so paid or caused to be paid.

(b) When all of the Outstanding Bonds shall have been paid in full, or provisions for such full payment of all Outstanding Bonds shall have been made in accordance with this the Indenture, the Trustee and the Issuer shall promptly execute and deliver to the School such

written certificates, instruments and documents as the School shall provide to cause the Lien of the Series 2017 Indenture upon the Trust Estate to be discharged and canceled.

(c) Notwithstanding the fact that the Lien of the Series 2017 Indenture upon the Trust Estate may have been discharged and canceled in accordance with the Indenture, this Series 2017 Indenture and the rights granted and duties imposed, to the extent not inconsistent with the fact that the Lien upon the Trust Estate may have been discharged and canceled, shall nevertheless continue and subsist until the principal or Redemption Price of and interest on all of the Series 2017 Bonds shall have been fully paid or the Trustee shall have returned to the Issuer pursuant to the Indenture all funds theretofore held by the Trustee for payment of any Bonds not theretofore presented for payment.

### **Discharge of the Indenture**

(a) Any Outstanding Bond or installments of interest with respect thereto shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning of, and with the effect expressed in, the Indenture: (i) there shall have been deposited with the Trustee sufficient cash and/or Government Obligations, in accordance with the Indenture, which will, without further investment, be sufficient, together with the other amounts held for such payment, to pay the principal of the Series of Bonds when due or to redeem the Series of Bond on the earliest possible redemption date thereof at the Redemption Price specified in the Indenture or in a Supplemental Indenture with respect to such Series of Bonds, (ii) in the event such Series of Bonds are to be redeemed prior to maturity in accordance with the Indenture or in a Supplemental Indenture with respect to such Series of Bonds, all action required by the provisions of the Series 2017 Indenture to redeem the Series of Bonds shall have been taken or provided for to the satisfaction of the Trustee and notice thereof in accordance with the Indenture or in a Supplemental Indenture with respect to such Series of Bonds shall have been duly given or provision satisfactory to the Trustee shall have been made for the giving of such notice, (iii) provision shall have been made for the payment of all fees and expenses of the Trustee and of any additional Paying Agent with respect to the Series of Bonds of which the Bond is a part, (iv) the Issuer shall have been reimbursed for all of its expenses under the Loan Agreement with respect to the Series of Bonds of which the Bond is a part, and (v) all other payments required to be made under the Loan Agreement and the Series 2017 Indenture or any Supplemental Indenture with respect to the Series of Bonds of which the Bond is a part shall have been made or provided for.

(b) For the purpose summarized under this heading, the Series 2017 Trustee shall be deemed to hold sufficient moneys to pay the principal of an Outstanding Bond not then due or to redeem an Outstanding Bond prior to the maturity thereof only if there shall be on deposit with the Trustee and available for such purpose an amount of cash and/or a principal amount of Government Obligations, maturing or redeemable at the option of the owner thereof not later than (i) the maturity date of such Series of Bonds, or (ii) the first date following the date of computation on which such Series of Bonds may be redeemed pursuant to the Indenture (whichever may first occur), which, together with income to be earned on such Government Obligations prior to such maturity date or Redemption Date, equals the principal and redemption premium, if any, due on such Series of Bonds, together with all interest thereon (at the maximum applicable rate) which has accrued and which will accrue to such maturity or Redemption Date.

(c) Upon the defeasance of any series of Bonds or of all Outstanding Bonds in accordance with the Indenture, the Trustee shall hold in trust, for the benefit of the Owners of such Series of Bonds, all such cash and/or Government Obligations, shall make no other or different investment of such cash and/or Government Obligations and shall apply the proceeds thereof and the income therefrom only to the payment of such Bonds.

### **Lien Law Section 73 Covenant**

The School, for itself and as the Agent of the Issuer, covenants to the Issuer and to the Trustee, as a third-party beneficiary of the Indenture, that the School will receive advances of monies under the Bond Documents and will hold the right to receive such advances as trust funds to be first applied to the payment of trust claims as defined in Section 71 of the Lien Law of the State, and that the School will apply the same to such payments only, before using any part of such advances for any other purpose.

### **Events of Default**

The following shall be “Events of Default” under the Series 2017 Indenture with respect to any Bond or any Series of Bonds:

(a) A default in the due and punctual payment of any interest or any principal, Sinking Fund Payments, or Redemption Price of any Bond, whether at the stated maturity thereof, upon proceedings for redemption thereof or upon the maturity thereof by declaration, or any other amounts due under the Series 2017 Indenture or the other Bond Documents or any other bond documents entered into in connection with any series of Additional Bonds; or

(b) A default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in the Series 2017 Indenture or in any Series of Bonds and the continuance thereof for a period of thirty (30) days after written notice given by the Trustee or by the Owners of not less than fifty percent (50%) of the principal amount of the applicable Series of Bonds then Outstanding; or if such default cannot be cured within thirty (30) days, but the Issuer is proceeding diligently to cure such default, then the Issuer shall be permitted an additional ninety (90) days within which to remedy the default; or

(c) The occurrence of an Event of Default under any Loan Agreement.

### **Acceleration; Annulment of Acceleration; Default Rate**

(a) Upon the occurrence of an Event of Default under the Loan Agreement or any similar provision in any other Loan Agreement with respect to any Additional Bonds, all Series of Bonds Outstanding shall become immediately due and payable without action or notice of any kind on the part of the Trustee or the Issuer. Upon the occurrence and continuance of an Event of Default, the Trustee shall, by notice in writing delivered to the Issuer and the School, declare all Series of Bonds Outstanding immediately due and payable, and such Series of Bonds shall become and be immediately due and payable, anything in the Series of Bonds or in the Series 2017 Indenture to the contrary notwithstanding. In such event, there shall be due and payable on the Series of Bonds an amount equal to the total principal amount of all such Series of Bonds, plus all interest accrued thereon and which will accrue thereon to the date of payment. If all of the Series of Bonds Outstanding shall become so immediately due and

payable, the Issuer and the Trustee shall as soon as possible declare by written notice to the School all unpaid installments payable by the School under the Loan Agreement or any similar provision in any other Loan Agreement with respect to any Additional Bonds to be immediately due and payable. Upon such declaration the same shall become and be immediately due and payable, and the Trustee shall immediately first apply any moneys on deposit in the Principal Account and Interest Account, as appropriate, of the Bond Fund, and second, apply any moneys on deposit in the Debt Service Reserve Fund therein.

(b) At any time after the principal of the Series 2017 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 the Series 2017 Indenture, the Trustee may annul such declaration and its consequences with respect to any Series 2017 Bonds not then due by their terms if (i) moneys shall have been deposited in the Bond Fund sufficient to pay all matured installments of interest and principal, Sinking Fund Payments, or the Redemption Price (other than principal then due only because of such declaration) of such Outstanding Series of Bonds; (ii) sufficient moneys shall be available to pay the amounts described in the Series 2017 Indenture; (iii) all other amounts then payable by the Issuer under the Indenture shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee; and (iv) every other Event of Default known to the Trustee (other than a default in the payment of the principal of such Bonds then due only because of such declaration) shall have been remedied to the satisfaction of the Trustee. No such annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

(c) Upon the occurrence and continuation of an Event of Default, the Series 2017 Bonds shall bear interest at the Default Rate from the date of the occurrence of such Event of Default until the Series 2017 Bonds have been paid pursuant to the Indenture or such Event of Default has been cured.

### **Enforcement of Remedies**

(a) Upon the occurrence and continuance of any Event of Default, and upon being provided with security or indemnity reasonably satisfactory to the Trustee against any liability or expense which might thereby be incurred, the Trustee shall proceed forthwith to protect and enforce its rights and the rights of the Owners under the Act, the applicable Series of Bonds and the applicable Loan Agreement by such suits, actions or proceedings as the Trustee, being advised by counsel, shall deem expedient.

(b) The Trustee acting directly may sue for, enforce payment of and receive any amounts due or becoming due from the Issuer or the School for principal, Redemption Price, interest or otherwise under any of the provisions of the Series of Bonds, the Bond Documents and any bond documents entered into in connection with any Series of Additional Bonds without prejudice to any other right or remedy of the Trustee or of the Owners.

(c) Regardless of the happening of an Event of Default, the Trustee shall have the right to institute and maintain such suits and proceedings as it may be advised by such Owners shall be necessary or expedient (i) to prevent any impairment of the security under the Series 2017 Indenture by any acts which may be unlawful or in violation of the Series 2017 Indenture

or of any resolution authorizing any Series of Bonds, or (ii) to preserve or protect the interests of the Owners, provided that such request is in accordance with law and the provisions of the Series 2017 Indenture and is not unduly prejudicial to the interests of the Owners not making such request.

### **Appointment of Receivers**

Upon the occurrence of an Event of Default and upon the filing of a suit or commencement of other judicial proceedings to enforce the rights of the Trustee or the Owners under the Series 2017 Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the revenues and receipts thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

### **Application of Moneys**

(a) The Net Proceeds received by the Trustee pursuant to any right given or action taken under the provisions of Article VIII of the Indenture shall be, after paying the fees and expenses of the Trustee, deposited in the Bond Fund.

(b) All moneys held in a sub-account of the Bond Fund for any particular Series of Bonds during the continuance of an Event of Default shall be applied as follows:

(i) Unless the principal of all the Series 2017 Bonds of a particular series shall have become due or shall have been declared due and payable,

FIRST - To the payment of all installments of the interest then due, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment of interest, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto without any discrimination or preference; and

SECOND - To the payment of the unpaid principal or Redemption Price, if any, of any Series of Bonds or principal installments which shall have become due (other than any Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of the Series 2017 Indenture), in order of their due dates, with interest on such Bonds, at the rate or rates expressed thereon, from the respective dates upon which such Bonds became due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, to the Persons entitled thereto without any discrimination or preference; and

THIRD - To the payment of the principal or Redemption Price of and interest on such Bonds as the same become due and payable; and

(ii) If the principal of all such Bonds shall have become due or shall have been declared due and payable, to the payment of the principal and interest (at the rate or rates expressed thereon) then due and unpaid upon all such Bonds,

without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bonds of such series, ratably according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference; and

(iii) If the principal of all such Bonds shall have been declared due and payable and if such declaration shall thereafter have been annulled pursuant to provisions of the Indenture, the moneys shall be applied in accordance with the provisions of paragraph (i) above.

(c) Whenever moneys are to be applied by the Trustee pursuant to the provisions of the Indenture, such moneys shall be applied at such time or times as the Trustee in its sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. On the date fixed by the Trustee for application of such moneys, interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the application of any such moneys and of the fixing of any such date.

#### **Remedies Vested in Trustee**

Except as otherwise provided in the Indenture, all rights of action (including the right to file proof of claim) under the Series 2017 Indenture or under any of the Series of Bonds may be enforced by the Trustee without possession of any of the Series of Bonds or the production thereof in any trial or other proceedings relating thereto. Any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owners of any of the Series of Bonds. Subject to the provisions of the Indenture, any recovery of judgment shall be for the equal benefit of the Owners of the Outstanding Bonds.

#### **Remedies Not Exclusive**

No remedy conferred upon or reserved to the Trustee or to the Owners by the Series 2017 Indenture is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners under the Indenture or now or hereafter existing at law or in equity or by statute.

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## **SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT**

*The obligations of the School to make payments under the Loan Agreement are evidenced by a promissory note for the Series 2013A (tax-exempt) and Series 2013B (taxable) from the School to the Issuer and assigned by the Issuer to the Trustee. The payments by the School under the Loan Agreement and the Promissory Notes are intended as security for the Series 2013 Bonds.*

*The following is a brief summary of certain provisions of the Loan Agreement and should not be considered a full statement thereof. Reference is made to the Loan Agreement for complete details of the terms thereof.*

### **Loan of Series 2013 Bond Proceeds**

The Issuer agreed to loan the Series 2017 Bond Proceeds to the School in accordance with the provisions of the Loan Agreement. Such Series 2017 Bond Proceeds shall be disbursed to the School in accordance with the provisions of the Loan Agreement and the Indenture.

### **Renovation, Construction, Equipping and Furnishing of Project**

(a) The School agrees, and covenants and warrants to the Issuer, it has or will renovate, construct, equip and furnish the Facility in accordance with the Plans and Specifications.

(b) The School may revise the Plans and Specifications from time to time, provided, however, if such revision shall include a material change to the Facility, the School shall first obtain the written approval of the Issuer, which approval shall not be unreasonably withheld, denied, conditioned, or delayed but may be subject to such conditions as the Issuer may deem appropriate.

(c) Reserved.

(d) The School shall pay all fees, costs and expenses incurred in the construction and renovation of the Improvements and the acquisition and installation of the Equipment from funds made available therefor in accordance with the Loan Agreement, and shall ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever that may be due, owing and payable to the School under the terms of any contract, order, receipt, or writing in connection with the construction, renovation and completion of the Improvements and the acquisition and installation of the Equipment, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security.

(e) Reserved.

(f) The School shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the construction, renovation, equipping and

furnishing of the Facility and shall include in all construction contracts all provisions required to be inserted therein by such provisions. The School shall comply with the relevant policies of the Issuer with respect to such laws, which are set forth as Exhibit B attached to the Loan Agreement. Except as provided in the preceding two sentences, the provisions under this heading do not create any obligations or duties not created by applicable law outside of the terms of the Loan Agreement.

### **Issuance of the Series 2017 Bonds; Disbursement of Series 2017 Bond Proceeds**

In order to provide funds for payment of the Costs of the Project, together with other payments and incidental expenses in connection therewith, the Issuer agrees that it will authorize, issue, sell and cause the Series 2017 Bonds to be delivered on the terms set forth in the Indenture. Series 2017 Bond Proceeds shall be disbursed in accordance with the provisions of the Indenture and the Loan Agreement.

### **Application of Bond Proceeds**

Except as provided in the Loan Agreement, the Series 2017 Bond Proceeds, upon the written direction of an Authorized Representative of the School, and upon the conditions provided for in the Indenture, shall be applied to pay only the following costs and items of expense paid on or after September 2, 2016 except as may otherwise be provided under the Tax Regulatory Agreement or included in a resolution of the Board of Trustees of the School indicating an intent to reimburse the School for costs of the Project incurred prior to that date:

- (i) the cost of preparing the Plans and Specifications (including any preliminary study or planning of the Facility or any aspect thereof),
- (ii) all costs of renovating, constructing, equipping and furnishing the Facility (including environmental audits and architectural, engineering and supervisory services with respect to the Facility),
- (iii) certain working capital expenses including but not limited to real estate taxes on the Facility described in 26 C.F.R. § 1.148-6(d)(3)(ii),
- (iv) all fees, taxes, charges and other expenses for recording or filing, as the case may be, any documents that the Issuer or the 2017 Trustee may deem desirable in order to protect or perfect any security interest contemplated by the Indenture,
- (v) interest payable on the Series 2017 Bonds during the Construction Period of the Facility and principal and interest payable during the Construction Period on such interim financing as the School may have secured with respect to the Project in contemplation of the issuance of the Series 2017 Bonds,
- (vi) all legal, accounting and any other fees, costs and expenses incurred in connection with the preparation, printing, reproduction, authorization, issuance, execution, sale and distribution of the Series 2017 Bonds and the Series 2017 Bond Documents and all other documents in connection with the Loan

Agreement or the Indenture, and with any other transaction contemplated by the Loan Agreement or the Indenture,

(vii) any administrative fee and fee for services of the Issuer,

(viii) any funds or reserves required to be maintained by the Debt Service Reserve Fund,

(ix) any expenditures and costs listed in 26 C.F.R. § 1.150-2(f),

(x) reimbursement to the School for any of the above-enumerated costs and expenses, and

(xi) with the use of the Series 2017B Bond proceeds only, the satisfaction of any liens or encumbrances on the Mortgaged Property.

### **Certificates of Completion**

To establish the Completion Date, the School shall deliver to the Issuer and the 2017 Trustee a Completion Certificate signed by an Authorized Representative of the School (i) stating that the acquisition, renovation, construction, equipping and furnishing of the Facility to be paid for with Series 2017 Bond Proceeds has been substantially completed in accordance with the Plans and Specifications therefor; and (ii) stating that except for amounts retained in the Project Fund for the payment of incurred, but unpaid, items of the Costs of the Project or items when the School is then contesting the payment thereof, the payment for all labor, services, materials and supplies used in such renovation, construction, equipping and furnishing has been made or provided for. The School agrees to complete the renovation, construction, equipping and furnishing of the Facility on or before July 1, 2019 unless such date has been extended by the Issuer. The Issuer shall not extend such Completion Date unless the School has caused to be delivered to the Issuer and the 2017 Trustee an acceptable opinion of Bond Counsel stating that the extension of the Completion Date will not adversely affect the exclusion of interest on the Series 2017 Bonds, from gross income for Federal income tax purposes. Such Completion Certificate shall further certify as to the determination of the Rebate Amount as provided in the Tax Regulatory Agreement and the Indenture and shall direct the 2017 Trustee to make any transfer to, or make payments of amounts for deposit in, the Rebate Fund.

### **Completion by School**

(a) In the event that the Net Proceeds of the Series 2017 Bonds are not sufficient to pay in full the costs of renovating, constructing, equipping and furnishing the Project in accordance with the Plans and Specifications, the School agrees to pay all such sums as may be in excess of the Net Proceeds of the Series 2017 Bonds. The School shall execute, deliver and record or file such instruments as the Issuer or the 2017 Trustee may request in order to perfect or protect the Issuer's security interests contemplated by the Indenture, the Mortgage and the Note.

(b) The School shall not be entitled to any reimbursement for such excess cost or expense from the Issuer or the 2017 Trustee or the Owners of any of the Series 2017 Bonds, but

may be reimbursed in a future issue of Bonds, nor shall it be entitled to any diminution or abatement of any other amounts payable by the School under this Loan Agreement.

### **Loan Payments and Other Amounts Payable**

(a) The School shall pay to the Issuer on the Closing Date the balance of the Issuer's administrative fee in the amount of \$157,640.72 (equal to the administrative fee of \$152,170.00, plus \$2,470.72 (total costs related to each of the public hearings), plus \$3,000 (the Initial Compliance Fee)). In addition, the School shall pay to the Issuer an Annual Compliance Fee of \$1,500.00 on or before January 1 of each year commencing on January 1, 2018 and continuing through the term of the Loan Agreement. The School shall pay or cause to be paid to the 2017 Trustee for deposit in the Bond Fund loan payments on January 1, 2018 in an amount equal to the interest payment that will be due and owing on the Series 2017 Bonds on the February 1, 2018 Debt Service Payment Date and thereafter on the first Business Day of each April, July, October and January commencing on April 1, 2018 in an amount equal to 1/2 of the next upcoming interest payment on the Series 2017 Bonds due and owing on the next Debt Service Payment Date, and 1/4 of the next upcoming principal payment or sinking fund installment payment of the Series 2017 Bonds due and owing on the next Debt Service Payment Date; provided however, the School shall commence making payments with respect to principal beginning January 1, 2020. The School's obligation to pay such loan payments shall be evidenced by the Note, substantially in the form attached to the Loan Agreement as Exhibit C.

(b) In addition to the Loan Payments pursuant to the Loan Agreement, throughout the Loan Term, the School shall pay to the Issuer as additional loan payments, within fifteen (15) days of the receipt of demand therefor, an amount equal to the sum of the reasonable expenses of the Issuer and the members thereof incurred (i) by reason of the Issuer's financing of the Project, or (ii) in connection with the carrying out of the Issuer's duties and obligations under the Issuer Documents, the payment of which is not otherwise provided for under this Loan Agreement. Other than the Annual Compliance Fee, the foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Issuer.

(c) In addition, the School shall pay as additional loan payments within fifteen (15) days after receipt of a written demand therefor the Ordinary Expenses and Extraordinary Expenses payable by the Issuer to the 2017 Trustee pursuant to and under the Indenture.

(d) If, after making a valuation of the Debt Service Reserve Fund as set forth in the Indenture, the 2017 Trustee notifies the School that the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement, the School shall pay to the 2017 Trustee, in addition to the amounts required under the Loan Agreement, as a special loan payment, on the first day of each January, April, July and October following such notification, an amount equal to one-fourth (1/4) of the total amount necessary to restore the balance in the Debt Service Reserve Fund to the Debt Service Reserve Fund Requirement.

(e) Unless the amount on deposit in the Repair and Replacement Fund on the first Business Day of any Fiscal Year equals or exceeds the Repair and Replacement Fund Requirement (in which event no additional deposits are required), on the first day of each January, April, July, and October, commencing with the first payment due not later than the July

1 following the Fiscal Year in which the Facility is completed, the School shall pay to the 2017 Trustee amounts, in substantially sixty (60) equal quarterly installments, which, in the aggregate, equal (i) \$100,000 or (ii) the deficiency in the Repair and Replacement Fund if such deficiency is less than the Repair and Replacement Fund requirement of \$100,000. The School shall not be required to pay or cause to be paid to the 2017 Trustee any amounts which would result in moneys in excess of the Repair and Replacement Fund Requirement being held in the Repair and Replacement Fund.

(f) The School, under the provisions of the Loan Agreement, agrees to make or cause to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the School shall fail timely to make or cause to make any payment required in subsection (a) under this heading, the School shall pay the same together with all late payment penalties specified in the Series 2017 Bonds. In the event the School shall fail timely to make or cause to make any payment required in subsection (b) under this heading, the School shall pay the same together with interest on such payment at the per annum rate of ten percent (10%), but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

#### **Obligations of School Under the Loan Agreement Unconditional**

The obligations of the School to make the payments required in the Loan Agreement, and to perform and observe any and all of the other covenants and agreements on its part contained in the Loan Agreement, shall be a general obligation of the School, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Issuer. The School agrees it will not (i) suspend, discontinue or abate any payment required under the Loan Agreement, (ii) fail to observe any of its other covenants or agreements in the Loan Agreement, or (iii) terminate the Loan Agreement for any cause whatsoever unless and until the Series 2017 Bonds, including premium, if any, and interest thereon, have been paid or provided for in the Indenture.

Subject to the foregoing provisions, nothing contained under this heading shall be construed to release the Issuer from the performance of any of the agreements on its part contained in the Loan Agreement or to affect the right of the School to seek reimbursement from, or institute any action against any party as the School may deem necessary to compel performance or recover damages for non-performance from such party.

#### **Payment of Additional Moneys in Prepayment of Series 2013 Bonds**

In addition to any other moneys required or permitted to be paid pursuant to the Loan Agreement, the School may, subject to the terms of the Indenture, pay or cause to be paid moneys to the 2017 Trustee (i) to be applied as the prepayment of amounts to become due and payable by the School pursuant to the Loan Agreement and the Promissory Note, or (ii) to be used for the redemption or prepayment of any Series 2017 Bonds at such time or times and on such terms and conditions as is provided in such Series 2017 Bonds and in the Indenture. The School shall notify the Issuer and the 2017 Trustee in writing as to the purpose of any such payment.

## **Rights and Obligations of the School upon Prepayment of Series 2013 Bonds**

In the event the Series 2017 Bonds shall have been paid in full prior to the termination of the Loan Agreement, or provision for such payment shall have been made in accordance with the Indenture, the Issuer, at the sole cost of the School, shall obtain and record or file appropriate discharges or releases of the Mortgage and the Note or the Loan Agreement and any terminations, discharges or releases of any security interest relating to the Facility or under the Indenture.

## **Maintenance and Modifications of Project by School**

(a) The School shall not abandon the Facility or cause or intentionally or negligently permit any waste to the Improvements. During the Loan Term, the School shall not remove any part of the Facility outside of the jurisdiction of the Issuer and shall (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all reasonable and necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Project in a sound and economic manner.

(b) With the written consent of the Issuer, which shall not be unreasonably withheld, denied, conditioned, or delayed, the School, from time to time, may make any material structural additions, modifications or improvements to the Facility or any part thereof, provided (i) such actions do not adversely affect the structural integrity of the Facility, (ii) such actions do not materially impair the use of the Facility or materially decrease their value. All such additions, modifications or improvements made by the School shall become a part of the Facility. The School agrees to deliver to the Issuer all documents which may be necessary or appropriate to protect the lien of the Mortgage.

## **Installation of Additional Equipment**

Subject to the provisions of the Loan Agreement and the Mortgage, the School or any permitted sublessee of the School from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility, provided that the acquisition and installation of such property is not financed from either the Project Fund or the Renewal Fund. Subject to the provisions of the Loan Agreement and the Mortgage, the School from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the School from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred; or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided

further that, if any damage is occasioned to the Facility by such removal, the School agrees promptly to repair such damage at its own expense.

### **Insurance Required**

At all times throughout the Loan Term, including, when indicated in the Loan Agreement, during the Construction Period, the School shall, at its sole cost and expense, maintain or cause to be maintained insurance covering the Facility against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the School, but in no event less than the principal amount of the Series 2017 Bonds. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the School is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the School who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the School first occupy the Facility.

(c) Insurance protecting the Issuer, the 2017 Trustee and the School against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the School under the Loan Agreement) and arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or occurrence with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage) and with a blanket excess liability coverage in an amount not less than \$5,000,000 protecting the Issuer, the 2017 Trustee and the School against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

(d) During the Construction Period (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the School shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation and employer's liability with limits in accordance with applicable law.

(ii) Comprehensive general liability providing coverage for:

Premises and Operations  
Products and Completed Operations  
Owners Protective  
Contractors Protective  
Contractual Liability  
Personal Injury Liability  
Broad Form Property Damage  
(including completed operations)  
Explosion Hazard  
Collapse Hazard  
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iii) Business auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iv) Excess “umbrella” liability providing liability insurance in excess of the coverage’s in (ii) and (iii) above with a limit of not less than \$5,000,000.

(e) A policy or policies of flood insurance in an amount not less than the principal amount of the Loan or the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Issuer that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

### **Additional Provisions Respecting Insurance**

(a) All insurance required by the Loan Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. The company issuing the policies required by the Loan Agreement shall be rated “A” or better by A.M. Best Co., Inc. 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 procuring entity is engaged. All policies evidencing the insurance required by the Loan Agreement shall contain a standard New York non-contributory mortgagee clause showing the interest of the Issuer as first mortgagee and provide for payment to the 2017 Trustee of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder, and all policies of insurance required by the Loan Agreement shall provide for at least thirty (30) days’ prior written notice of the restriction, cancellation or modification thereof to the Issuer and the 2017 Trustee. The policy evidencing the insurance required by the Loan Agreement shall name the Issuer and the 2017 Trustee as

additional insureds. All policies evidencing the insurance required by the Loan Agreement shall name the Issuer and the School as additional insureds. Upon request of the 2017 Trustee, the School will assign and deliver to the 2017 Trustee the policies of insurance required under subsection (a) under the heading “Insurance Required”, so and in such manner and form that the 2017 Trustee shall at all times, upon such request and until the payment in full of the Series 2017 Bonds, have and hold said policies and the Net Proceeds thereof as collateral for the payment of the Series 2017 Bonds. The policies under subsection (a) under the heading “Insurance Required” shall contain appropriate waivers of subrogation.

(b) The policies (or certificates and binders) of insurance required by subsection (a) under the heading “Insurance Required” shall be deposited with the 2017 Trustee on or before the Closing Date. A copy of the policy (or certificate or binder) of insurance required by the subsection (c) under the heading “Insurance Required” shall be delivered to the Issuer on or before the Closing Date. A copy of the policies (or certificates and binders) of insurance required by the Loan Agreement shall be delivered to the Issuer on or before the Closing Date. The School shall deliver to the Issuer and the 2017 Trustee before the first Business Day of each July thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding twelve (12) month period, insurance of the types and in the amounts required by the Loan Agreement and complying with the additional requirements of the Loan Agreement. Prior to the expiration of each such policy or policies, the School shall furnish to the Issuer and the 2017 Trustee a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by the Loan Agreement. The School shall provide such further information with respect to the insurance coverage required by the Loan Agreement as the Issuer and the 2017 Trustee may from time to time reasonably require.

#### **Application of Net Proceeds of Insurance**

The Net Proceeds of the insurance carried pursuant to the provisions of the Loan Agreement shall be applied as follows: (i) the Net Proceeds of the insurance required by the subsection (a) under the heading “Insurance Required” shall be applied as provided in the summarized section under the heading “Damage and Destruction of the Project”, and (ii) the Net Proceeds of the insurance required by the subsections (b), (c) and (d) under the heading “Insurance Required” shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

#### **Damage or Destruction of the Project**

(a) If any portion of the Facility shall be damaged or destroyed (in whole or in part) at any time during the Loan Term:

(i) the Issuer shall have no obligation to replace, repair, rebuild, restore or relocate the Facility or any project thereof comprising a portion of the Facility; and

(ii) there shall be no abatement or reduction in the Loan Payments or other amounts payable by the School under the Loan Agreement (whether or not such project comprising a portion of the Facility replaced, repaired, rebuilt, restored or relocated); and

(iii) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the 2017 Trustee and deposited in the Renewal Fund, and, except as otherwise provided in the Loan Agreement, the School shall at its option either (A) replace, repair, rebuild, restore or relocate such project comprising a portion of the Facility, or (B) direct the 2017 Trustee to apply such Net Proceeds to the payment of the principal of the Series 2017 Bonds or any Additional Bonds as they become due and payable or the Redemption Price of Bonds subject to Redemption pursuant to the Indenture.

If the School elects to replace, repair, rebuild, restore or relocate the Facility, the 2017 Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in the Indenture to pay or reimburse the School for the cost of such replacement, repair, rebuilding, restoration or relocation.

(b) Any such replacements, repairs, rebuilding, restorations or relocations shall be subject to the following conditions:

(i) such project comprising a portion of the Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction;

(ii) such project comprising a portion of the Facility shall continue to constitute a "project" as such term is defined in the Indenture, and the exclusion of the interest on the Series 2017 Bonds from gross income for Federal income tax purposes shall not, in the opinion of Bond Counsel, be adversely affected;

(iii) such project comprising a portion of the Facility will be subject to no Liens, other than Permitted Encumbrances; and

(iv) any other conditions the Issuer may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of such project comprising a portion of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements and be promptly and fully paid for by the School in accordance with the terms of the applicable contracts.

(d) If the School elects to replace, repair, rebuild, restore or relocate the Facility pursuant to the Loan Agreement, then in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, restoration or relocation, the School shall nonetheless complete the work and pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. All such replacements, repairs, rebuilding, restoration or relocations made pursuant to the terms under this heading, whether or not requiring the expenditure of the School's own money, shall automatically become a part of the Facility as if the same were specifically described in the Loan Agreement.

(e) Any balance of such Net Proceeds remaining in the Renewal Fund after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall, subject to any rebate

required to be made to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement, be applied in accordance with the provisions of the Indenture.

(f) If the School shall exercise its option to terminate the Loan Agreement pursuant to the Loan Agreement, such Net Proceeds shall be applied to the payment of the amounts required to be paid by the Loan Agreement. If an Event of Default under the Loan Agreement shall have occurred and is continuing and the 2017 Trustee shall have exercised its remedies under the Loan Agreement, such Net Proceeds shall be applied to the payment of the amounts required to be paid by the Loan Agreement.

(g) If the entire amount of the Series 2017 Bonds and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, all such remaining Net Proceeds shall be paid to the School.

(h) Except upon the occurrence and continuation of an Event of Default, the School with the consent of the Issuer, not to be withheld unreasonably, shall have the right to settle and adjust all claims under any policies of insurance required by the Loan Agreement on behalf of the Issuer and on its own behalf.

### **Condemnation**

(a) If title to or use of the Facility or any portion thereof comprising a portion of the Facility shall be taken by Condemnation (in whole or in part) at any time during the Loan Term:

(i) the Issuer shall have no obligation to replace, repair, rebuild, restore or relocate such project comprising a portion of the Facility or acquire, by construction or otherwise, facilities of substantially the same nature as the Facility (“**Substitute Facility**”); and

(ii) there shall be no abatement or reduction in the amounts payable by the School under the Loan Agreement (whether or not such facility comprising a portion of the Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired); and

(iii) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the 2017 Trustee and deposited in the Renewal Fund, and, except as otherwise provided in the Loan Agreement, the School shall either:

(A) replace, repair, rebuild, restore or relocate such facility comprising a portion of the Facility or acquire Substitute Facility, or

(B) redeem an amount of the Series 2017 Bonds equal to the Net Proceeds in accordance with the Indenture.

If the School replaces, repairs, rebuilds, restores or relocates such facility comprising a portion of the Facility or acquires a Substitute Facility, the 2017 Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in the Indenture to pay or reimburse the

School for the cost of such replacement, repair, rebuilding, restoration, relocation or acquisition of such Substitute Facility.

(b) Any such replacements, repairs, rebuilding, restorations, relocations or acquisitions of a Substitute Project shall be subject to the following conditions:

(i) such facility comprising a portion of the Facility or the Substitute Facility shall be in substantially the same condition and value as an operating entity as existed prior to the condemnation;

(ii) such project comprising a portion of the Project or the Substitute Project shall continue to constitute a "facility" as such term is defined in the Act, and the exclusion of the interest on the Series 2017 Bonds from gross income for Federal income tax purposes shall not, in the opinion of Bond Counsel, be adversely affected;

(iii) such project comprising a portion of the Facility or the Substitute Facility will be subject to no Liens, other than Permitted Encumbrances; and

(iv) any other conditions the Issuer may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of such facility comprising a portion of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements and shall be promptly and fully paid for by the School in accordance with the terms of the applicable contracts.

(d) If the School elects to replace, repair, rebuild, restore or relocate pursuant to the Loan Agreement, then in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, restoration, relocation or acquisition of a Substitute Facility, the School shall nonetheless complete the work or the acquisition and pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. All such replacements, repairs, rebuilding, restoration, relocations and such acquisition of a Substitute Facility made pursuant to the terms under this heading, whether or not requiring the expenditure of the School's own money, shall automatically become a part of the Facility as if the same were specifically described in the Loan Agreement.

(e) Any balance of such Net Proceeds remaining in the Renewal Fund after payment of all costs of replacement, repair, rebuilding, restoration, relocation or acquisition of the Substitute Facility shall, subject to any rebate required to be made to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement, be used to redeem the Series 2017 Bonds as provided in the Indenture.

(f) If the School shall exercise its option to terminate the Loan Agreement pursuant to the Loan Agreement, such Net Proceeds shall be applied to the payment of the amounts required to be paid by the Loan Agreement. If any Event of Default under the Loan Agreement shall have occurred and is continuing and the 2017 Trustee shall have exercised its remedies under the Loan Agreement, such Net Proceeds shall be applied to the payment of the amounts required to be paid by the Loan Agreement.

(g) If the entire amount of the Series 2017 Bonds and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, all such remaining Net Proceeds shall be paid to the School.

(h) Except upon the occurrence and continuation of an Event of Default, the School with the consent of the Issuer, not to be unreasonably withheld, shall have the right to settle and adjust all claims under any Condemnation proceedings on behalf of the Issuer and on its own behalf.

### **Hold Harmless Provisions**

(a) The School agrees that the Issuer, the 2017 Trustee and each Paying Agent shall not be liable for and agrees to defend, indemnify, release and hold the Issuer, the 2017 Trustee and each Paying Agent harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the 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 Facility or the Land, or (ii) liability arising from or expense incurred in connection with the Issuer's financing, construction, renovation, and equipping of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the School of any of its covenants contained in the Loan Agreement, and all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Issuer, the 2017 Trustee or any Paying Agent are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Issuer, the 2017 Trustee or any Paying Agent or any of their respective members, directors, trustees, officers, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Issuer, the 2017 Trustee or any Paying Agent, or any of their respective members, directors, trustees, officers, agents or employees, and irrespective of the breach of a statutory obligation (other than a breach caused by any of their respective gross negligence or intentional or willful wrongdoing) or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law.

(b) Notwithstanding any other provisions of the Loan Agreement, the obligations of the School pursuant to the terms under this heading shall remain in full force and effect after the termination of the 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 described in the Loan Agreement may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters described in the Loan Agreement and the payment of all expenses and charges incurred by the Issuer, the 2017 Trustee or their respective members, directors, officers, agents and employees, relating to the enforcement of the provisions specified in the Loan Agreement.

(c) In the event of any claim against the Issuer, the 2017 Trustee or any Paying Agent or their respective members, directors, officers, agents or employees by any employee or contractor of the School 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 School under the Loan Agreement

shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

(d) The 2017 Trustee and each Paying Agent shall be third party beneficiaries of the School's obligations under the terms under this heading.

### **Right to Inspect Project**

The Issuer and the 2017 Trustee and the duly authorized agents of either of them shall have the right at all reasonable times upon prior notice to the School to inspect the Facility.

### **School to Maintain Its Existence**

The School agrees that during the Loan Term (a) it will maintain its existence as a not-for-profit educational corporation constituting an Exempt Organization subject to service of process within the State and will not dissolve or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it or acquire all or substantially all of the assets of one or more entities without the prior written consent of the Issuer; (b) it will preserve its status as an organization described in Section 501(c)(3) of the Code; (c) it will operate as an institution of primary learning and will accept Educational Aid and fees for services provided by the School which, together with other available funds, will be sufficient in each fiscal year to provide funds for the following: (1) the payment by the School of all of its expenses for the operation, maintenance and repair of its Facility in such year; (2) the payment of all amounts due under the Loan Agreement in such year; and (3) the payment of all Indebtedness and all other obligations of the School due in such year; and (d) it will not perform any act, enter into any agreement, or use or permit the Facility to be used in any manner or for any unrelated trade or business as described in Section 513(a) of the Code, which could adversely affect the exemption of interest on the Series 2017 Bonds from Federal income taxes pursuant to Section 103 and 145 of the Code except as provided in the Tax Regulatory Agreement. Furthermore, except as permitted by the Tax Regulatory Agreement prior to the School performing any act, entering into any agreement or using or permitting the Facility to be used in any manner that would constitute an unrelated trade or business within the meaning of Section 513(a) of the Code, the School shall provide written notice to the Issuer and the 2017 Trustee and the Issuer and the 2017 Trustee shall receive an opinion of counsel satisfactory to each of them to the effect that such contemplated act, agreement or use will not adversely affect the exemption of interest on the Series 2017 Bonds for Federal income tax purposes.

### **Qualification in State**

The School throughout the Loan Term shall continue to be duly authorized to do business in the State as an entity of primary education.

### **Books of Record and Account; Financial Statements**

The School at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the School.

### **Compliance with Orders, Ordinances, Etc.**

(a) The School, throughout the Loan Term, agrees that it will promptly comply, and take all reasonable steps to cause any tenant or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof or to the renovation, construction and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Facility or any part thereof, or to the renovation, construction, equipping and furnishing thereof, or to any use, manner of use or condition of the Facility or any part thereof and of all companies or associations insuring the premises. The School retains the right to contest the imposition of any statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary which now or at any time hereafter have been made applicable to the Facility so long as such contest does not impose sanctions or liability on the Trustee or the Issuer or adversely affect the exclusion from gross income of interest on the Series 2017A Bonds for federal income tax purposes.

(b) The School shall keep or cause the Facility to be kept free of Hazardous Substances, except in compliance with applicable law. Without limiting the foregoing, the School shall not cause or permit the Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws, regulations and permits, nor shall the School cause or permit, as a result of any intentional or unintentional act or omission on the part of the School or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Facility or onto any other property. The School shall comply with and shall take all reasonable steps to ensure compliance by all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and shall take all reasonable steps to ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The School shall (a) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances, on, from, or affecting the Facility (i) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, (ii) to the reasonable satisfaction of the 2017 Trustee and the Issuer, and (iii) in accordance with the orders and directives of all federal, state, and local governmental authorities; and (b) defend, indemnify, and hold harmless the 2017 Trustee and the Issuer, their employees, agents, officers, and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (i) the presence, disposal, release, or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, (ii) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous

Substances, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the 2017 Trustee and the Issuer, which are based upon or in any way related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, reasonable investigation and laboratory fees, court costs, and reasonable litigation expenses. The provisions under this heading shall be in addition to any and all other obligations and liabilities the School may have to the 2017 Trustee at common law, and shall survive the transactions contemplated in the Loan Agreement.

(c) Notwithstanding the provisions of subsections (a) and (b) under this heading, the School may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the School may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Issuer or the 2017 Trustee shall notify the School that by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the School shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the 2017 Trustee and to the Issuer. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the School shall use all reasonable efforts to not cause or permit such use or occupancy to be discontinued without the prior written consent of the Issuer and the 2017 Trustee.

(d) Notwithstanding the provisions of under this heading, if, because of a breach or violation of the provisions of subsections under this heading (without giving effect to subsection (c) under this heading), either the Issuer, the 2017 Trustee, or any of their respective members, directors, officers, agents, or employees, shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Issuer or the 2017 Trustee, the School shall immediately provide legal protection and/or pay amounts necessary in the opinion of the Issuer or the 2017 Trustee, as the case may be, and their respective members, directors, officers, agents and employees deem sufficient, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions under this heading, the 2017 Trustee and the Issuer retain the right to defend themselves in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of themselves, the 2017 Trustee and the Issuer shall each select their own counsel, and any and all reasonable costs of such defense, including, without limitation, reasonable attorney and consultant fees, reasonable investigation and laboratory fees, court costs, and reasonable litigation expenses, shall be paid by the School.

### **Discharge of Liens and Encumbrances**

(a) The School, throughout the Loan Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility, the Mortgaged Property or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) under this heading, the School may in good faith contest any such Lien. In such event, the School may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Issuer or the 2017 Trustee shall notify the School that by nonpayment of any such item or items, the lien of the Mortgage may be materially endangered or the Facility or any part thereof may be subject to loss or forfeiture, in which event the School shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Issuer, thereby causing such Lien to be removed or by taking such other actions as may be satisfactory to the Issuer to protect its interests. Mechanics' Liens shall be discharged or bonded within ninety (90) days following the School's receipt of notice of the filing or perfection thereof.

### **Financial Covenants**

(a) The School covenants and agrees to maintain unrestricted "Cash on Hand" of at least twenty-five (25) Days' Cash on Hand for fiscal year 2018, at least thirty-five (35) Days' Cash on Hand, for fiscal year 2019, and at least forty-five (45) Days' Cash on Hand, for fiscal year 2020 and thereafter, until the Series 2017 Bonds are no longer outstanding (the "Cash on Hand Requirement"). The Cash on Hand Requirement shall be tested as of June 30 of each year based on the results of the annual audit of the School for such Fiscal Year upon the release of such audit (the "Testing Date"). Following each Testing Date, the School will provide the Dissemination Agent (as defined in the Continuing Disclosure Agreement) with a certification of having met the Cash on Hand Requirement no later than the earlier of the ensuing December 31 or three (3) weeks after completion of the School's audit for the previous Fiscal Year. The foregoing is subject to the qualification that if applicable State or federal laws or regulations, or the rules and regulations of agencies having jurisdiction, shall not permit the School to maintain the Cash on Hand Requirement, then the School shall, in conformity with the then prevailing laws, rules, or regulations, maintain its Cash on Hand equal to the maximum permissible level (the "Adjusted Cash on Hand Requirement"). The School shall provide the 2017 Trustee with a written certification, attached to the Loan Agreement as Exhibit D if the Adjusted Cash on Hand becomes applicable and the amount of such Adjusted Cash on Hand and the 2017 Trustee shall be fully protected in relying on such written certification. In such case, the certification shall be made with respect to the Adjusted Cash on Hand Requirement in lieu of the Cash on Hand Requirement.

(b) If the Cash on Hand for any Testing Date is less than the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement, as applicable, then, the School shall retain on an annual basis 50% of the Excess Net Revenues until such time as the School is in compliance with the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement, as applicable. For avoidance of doubt, the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement shall continue to only be tested on each Testing Date. In the event that the School fails to satisfy the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement, as applicable, and does not retain on an annual basis 50% of the Excess Net Revenues, then the Trustee shall give notice thereof to the Bondholders, and upon the written direction of the two thirds (2/3rds) of the Owners of the Outstanding Bonds, the School will promptly employ a Management Consultant to review and analyze the operations and

administration of the School, inspect the Facility, and submit to the School and the Trustee written reports, and make such recommendations as to the operation and administration of the School as such Management Consultant deems appropriate, including any recommendation as to a revision of the methods of operation thereof. The School agrees to consider any recommendations by the Management Consultant and, to the fullest extent practicable, to adopt and carry out such recommendations. The 2017 Trustee has no duty or obligation to monitor the School's compliance with any recommendations and the 2017 Trustee's sole responsibility is to forward such recommendations to the Bondholders. So long as the School is otherwise in full compliance with its obligations under the Loan Agreement, including following, to the fullest extent practicable, the recommendations of the Management Consultant, it shall not constitute an Event of Default under the Loan Agreement if the School fails to meet the Cash on Hand Requirement or the Adjusted Cash on Hand Requirement, as applicable, and retain on an annual basis 50% of the Excess Net Revenues.

(c) The School covenants that, so long as any Bonds remain Outstanding, it will maintain a Long-Term Debt Service Coverage Ratio greater than 1.15 to 1.0. Beginning with the Fiscal Year commencing July 1, 2018, the School shall calculate annually the Long-Term Debt Service Coverage Ratio for the most recently completed Fiscal Year, and shall provide a copy of such calculation verified and certified by certified public accountants who completed the audit of the School's financial statements for the corresponding Fiscal Year to the 2017 Trustee at the time of delivery of the annual audited financial statements. If the Long-Term Debt Service Coverage Ratio indicates that the Long-Term Debt Service Coverage Ratio of the School for such previous Fiscal Year shall be less than 1.15 to 1.0 but equal to or greater than 1.0 to 1.0, the School shall within thirty (30) days of the date of such calculation, provide the 2017 Trustee with a detailed written explanation from an Authorized Representative of the School stating the reasons for the School's failure to achieve the required Long-Term Debt Service Coverage Ratio and its plan for achieving such Long-Term Debt Service Coverage Ratio by the end of the next Fiscal Year. In the event that the School is unable to comply with the above Long-Term Debt Service Coverage Ratio requirement within 12 months of the initial non-compliance, then the Owners of two-thirds (2/3) of the Outstanding Bonds shall have the right to direct the 2017 Trustee to require the School to engage, at the School's expense, a Management Consultant acceptable to the 2017 Trustee, which shall deliver a written report within seventy-five (75) days of engagement to the 2017 Trustee and the School containing recommendations concerning the School's:

- (i) operations;
- (ii) financing practices and activities, including Short-Term Indebtedness, lease financing, and investment activities;
- (iii) management practices, including the use of consultants, budgeting practices, and ongoing financial systems and monitoring of the School's financial condition;
- (iv) governance and administration practices; and
- (v) other factors relevant to maintaining such compliance.

Upon submission of the Management Consultant's report, the School shall arrange for payment of the amount owed to the Management Consultant and issue a written certificate to the 2017 Trustee indicating its acceptance or rejection of all or any material portion of the recommendations of the Management Consultant within 30 days of receiving the report of the Management Consultant. The Owners of two-thirds (2/3) of the Outstanding Bonds shall have the right to require the School to comply with any reasonable recommendation of the Management Consultant with respect to items (i) through (v) above.

Notwithstanding anything to the contrary contained in the Loan Agreement, the School's failure to maintain a Long-Term Debt Service Coverage Ratio of at least 1.0 to 1.0 shall constitute an Event of Default under the Loan Agreement.

### **Certain Additional Covenants**

(a) The School agrees to furnish to the Issuer and the 2017 Trustee, and, upon written request to the School, to any registered Bondholder of \$1,000,000 in aggregate principal amount of the Series 2017 Bonds, as soon as available and in any event within one hundred eighty days (180) after the close of each fiscal year of the School, a copy of the annual audited financial statements of the School, including statements of financial position as of the end of such year, and the related statement of activities for such fiscal year, prepared in accordance with generally accepted accounting principles, audited by a firm of independent certified public accountants.

(b) The School shall deliver to the Issuer and the 2017 Trustee with each delivery of annual financial statements required by the Loan Agreement, a certificate of an Authorized Representative of the School as to whether or not, as of the close of such preceding fiscal year of the School, and at all times during such fiscal year, the School was in compliance with all the provisions which related to the School in the Bond Documents, including without limitation the Financial Covenants of the Loan Agreement, and if such Authorized Representative of the School shall have obtained knowledge of any default in such compliance or notice of such default, such Authorized Representation of the School shall disclose in such certificate, such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default under the Loan Agreement, and any action proposed to be taken by the School with respect thereto.

(c) The School shall immediately notify the Issuer and the 2017 Trustee of the occurrence of any default or any event which with notice and/or lapse of time would constitute a default under the Loan Agreement or any of the other Bond Documents. Any notice required to be given pursuant to the Loan Agreement, as described under this heading, shall be signed by an Authorized Representative of the School and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the School shall state this fact on the notice.

(d) The School will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the School, as the Issuer or the 2017 Trustee deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of the Loan Agreement and any rights of the Issuer or the 2017 Trustee under the Loan Agreement or under the Indenture.

## **Continuing Disclosure Agreement**

The School has executed and delivered to the 2017 Trustee a Continuing Disclosure Agreement, dated the date of initial delivery of the Series 2017 Bonds. The School covenants and agrees with the holders from time to time of the Series 2017 Bonds that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement, as amended from time to time, applicable to it. Notwithstanding any other provision of the Loan Agreement, failure of the School to comply with the Continuing Disclosure Agreement shall not be considered a default or an event of default under the Loan Agreement and the rights and remedies provided by the Loan Agreement upon the occurrence of such a default or an event of default shall not apply to any such failure, but the Continuing Disclosure Agreement may be enforced only as provided therein.

## **Securities Law Status**

The School affirmatively represents, warrants and covenants that, as of the date of the Loan Agreement, it is an organization organized and operated: (i) exclusively for civic or charitable purposes; (ii) not for pecuniary profit; and (iii) no part of the net earnings of which inure to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act of 1933, as amended, and of the Securities Exchange Act of 1934, as amended. The School agrees that it shall not perform any act nor enter into any agreement which shall change such status as set forth pursuant to the Loan Agreement, by the terms described in this heading.

## **Rebate Covenant**

The School covenants to make, or cause to be made, any and all payments required to be made to the United States Department of the Treasury in connection with the Series 2017 Bonds pursuant to Section 148(f) of the Code and to comply with instructions received from Bond Counsel pursuant to the certification with respect to the making of any such payments.

## **Additional Indebtedness**

The School shall be precluded from incurring Additional Indebtedness that is senior to the lien of the Mortgage on the Facility and the obligations of the School under the Loan Agreement. The School may incur Additional Parity Indebtedness only upon providing to the 2017 Trustee a certificate of an Authorized Representative of the School, including Additional Bonds issued under the Indenture, accompanied by a confirming accountant's certificate, to the effect that (i) the requirements of the Indenture have been met, but this clause applies only if the other Indebtedness takes the form of Additional Bonds, and (ii) either:

- (a) the combined Maximum Annual Debt Service for outstanding Long-Term Indebtedness related to the Project and the Long-Term Indebtedness related to the Project proposed to be incurred is equal to or less than ten percent (10%) of the Gross Revenues as determined in the most recent audited financial statements of the School; or

(b) the Net Income Available for Debt Service as determined in the most recent audited financial statements of the School must be sufficient to pay an amount representing not less than one-hundred and twenty-five percent (125%) of the combined Maximum Annual Debt Service for currently outstanding Long-Term Indebtedness related to the Project and the Long-Term Indebtedness related to the Project proposed to be incurred.

In addition to the foregoing, prior to the incurrence of Additional Parity Indebtedness, the Issuer, the Custodian, the 2017 Trustee, the School and any issuer of such Additional Parity Indebtedness shall have entered into an intercreditor agreement, satisfactory to all parties, providing for, among other things, the application and disposition of amounts on deposit in the Custody Account under the Custody Agreement.

Additional Indebtedness subordinate to the obligations of the School under this agreement and lien on the Facility are permitted by the Loan Agreement.

#### **Agreement to Obtain As Built Appraisal.**

The School covenants to obtain, pay for all expenses of and provide to the 2017 Trustee an “as built” appraisal of the Facility not later than 90 days following the Completion Date.

#### **Negative Pledge; Liens Securing Additional Indebtedness**

The School covenants that it will not create or allow Liens upon any of its Property, except that the School may create or allow (i) Liens on the Mortgaged Property provided that the Indebtedness secured by such Lien is permitted to be incurred in accordance with the limitations on Additional Indebtedness set forth in the Loan Agreement and such Lien is not senior to the Mortgage granted by the Loan Agreement and the holder of such Lien has entered into an intercreditor agreement with the Trustee pursuant to which such lienholder has agreed that the Trustee shall act as Collateral Agent for the benefit of the Holders of all Bonds and any other Indebtedness permitted under the Loan Agreement and the Trustee shall control all remedies related to the Mortgaged Property, (ii) Liens on real property of the School (and improvements and personal property located thereon) other than the Mortgaged Property, and (iii) Permitted Liens.

#### **Agreement to Obtain Rating from Rating Agency**

The School covenants that it will not create or allow Liens upon any of its Property, except that the School may create or allow (i) Liens on the Mortgaged Property provided that the Indebtedness secured by such Lien is permitted to be incurred in accordance with the limitations on Additional Indebtedness set forth in the Loan Agreement and such Lien is not senior to the Mortgage granted and the holder of such Lien has entered into an intercreditor agreement with the 2017 Trustee pursuant to which such lienholder has agreed that the 2017 Trustee shall act as Collateral Agent for the benefit of the Holders of all Series 2017 Bonds and any other Indebtedness permitted under the Loan Agreement and the 2017 Trustee shall control all remedies related to the Mortgaged Property, (ii) Liens on real property of the School (and

improvements and personal property located thereon) other than the Mortgaged Property, and (iii) Permitted Liens.

### **Key Person Insurance**

The School shall obtain, no later than the date of issuance of the Series 2017 Bonds, a \$2,000,000 “key person” life insurance policy per person on the lives of Reverend Barrington F.H. Goldson, Chairman of the Board of Trustees and Wayne Haughton, Executive Director until December 1, 2033 which names the 2017 Trustee as the primary beneficiary thereunder. The receipt of “key person” person insurance proceeds upon the death of one “key person” named in the Loan Agreement does not void the requirement to maintain “key person” insurance upon the other surviving “key person” named in the Loan Agreement through the full 20-year term. If the School is unable to obtain the “key person” life insurance required by the Loan Agreement pursuant to the terms described under this heading, or the “key persons” named in the Loan Agreement terminate their employment with the School, the School shall notify the 2017 Trustee to notify the registered owners of such occurrence, and the registered owners of at least a majority of the Outstanding Bonds shall have the right to direct the Charter School on how to proceed with meeting the requirements set forth in the Loan Agreement. The School agrees to notify the 2017 Trustee of the death of any “key person” named in the Loan Agreement. Said “key person” insurance policies and any proceeds thereof shall be held and applied by the 2017 Trustee as provided in the Indenture.

### **Assignment, Leasing and Subleasing**

(a) In addition to the limitation contained in the Loan Agreement, the Loan Agreement may not be assigned by the School, in whole or in part, and except in the ordinary course of the operations of the School, the Facility may not be leased, in whole or in part, without the prior written consent of the Issuer which consent shall not be unreasonably withheld, conditioned, delayed, or denied. Any assignment or lease shall be on the following conditions:

- (i) no assignment or lease shall relieve the School from primary liability for any of its obligations under the Loan Agreement or under any other of the School Documents;
- (ii) the assignee or lessee shall assume the obligations of the School under the Loan Agreement to the extent of the interest assigned or leased, shall be jointly and severally liable with the School for the performance thereof and shall be subject to service of process in the State of New York;
- (iii) the School shall, within ten (10) business days after the delivery thereof, furnish or cause to be furnished to the Issuer and to the 2017 Trustee a true and complete copy of such assignment or lease and the instrument of assumption;
- (iv) neither the validity nor the enforceability of the Series 2017 Bonds or any Bond Document shall be adversely affected thereby;
- (v) the exclusion of the interest on the Series 2017 Bonds from gross income for Federal income tax purposes will not be adversely affected;

- (vi) the assignee or lessee shall be an Exempt Organization and shall utilize the Facility substantially in the same manner as the School as facilities of primary education.

(b) If the 2017 Trustee or the Issuer shall so request, as of the purported effective date of any assignment or lease pursuant to the Loan Agreement as described under subsection (a) of this heading, the School, at its sole cost, shall furnish the 2017 Trustee or the Issuer, as appropriate, with an opinion, in form and substance satisfactory to the 2017 Trustee or the Issuer, as appropriate, (i) of Bond Counsel as to items (v) and (vi) above, and (ii) of Independent Counsel as to items (i), (ii) and (iv) above.

### **Merger of Issuer**

(a) Nothing contained in the Loan Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of its interest in the entire Facility to any other local development corporation, political subdivision, or other entity which has the legal authority to enter into the Loan Agreement, provided that:

- (i) upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of the Loan Agreement to be kept and performed by the Issuer shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Issuer's interest in the Facility shall be transferred; and

- (ii) the exclusion of the interest on the Series 2017 Bonds from gross income for Federal income tax purposes shall not be adversely affected thereby.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of interest, the Issuer shall give notice thereof in reasonable detail to the School and the 2017 Trustee and shall furnish to the School and the 2017 Trustee (i) a favorable opinion of Independent Counsel as to compliance with the provisions of the Loan Agreement, and (ii) a favorable opinion of Bond Counsel opining as to compliance with the provisions of the Loan Agreement. The Issuer promptly shall furnish such additional information with respect to any such transaction as the School or the 2017 Trustee may reasonably request.

### **Events of Default Defined**

(a) The following shall be "Events of Default" under the Loan Agreement:

- (i) the failure by the School to pay or cause to be paid on the date due, the amounts specified to be paid pursuant to subsections (a), (b) and (d) under the heading "Loan Payments and Other Amounts Payable";

- (ii) the failure by the School to observe and perform certain covenants enumerated in the Loan Agreement;

- (iii) any representation or warranty of the School in the Loan Agreement or in the Bond Purchase Agreement shall prove to have been false or

misleading when made in any material respect and the same shall have a materially adverse effect upon the School, the Project, or the exclusion of interest on the Series 2017 Bonds from gross income for federal income tax purposes;

(iv) the failure by the School to observe and perform any covenant, condition or agreement under the Loan Agreement on its part to be observed or performed (except obligations referred to in 10.1(a)(i) or (ii)) for a period of thirty (30) days after receiving written notice, specifying such failure and requesting that it be remedied, given to the School by the Issuer or the 2017 Trustee; provided, however, that if such default cannot be cured within thirty (30) days but the School is proceeding diligently and in good faith to cure such default, then the School shall be permitted an additional ninety (90) days within which to remedy the default;

(v) the dissolution or liquidation of the School; or the failure by the School to release, stay, discharge, lift or bond within sixty (60) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the School generally to pay its debts as they become due; or an assignment by the School for the benefit of creditors; the commencement by the School (as the debtor) of a case in Bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in Bankruptcy or any proceeding under any other insolvency law against the School (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the School as the debtor in such case or proceeding, or such case or proceeding is consented to by the School or remains undismissed for sixty (60) days, or the School consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the School for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors (the term "dissolution or liquidation of the School or the Guarantors" as used under the provisions Loan Agreement, as described in this subsection, shall not be construed to include any transaction permitted by the Loan Agreement);

(vi) an Event of Default under or a default on the part of the School of its obligations under the Indenture shall have occurred and be continuing;

(vii) the invalidity, illegality or unenforceability of any of the Bond Documents, provided the same does not permit the Issuer or the 2017 Trustee, as the case may be, to recognize the material benefits of the respective documents;

(viii) a breach of any covenant or representation contained in the Loan Agreement with respect to environmental matters;

(ix) an Event of Default under the Mortgage shall have occurred and be continuing; or

(x) an event of default by the School under any other Indebtedness of the School beyond any applicable cure periods.

(b) Notwithstanding the provisions of the Loan Agreement, if by reason of force majeure any party to the Loan Agreement shall be unable in whole or in part to carry out its obligations under the Loan Agreement (other than its obligations under subsection (a), (b) or (d) under the heading “Loan Payments and Other Amounts Payable”) and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the 2017 Trustee, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under the Loan Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The term “force majeure” as used in the Loan Agreement shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, 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, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. 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 and other industrial disturbances by acceding to the demands of the opposing party or parties.

### **Remedies on Default**

(a) Whenever any Event of Default shall have occurred, the Issuer or the 2017 Trustee may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the School, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid Loan Payments payable pursuant to the Loan Agreement and pursuant to the Promissory Note in amount equal to the aggregate unpaid principal balance of all Series 2017 Bonds together with all interest which has accrued and will accrue thereon to the date of payment and all premium, if any, and (B) all other payments due under the Loan Agreement; provided, however, that if an Event of Default specified in the Loan Agreement shall have occurred, such Loan Payments and other payments due under the Loan Agreement shall become immediately due and payable without notice to the School or the taking of any other action by the 2017 Trustee;

(ii) apply any undisbursed money in the Project Fund and Renewal Fund to the payment of the costs and expenses incurred in connection with the enforcement of the rights and remedies of the 2017 Trustee and the Issuer, and (b)

apply any undisbursed monies in the Project Fund, the Renewal Fund, and any other Fund or Account under the Indenture (other than those sums attributable to Unassigned Rights and except for the monies and investments from time to time in the Rebate Fund) to the payment of the outstanding principal amount of the Series 2017 Bonds and premium, if any, and accrued and unpaid interest on the Series 2017 Bonds;

(iii) direct the 2017 Trustee to foreclose on the Mortgage or otherwise realize upon or seize any portion of the Trust Estate;

(iv) take any other action at law or in equity that may appear necessary or desirable to collect the payments then due or thereafter to become due under the Loan Agreement and to enforce the obligations, agreements or covenants of the School under the Loan Agreement; or

(v) exercise any other rights or remedies under any control agreement with respect to any Intercreditor Agreement.

(b) Reserved.

(c) Any sums payable to the Issuer as a consequence of any action taken in accordance with to the Loan Agreement, pursuant to the terms described under this heading (other than those sums attributable to Unassigned Rights and except for the moneys and investments from time to time in the Rebate Fund) shall be paid to the Series 2017 Trustee and applied to the payment of the Series 2017 Bonds.

(d) No action taken pursuant to the Loan Agreement, as described in the terms under this heading, shall relieve the School from its obligation to make all payments required by the Loan Agreement and pursuant to the Promissory Note.

(e) Reserved.

(f) The Issuer shall have all of the rights, powers and remedies of a secured party under the Uniform Commercial Code of New York, including, without limitation, the right to seize or otherwise dispose of any or all of the Collateral described in the Loan Agreement, and to receive the payment of or take possession of the Collateral or the proceeds thereof. Upon the occurrence of an Event of Default by the School under the Loan Agreement, the School agrees that it will not commingle any moneys or other proceeds received by it in connection with any Collateral with any other moneys, funds or accounts of the School.

### **Remedies Cumulative**

No remedy conferred in the Loan Agreement upon or reserved to the Issuer or the 2017 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 the Loan Agreement 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 2017 Trustee, as appropriate, to exercise any remedy reserved to it in the Loan Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in the Loan Agreement.

#### **Agreement to Pay Attorneys' Fees and Expenses**

(a) In the event the School should default under any of the provisions of the Loan Agreement and the Issuer should employ attorneys or incur other expenses for the collection of amounts payable under the Loan Agreement or the enforcement of performance or observance of any obligations or agreements on the part of the School contained in the Loan Agreement, the School shall, on demand therefor, pay to the Issuer the reasonable fees of such attorneys and such other reasonable expenses so incurred.

(b) In the event the School should default under any of the provisions of the Loan Agreement and the 2017 Trustee should employ attorneys or incur other expenses for the collection of amounts payable under the Loan Agreement or the enforcement of performance or observance of any obligations or agreements on the part of the School contained in the Loan Agreement, the School shall, on demand therefor, pay to the 2017 Trustee the reasonable fees of such attorneys and such other reasonable expenses so incurred.

(c) In the event the School should default under any of the provisions of the Loan Agreement and the Custodian should employ attorneys or incur other expenses for the collection of amounts payable under the Loan Agreement or the enforcement of performance or observance of any obligations or agreements on the part of the School contained in the Loan Agreement, the School shall, on demand therefor, pay to the Custodian the reasonable fees of such attorneys and such other reasonable expenses so incurred.

#### **No Additional Waiver Implied by One Waiver**

In the event any agreement contained in the Loan Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under the Loan Agreement.

#### **Early Termination of Loan Agreement**

The School shall have the option to terminate the Loan Agreement at any time that the Series 2017 Bonds are subject to redemption in whole under the Indenture and upon filing with the Issuer and the 2017 Trustee a certificate signed by an Authorized Representative of the School stating the School's intention to do so pursuant to the Loan Agreement, as described by the terms under this heading, and the date upon which such payment shall be made (which date shall not be less than forty-five (45) nor more than ninety (90) days from the date such certificate is filed) and upon compliance with the requirements set forth in the Loan Agreement.

#### **Conditions to Early Termination of Loan Agreement**

In the event the School exercises its option to terminate the Loan Agreement in accordance with the provisions of the Loan Agreement, the School shall make the following payments:

(a) To the 2017 Trustee for the account of the Issuer: an amount certified by the Trustee which, when added to the total amount on deposit with the 2017 Trustee for the account of the Issuer and the School and available for such purpose, will be sufficient to pay the principal of, Redemption Price of, and interest to maturity or the earliest practicable redemption date, as the case may be, on the Series 2017 Bonds, all expenses of redemption and the 2017 Trustee's fees and expenses.

(b) To the Issuer: an amount certified by the Issuer sufficient to pay all unpaid fees and expenses of the Issuer incurred under the Bond Documents.

(c) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Bond Documents.

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## **SUMMARY OF CERTAIN PROVISIONS OF THE SECOND AMENDED AND RESTATES CUSTODY AGREEMENT**

*The following is a brief summary of certain provisions of the Second Amended and Restated Custody Agreement and should not be considered a full statement thereof. Reference is made to the Custody Agreement for complete details of the terms thereof.*

### **Representations and Warranties of the School**

The School makes the following representations and warranties as the basis for the undertakings on its part contained in the Custody Agreement:

2. The School is an education corporation duly organized and validly existing under the laws of the State, is qualified to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into the Custody Agreement and carry out its obligations under the Custody Agreement and has been duly authorized to execute the Custody Agreement. The School has been qualified as a 501(c)(3) corporation. The Custody Agreement and the transactions contemplated by the Custody Agreement have been duly authorized by all necessary action on the part of the School.

3. Neither the execution and delivery of the Custody Agreement, the consummation of the transactions contemplated by the Custody Agreement nor the fulfillment of or compliance with the provisions of the Custody Agreement will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the certificate of incorporation or by-laws of the School or any order, judgment, agreement or instrument to which the School is a party or by which the School 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 School other than pursuant to the Security Documents or a Permitted Lien, or (3) require consent (which has not been received) under any corporate restriction, agreement or instrument to which the School is a party or by which the School or any of its Property may be bound or affected, or (4) require consent (which has not been received) under, 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 School or any of the Property of the School.

### **Representations and Warranties of the Custodian**

The Custodian makes the following representations and warranties as the basis for the undertakings on its part contained in the Custody Agreement:

1. The Custodian is a banking corporation duly organized and validly existing under the laws of the State of New York, is qualified to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into the Custody Agreement and carry out its obligations under the Custody Agreement and

has been duly authorized to execute the Custody Agreement. The Custody Agreement and the transactions contemplated by the Custody Agreement have been duly authorized by all necessary action on the part of the Custodian.

2. Neither the execution and delivery of the Custody Agreement, the consummation of the transactions contemplated by the Custody Agreement nor the fulfillment of or compliance with the provisions of the Custody Agreement will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the articles of association or by-laws of the Custodian or any order, judgment, agreement or instrument to which the Custodian is a party or by which the Custodian 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 Custodian other than pursuant to the Security Documents, or (3) require consent (which has not been received) under any corporate restriction, agreement or instrument to which the Custodian is a party or by which the Custodian or any of its Property may be bound or affected, or (4) require consent (which has not been received) under, 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 Custodian or any of the Property of the Custodian.

#### **Representations and Warranties of the Series 2011 Trustee**

The Series 2011 Trustee makes the following representations and warranties as the basis for the undertakings on its part contained in the Custody Agreement:

1. The Series 2011 Trustee is a banking corporation duly organized and validly existing under the laws of the State of New York, is qualified to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into the Custody Agreement and carry out its obligations under the Custody Agreement and has been duly authorized to execute the Custody Agreement. The Custody Agreement and the transactions contemplated by the Custody Agreement have been duly authorized by all necessary action on the part of the Series 2011 Trustee.

2. Neither the execution and delivery of the Custody Agreement, the consummation of the transactions contemplated by the Custody Agreement nor the fulfillment of or compliance with the provisions of the Custody Agreement will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the articles of association or by-laws of the Series 2011 Trustee or any order, judgment, agreement or instrument to which the Series 2011 Trustee is a party or by which the Series 2011 Trustee 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 Series 2011 Trustee other than pursuant to the Security Documents, or (3) require consent (which has not been received) under any corporate restriction, agreement or instrument to which the Series 2011 Trustee is a party or by which the Series 2011 Trustee or any of its Property may be bound or affected, or (4) require consent (which has not been received) under, 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 Series 2011 Trustee or any of the Property of the Series 2011 Trustee.

#### **Representations and Warranties of the Series 2013 Trustee**

The 2013 Trustee makes the following representations and warranties as the basis for the undertakings on its part contained in the Custody Agreement:

1. The 2013 Trustee is a banking corporation duly organized and validly existing under the laws of the State of New York, is qualified to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into the Custody Agreement and carry out its obligations under the Custody Agreement and has been duly authorized to execute the Custody Agreement. The Custody Agreement and the transactions contemplated by the Custody Agreement have been duly authorized by all necessary action on the part of the 2013 Trustee.

2. Neither the execution and delivery of the Custody Agreement, the consummation of the transactions contemplated by the Custody Agreement nor the fulfillment of or compliance with the provisions of the Custody Agreement will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the articles of association or by-laws of the 2013 Trustee or any order, judgment, agreement or instrument to which the 2013 Trustee is a party or by which the Series 2011 Trustee 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 2013 Trustee other than pursuant to the Security Documents, or (3) require consent (which has not been received) under any corporate restriction, agreement or instrument to which the 2013 Trustee is a party or by which the 2013 Trustee or any of its Property may be bound or affected, or (4) require consent (which has not been received) under, 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 2013 Trustee or any of the Property of the 2013 Trustee.

### **Representations and Warranties of the 2017 Trustee**

The 2017 Trustee makes the following representations and warranties as the basis for the undertakings on its part contained in the Custody Agreement:

1. The 2017 Trustee is a banking corporation duly organized and validly existing under the laws of the State of New York, is qualified to do business in the State and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into the Custody Agreement and carry out its obligations under the Custody Agreement and has been duly authorized to execute the Custody Agreement. The Custody Agreement and the transactions contemplated by the Custody Agreement have been duly authorized by all necessary action on the part of the 2017 Trustee.

2. Neither the execution and delivery of the Custody Agreement, the consummation of the transactions contemplated by the Custody Agreement nor the fulfillment of or compliance with the provisions of the Custody Agreement will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the articles of association or by-laws of the 2017 Trustee or any order, judgment, agreement or instrument to which the 2017 Trustee is a party or by which the Series 2011 Trustee 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 2017 Trustee other than pursuant to the Security Documents, or (3) require consent (which has not

been received) under any corporate restriction, agreement or instrument to which the 2017 Trustee is a party or by which the 2017 Trustee or any of its Property may be bound or affected, or (4) require consent (which has not been received) under, 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 2017 Trustee or any of the Property of the 2017 Trustee

### **Covenants of the School**

The School covenants and agrees with the Custodian, the Series 2011 Trustee, the Series 2013 Trustee and the 2017 Trustee that from and after the date of the Custody Agreement until the Series 2011 Bonds, the Series 2013 Bonds and the Series 2017 Bonds are paid in full:

1. The School shall pay over to the Custodian any and all amounts of Education Aid paid by the School Districts within two (2) Business Days of receipt thereof by the School.

2. The School shall take all such customary actions as may be necessary to deliver in a timely fashion to each School District and to any State or federal education agency, as applicable, all such information as may be necessary in accordance with the Federal Education Act to permit each such School District or agency to make each payment of federally funded Other Education Aid to the School permitted by the Federal Education Act. The School shall provide copies of all materials provided to any such School District or agency with respect to such Education Aid to the Custodian and the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee to the extent permitted by law.

3. The School irrevocably directs the Custodian pursuant to the Custody Agreement to deposit with the Series 2011 Trustee, the 2013 Trustee and the 2017 Trustee, immediately upon receipt by the Custodian of a payment of Education Aid, the amounts necessary, along with any other amounts previously so deposited in the applicable period to cause the aggregate amount so deposited to equal the aggregate amount specified in the Custody Agreement Notice delivered by the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee with respect to such period.

4. The School agrees to provide the Series 2011 Trustee, the Series 2013 Trustee and the 2017 Trustee, in a timely fashion (but at least ten (10) Business Days prior to each State Education Operating Aid Payment Date), such information as may be reasonably required by the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee in order to permit the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee to prepare each Custody Agreement Notice.

5. The School agrees to give the Issuer, the Series 2011 Trustee, the Series 2013 Trustee, the Series 2017 Trustee and the Custodian notice of its intention to incur Parity Indebtedness at least sixty (60) days prior to the incurrence thereof. The School agrees to provide the Custodian with all information necessary to enable the Custodian to make the payments described in the Custody Agreement below in a timely manner with respect to such Parity Indebtedness.

### **Covenants of the Custodian**

The Custodian covenants and agrees with the School, the Series 2011 Trustee, the Series 2013 Trustee and the 2017 Trustee that from and after the date of the Custody Agreement until the Series 2011 Bonds, the Series 2013 Bonds and the Series 2017 Bonds are paid in full:

1. The Custodian, at the direction of the School, shall establish an account (which account shall be owned by the School) called The Academy Charter School Custody Account (the “**Custody Account**”) for the deposit of moneys received pursuant to the Custody Agreement.

2. The Custodian shall immediately deposit all moneys received pursuant to the Custody Agreement into the Custody Account.

3. Upon receipt and deposit of any moneys pursuant to the Custody Agreement, the Custodian shall immediately transfer to the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee the total amount of money described in the then applicable Custody Agreement Notice, along with any deficiency in amounts described in prior Custody Agreement Notices as due to the Series 2011 Trustee, the 2013 Trustee and the 2017 Trustee, which shall include any amounts necessary to fund deficiencies in the Bond Fund and the Debt Service Reserve Fund, to the extent necessary, along with all other amounts previously transferred with respect thereto to fully fund the requirements described therein (the “**Current Funding Amount**”).

4. In the event that the School has incurred Parity Indebtedness satisfying the requirements of the Loan Agreement, the Custodian shall, in addition to the payments required to be made to the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee pursuant to paragraph (C) of this heading, transfer to the issuer of or assignee of issuer or trustee of any such Parity Indebtedness, as the case may be, any amounts due and payable with respect to such Parity Indebtedness. In the event that the Custodian shall at any time be required to transfer moneys held by it to two or more recipients (excluding the School) and the aggregate amount then on deposit in the Custody Account shall not be sufficient to pay such recipients in full, the Custodian shall transfer the available amount to such recipients on a pro rata basis.

5. The Custodian shall transfer moneys, if any, remaining credited to the Custody Account after the completion of all transfers described in this this heading to the School automatically unless the Custodian receives the written instructions from the School to the contrary.

6. The Custodian shall immediately notify the Series 2011 Trustee, the 2013 Trustee, the 2017 Trustee and the School of any failure to receive payment of Education Aid within one (1) Business Day of a State Education Operating Aid Payment Date or, with respect to any payment of federally funded Other Education Aid, within one (1) Business Day of the date such payment is due.

7. The School shall timely notify the State Commissioner of Education of any failure of the School District to make required Education Aid Payments. The School shall cause the State Comptroller to pay any Education Aid Payments payable by the State Comptroller to the Custodian. Notwithstanding the foregoing, in the event that such Education Aid Payments are

paid by the State Comptroller to the School, as opposed to the Custodian, the School shall, upon notice of receipt of such funds, immediately transfer such amounts to the Custodian to be applied in accordance with the provisions of the Custody Agreement.

### **Covenants of the Series 2011 Trustee**

The Series 2011 Trustee covenants and agrees with the School and the Custodian that from and after the date of the Custody Agreement until the Series 2011 Bonds are paid in full:

1. The Series 2011 Trustee shall prepare a Custody Agreement Notice, in substantially the form of Exhibit A attached to the Custody Agreement, with respect to each period from and including February 2, 2012 and thereafter from and including each succeeding State Education Operating Aid Payment Date, through and including the calendar day preceding each subsequent State Education Operating Aid Payment Date (each an “**Education Aid Funding Period**”), certifying the respective aggregate amounts to be transferred by the Custodian to the Series 2011 Trustee during the applicable Education Aid Funding Period with respect to each of the following:

a. for deposit to the Bond Fund, as of the first Business Day of each January, April, July and October, commencing February 1, 2013, an amount equal to one-half (1/2) of the next upcoming interest payment on the Series 2011 Bonds due and owing on the next succeeding Debt Service Payment Date and one-fourth (1/4) of the next upcoming principal or sinking fund installment payment on the Series 2011 Bonds due and owing on the next succeeding Debt Service Payment Date and thereafter; provided however, the School shall commence making payments with respect to principal beginning February 1, 2013.

b. on each redemption date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Series 2011 Bonds, whether as an optional or a mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Series 2011 Bonds being redeemed on such redemption date;

c. in the event that a withdrawal has been made from the Debt Service Reserve Fund which results in a deficiency in the amount required to be on deposit to the credit of the Debt Service Reserve Fund, the Series 2011 Trustee shall include in the Custody Agreement Notice such amount as shall be necessary to replenish such withdrawal from the Debt Service Reserve Fund over a twelve month period in quarterly payments payable as of the first Business Day of each January, April, July and October, each such payment to be in an amount equal to one-fourth (1/4) of the amount of the deficiency commencing immediately succeeding the date of receipt by the School from the Series 2011 Trustee of notice of such deficiency in the Debt Service Reserve Fund; and

(4) for delivery to the School, the balance of any Education Aid received by the Custodian.

2. Notwithstanding the provisions of the Custody Agreement, it shall not be necessary for the Series 2011 Trustee to prepare a Custody Agreement Notice with respect to any

period described therein if the respective aggregate amounts to be transferred by the Custodian to the Series 2011 Trustee are the same as such amounts as certified in the most recent Custody Agreement Notice delivered by the Series 2011 Trustee.

3. Subject to receipt of information as provided in the Custody Agreement, the Series 2011 Trustee agrees to deliver the applicable Custody Agreement Notice to the Custodian and the School at least five (5) Business Days before each applicable State Education Operating Aid Payment Date.

4. Upon receipt of any moneys pursuant to the Custody Agreement or from the School, the Series 2011 Trustee shall immediately deposit the moneys in the funds and accounts held by the Series 2011 Trustee in accordance with the Indenture.

5. The Series 2011 Trustee shall immediately notify the Custodian and the School of any failure by the Custodian to transfer to the Series 2011 Trustee the amount of moneys described in the Custody Agreement Notice by seven (7) Business Days subsequent to a State Education Operating Aid Payment Date or, with respect to any payment of federally funded Other Education Aid, within seven (7) Business Days of the date such payment is due.

6. The Custodian shall take all such action as may be reasonably requested by the Series 2011 Trustee or the School, not resulting in material cost or liability on the part of the Series 2011 Trustee or the Custodian, to permit or facilitate the timely and full receipt by the Custodian of any federally funded Other Education Aid which may be receivable by the Custodian on behalf of the School.

### **Covenants of the Series 2013 Trustee**

The Series 2013 Trustee covenants and agrees with the School and the Custodian that from and after the date of the Custody Agreement until the Series 2013 Bonds are paid in full:

1. The Series 2013 Trustee shall prepare a Custody Agreement Notice, in substantially the form of Exhibit A attached to the Custody Agreement, with respect to each period from and including January 1, 2014 and thereafter from and including each succeeding State Education Operating Aid Payment Date, through and including the calendar day preceding each subsequent Education Aid Funding Period, certifying the respective aggregate amounts to be transferred by the Custodian to the Series 2013 Trustee during the applicable Education Aid Funding Period with respect to each of the following:

a. for deposit to the Bond Fund, as of January 1, 2014 an amount equal to the interest payment that will be due and owing on the Series 2013 Bonds on the February 1, 2014 Debt Service Payment Date and thereafter on the first Business Day of each January, April, July and October, commencing April 1, 2014, an amount equal to one-half (1/2) of the next upcoming interest payment on the Series 2013 Bonds due and owing on the next succeeding Debt Service Payment Date and one-fourth (1/4) of the next upcoming principal or sinking fund installment payment on the Series 2013 Bonds due and owing on the next succeeding Debt Service Payment Date and thereafter; provided however, the School shall commence making payments with respect to principal beginning January 1, 2015.

b. on each redemption date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Series 2013 Bonds, whether as an optional or a mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Series 2013 Bonds being redeemed on such redemption date;

c. in the event that a withdrawal has been made from the Debt Service Reserve Fund which results in a deficiency in the amount required to be on deposit to the credit of the Debt Service Reserve Fund, the Series 2013 Trustee shall include in the Custody Agreement Notice such amount as shall be necessary to replenish such withdrawal from the Debt Service Reserve Fund over a twelve month period in quarterly payments payable as of the first Business Day of each January, April, July and October, each such payment to be in an amount equal to one-fourth (1/4) of the amount of the deficiency commencing immediately succeeding the date of receipt by the School from the 2013 Trustee of notice of such deficiency in the Debt Service Reserve Fund; and

(4) for delivery to the School, the balance of any Education Aid received by the Custodian.

2. Notwithstanding the provisions the Custody Agreement, it shall not be necessary for the Series 2013 Trustee to prepare a Custody Agreement Notice with respect to any period described therein if the respective aggregate amounts to be transferred by the Custodian to the Series 2013 Trustee are the same as such amounts as certified in the most recent Custody Agreement Notice delivered by the Series 2013 Trustee.

3. Subject to receipt of information as provided in the Custody Agreement, the Series 2013 Trustee agrees to deliver the applicable Custody Agreement Notice to the Custodian and the School at least five (5) Business Days before each applicable State Education Operating Aid Payment Date.

4. Upon receipt of any moneys pursuant to the Custody Agreement or from the School, the Series 2013 Trustee shall immediately deposit the moneys in the funds and accounts held by the Series 2013 Trustee in accordance with the Indenture.

5. The Series 2013 Trustee shall immediately notify the Custodian and the School of any failure by the Custodian to transfer to the Series 2013 Trustee the amount of moneys described in the Custody Agreement Notice by seven (7) Business Days subsequent to a State Education Operating Aid Payment Date or, with respect to any payment of federally funded Other Education Aid, within seven (7) Business Days of the date such payment is due.

The Custodian shall take all such action as may be reasonably requested by the Series 2013 Trustee or the School, not resulting in material cost or liability on the part of the Series 2013 Trustee or the Custodian, to permit or facilitate the timely and full receipt by the Custodian of any federally funded Other Education Aid which may be receivable by the Custodian on behalf of the School.

#### **Covenants of the 2017 Trustee**

The Series 2017 Trustee covenants and agrees with the School and the Custodian that from and after the date of the Custody Agreement until the Series 2017 Bonds are paid in full:

1. The Series 2017 Trustee shall prepare a Custody Agreement Notice, in substantially the form of Exhibit A attached to the Custody Agreement, with respect to each period from and including January 1, 2018 and thereafter from and including each succeeding State Education Operating Aid Payment Date, through and including the calendar day preceding each subsequent Education Aid Funding Period, certifying the respective aggregate amounts to be transferred by the Custodian to the 2017 Trustee during the applicable Education Aid Funding Period with respect to each of the following:

a. for deposit to the Bond Fund, as of January 1, 2018 an amount equal to the interest payment that will be due and owing on the Series 2017 Bonds on the February 1, 2018 Debt Service Payment Date and thereafter on the first Business Day of each January, April, July and October, commencing January 1, 2018, an amount equal to one-half (1/2) of the next upcoming interest payment on the Series 2017 Bonds due and owing on the next succeeding Debt Service Payment Date and one-fourth (1/4) of the next upcoming principal or sinking fund installment payment on the Series 2017 Bonds due and owing on the next succeeding Debt Service Payment Date and thereafter; provided however, the School shall commence making payments with respect to principal beginning January 1, 2018.

b. on each redemption date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Series 2017 Bonds, whether as an optional or a mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Series 2017 Bonds being redeemed on such redemption date;

c. in the event that a withdrawal has been made from the Debt Service Reserve Fund which results in a deficiency in the amount required to be on deposit to the credit of the Debt Service Reserve Fund, the Series 2017 Trustee shall include in the Custody Agreement Notice such amount as shall be necessary to replenish such withdrawal from the Debt Service Reserve Fund over a twelve month period in quarterly payments payable as of the first Business Day of each January, April, July and October, each such payment to be in an amount equal to one-fourth (1/4) of the amount of the deficiency commencing immediately succeeding the date of receipt by the School from the Series 2017 Trustee of notice of such deficiency in the Debt Service Reserve Fund; and

(4) for delivery to the School, the balance of any Education Aid received by the Custodian.

2. Notwithstanding the provisions of the Custody Agreement, it shall not be necessary for the Series 2017 Trustee to prepare a Custody Agreement Notice with respect to any period described therein if the respective aggregate amounts to be transferred by the Custodian to the Series 2017 Trustee are the same as such amounts as certified in the most recent Custody Agreement Notice delivered by the 2017 Trustee.

3. Subject to receipt of information as provided in the Custody Agreement, the 2017 Trustee agrees to deliver the applicable Custody Agreement Notice to the Custodian and the

School at least five (5) Business Days before each applicable State Education Operating Aid Payment Date.

4. Upon receipt of any moneys pursuant to the Custody Agreement or from the School, the Series 2017 Trustee shall immediately deposit the moneys in the funds and accounts held by the Series 2017 Trustee in accordance with the Indenture.

5. The Series 2017 Trustee shall immediately notify the Custodian and the School of any failure by the Custodian to transfer to the Series 2017 Trustee the amount of moneys described in the Custody Agreement Notice by seven (7) Business Days subsequent to a State Education Operating Aid Payment Date or, with respect to any payment of federally funded Other Education Aid, within seven (7) Business Days of the date such payment is due.

6. The Custodian shall take all such action as may be reasonably requested by the Series 2017 Trustee or the School, not resulting in material cost or liability on the part of the Series 2017 Trustee or the Custodian, to permit or facilitate the timely and full receipt by the Custodian of any federally funded Other Education Aid which may be receivable by the Custodian on behalf of the School.

#### **Default**

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

a. The failure of the Custodian, the School, the Series 2011 Trustee, the Series 2013 Trustee or the Series 2017 Trustee to make or cause to be made, as the case may be, any payment required under the Custody Agreement within two (2) Business Days after receipt of written notice specifying the nature of such default;

b. The failure of the Custodian, the School, the Series 2011 Trustee, the Series 2013 Trustee or the Series 2017 Trustee to take such other actions as are required under (a) the Custody Agreement (other than as described in subsection (1)(a) of this heading), or (b) any other provision of the Custody Agreement on their part, respectively, within fifteen (15) days after written notice specifying the nature of such default; or

c. Any direction by the School to the Custodian to apply Education Aid in any manner which is inconsistent with the express requirements of the Custody Agreement.

#### **Remedies On Default**

Whenever any Event of Default under the Custody Agreement by one party to the Custody Agreement shall have occurred and be continuing, the other party may enforce the provisions of the Custody Agreement and may enforce and protect its rights by a suit or suits in equity or at law for (1) the specific performance of any covenant or agreement contained in the Custody Agreement or (2) any other appropriate legal or equitable remedy.

## SUMMARY OF CERTAIN PROVISIONS OF THE MORTGAGES

*The following is a brief summary of certain provisions of the Building Loan Mortgage and Security Agreement, the Project Loan Mortgage and Security Agreement, the Acquisition Loan Mortgage and Security Agreement and the Assignment of Building Loan Mortgage and Security Agreement, the Assignment of Project Loan Mortgage and Security Agreement and the Assignment of Acquisition Loan Mortgage and Security Agreement and should not be considered a full statement thereof. Reference is made to each of the Mortgages for complete details of the terms thereof.*

### **Grant of Mortgage Lien**

Pursuant to the Building Loan Mortgage and Security Agreement, the Project Loan Mortgage and Security Agreement and the Acquisition Loan Mortgage and Security Agreement (collectively, the “Mortgage”) the School has granted to the Issuer a mortgage Lien on and security interest in the Facility located in the Town of Hempstead, New York including without limitation the Land and Improvements consisting of all buildings, structures and other improvements now or hereinafter erected on the Land and all appurtenances located on the Land and all building materials and fixtures incorporated into any Improvements or appurtenances located on the Land and all other machinery, apparatus, equipment, fittings, fixtures and articles of personal property, now owned or hereafter owned by the School constituting the Equipment, all condemnation awards and casualty insurance proceeds with respect to the foregoing (collectively, the “Mortgage Property”).

### **Events of Default**

The occurrence of any one or more of the following events shall constitute an “Event of Default” under the Mortgage:

- (a) the School shall fail to pay on behalf of the Issuer (or cause to be paid) the principal of, redemption premium, if any, interest on or any other debt charges in respect of the Series 2017 Bonds when the same shall become due, whether on a Debt Service Payment Date, upon redemption, at maturity, upon acceleration, or otherwise; or
- (b) the School shall fail to pay any amounts due and owing under the Loan Agreement, or under the Promissory Notes; or
- (c) the School shall fail to observe or perform any covenant, condition or agreement on its part to be performed under the Mortgage; or
- (d) the occurrence and continuation of an Event of Default under the Loan Agreement or the Indenture; or

- (e) any “Event of Default” occurs under any of the other Bond Documents; or
- (f) a breach by the School of its obligations under the Loan Agreement or if the School shall release or sell any Mortgaged Property without Mortgagee’s prior written consent under the Loan Agreement, which consent may be given or withheld for no reason or given conditionally in Mortgagee’s sole discretion.

**Rights and Remedies Upon Default**

Upon the occurrence of any Event of Default under the Mortgage, the Mortgagee may exercise any one or more of the following rights and remedies:

- (a) Right to Cure Default. The Mortgagee shall have the right, but not the obligation, to comply with, perform or observe any covenant or obligation which Mortgagor has failed to comply with, perform or observe under any of the Bond Documents and shall have the right to enter the Mortgaged Property at any time and from time to time for the purpose of curing such default, and any amounts so paid by the Mortgagee or the costs of such performance, together with all costs and expenses incurred by the Mortgagee in connection with such payment or performance, including, but not limited to, reasonable attorneys’ fees and disbursements and interest on all such amounts, costs and expenses at the per annum rate of ten percent (10%), but in no event in excess of the maximum interest rate permitted by law, shall be paid by the Mortgagor to the Mortgagee on demand. Until so paid, all such amounts, costs and expenses, together with interest thereon, shall be secured by the Mortgage and, if not paid, may be added to the judgment in any foreclosure action.
- (b) Right to Accelerate Bonds. The Mortgagee may declare the entire unpaid principal amount, accrued interest and any other fees and expenses evidenced by the Loan Agreement, the Promissory Notes and the Bonds and secured by the Mortgage to be due and payable, in which event said amount shall immediately become due and payable. Upon the occurrence and continuation of an Event of Default described in clause (f) above, at the sole option of Mortgagee, Mortgagee may accelerate the indebtedness evidenced by the Loan Agreement and the Notes and declare the entire unpaid principal amount, accrued interest and any other fees and expenses evidenced by the Series 2017 Bonds and the Bond Documents immediately due and payable.
- (c) Right to Foreclose Mortgage. The Mortgagee may foreclose the Mortgage and sell, if permitted by law, or petition to be sold, the Mortgaged Property in one or more parcels or in several interests or portions in such manner as a court of competent jurisdiction may direct. If permitted by law, the Mortgagee or the Trustee may foreclose the Mortgage for any portion of the indebtedness or any other sums secured by the Mortgage which are then due and payable, subject to the continuing Lien of the Mortgage for the balance of the indebtedness not then due subject to Mortgagor’s rights under NY RPAPL § 1341. If any real property transfer tax shall be due and payable upon the conveyance of the Mortgaged Property or any portion thereof pursuant to a judicial sale in any foreclosure

action or by deed in lieu of foreclosure, the Mortgagor shall pay the same. In the event that the Mortgagor fails to pay any such tax within ten (10) days after notice and demand for payment is given by the Mortgagee, the Mortgagee may pay the same, and any amount thereof so paid by the Mortgagee, together with all costs and expenses incurred by the Mortgagee in connection with such payment, including, but not limited to, reasonable legal fees and disbursements, and interest on all such amounts, costs and expenses at the per annum rate of ten percent (10%), but in no event in excess of the maximum interest rate permitted by law, shall be paid by the Mortgagor to the Mortgagee on demand. The Mortgagee shall apply all proceeds of a foreclosure first, to all reasonable costs and expenses, including legal fees and expenses and costs incurred in connection with the foreclosure of the Mortgage, second, to the payment of all outstanding taxes and special assessments, and third, to the payment of the indebtedness secured under the Mortgage. Until so paid, all such amounts, costs and expenses, together with interest thereon, shall be secured by the Mortgage and, if not paid, may be added to the judgment in any foreclosure action.

(d) Right to Appointment of Receiver. The Mortgagee shall be entitled, without notice, without regard to the adequacy of any security for the indebtedness secured by the Mortgage and without regard to the solvency of the Mortgagor, to have a receiver, trustee, liquidator or conservator appointed with all the rights and powers permitted under the laws of the State. Such receiver shall have and may enforce all of the rights and remedies of the Mortgagee under subsection (c) under this heading to the maximum extent permitted by law.

(e) Right to Sell Mortgaged Property. The Mortgagee shall have the right to sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law.

(f) Right to Institute an Action, Suit or Proceeding. The Mortgagee shall have the right to institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in the Mortgage, in the Notes, the Loan Agreement or in the other Bond Documents.

(g) Right to Recover on Notes. The Mortgagee shall have the right to recover judgment on the Notes either before, during or after any proceedings for the enforcement of the Mortgage or the other Bond Documents.

(h) Rights under the Uniform Commercial Code. The Mortgagee shall have the right to exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Building Materials and the Equipment, or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the

Building Materials and Equipment, and (ii) request Mortgagor at its expense to assemble the Building Materials and Equipment and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Building Materials and Equipment sent to Mortgagor in accordance with the provisions of the Mortgage at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor.

(i) Right to Apply Sums in Accordance with Bond Documents. The Mortgagee shall have the right to apply any sums then deposited or held in escrow or otherwise by or on behalf of Mortgagee in accordance with the terms of the Loan Agreement, the Notes, the Mortgage or any other Bond Document to the payment of the following items in any order in its uncontrolled discretion: real estate taxes; insurance premiums; interest on the unpaid principal balance of the Notes; unpaid principal balance of the Notes; and all other sums payable pursuant to the Notes, the Loan Agreement, the Mortgage and the other Bond Documents, including without limitation advances made by Mortgagee pursuant to the terms of the Mortgage.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Mortgaged Property, the Mortgage shall continue as a lien and security interest on the remaining portion of the Mortgaged Property unimpaired and without loss of priority.

### **Rights and Remedies Under Mortgage Not Exclusive**

The rights and remedies of the Mortgagee under the Mortgage shall be in addition to its rights and remedies under the laws of the State, including, but not limited to, its rights and remedies under Section 254 of the Real Property Law of the State. Nothing contained in the Mortgage shall be construed as requiring the Mortgagee to pursue any particular right or remedy for the purpose of procuring the satisfaction of the obligations and indebtedness secured by the Mortgage, and the Mortgagee may exercise any or all of its rights and remedies under the Bond Documents or otherwise provided by law in its sole discretion. No failure of the Mortgagee to insist upon the strict performance by the Mortgagor of any of its covenants or obligations under the Bond Documents, and no delay by the Mortgagee in exercising any of its rights or remedies thereunder or otherwise provided by law, shall be deemed to be a waiver of such covenants or obligations or to preclude the exercise of such rights or remedies, and the Mortgagee, notwithstanding any such failure or delay, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of its covenants and obligations under the Bond Documents and to exercise any and all of its rights and remedies thereunder or otherwise provided by law.

### **The Assignment**

## **Assignment of Mortgages**

Pursuant to the Assignment of Building Loan Mortgage and Security Agreement, the Assignment of Project Loan Mortgage and Security Agreement and the Assignment of Acquisition Loan Mortgage and Security Agreement (collectively, the “Assignment”), the Issuer has assigned to the Trustee, all of the Issuer’s rights, title and interests under the Mortgage to the Trustee to secure the payment of the principal of, premium, if any, sinking fund installments of and interest on the Series 2017 Bonds.

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**APPENDIX E**

**FORM OF BOND COUNSEL OPINION**

Upon delivery of the Bonds, Nixon Peabody LLP, Bond Counsel to the Issuer, proposes to issue its final approving opinion in substantially the following form:

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[FORM OF BOND COUNSEL OPINION]

August 10, 2017

Town of Hempstead Local Development Corporation  
Hempstead, New York

Robert W. Baird & Co., Incorporated  
Denver, Colorado

Manufacturers and Traders Trust Company, as Trustee  
Buffalo, New York

Re: Town of Hempstead Local Development Corporation  
\$35,900,000 Tax-Exempt Education Revenue Bonds, Series 2017A  
(The Academy Charter School Project)

and

Town of Hempstead Local Development Corporation  
\$2,685,000 Taxable Education Revenue Bonds, Series 2017B  
(The Academy Charter School Project)

Ladies and Gentlemen:

We have acted as bond counsel to the Town of Hempstead Local Development Corporation (Town of Hempstead, New York) (the “**Issuer**”), in connection with the issuance on the date hereof by the Issuer of its \$35,900,000 Tax-Exempt Education Revenue Bonds, Series 2017A (The Academy Charter School Project) (the “**Series 2017A Bonds**”) and its \$2,685,000 Taxable Education Revenue Bonds, Series 2017B (The Academy Charter School Project) (The “**Series 2017B Bonds**”; and, together with the Series 2017A Bonds, the “**Series 2017 Bonds**”). The Series 2017 Bonds are authorized to be issued pursuant to (i) the New York Membership Corporation Law as in effect in 1966, as superseded by Section 1411 of the New York Not-for-Profit Corporation Law (collectively called the “**Act**”), (ii) a Bond Resolution duly adopted by the Issuer on June 22, 2017, as amended July 27, 2017 (collectively, the “**Resolution**”), and (iii) an Indenture of Trust, dated as of August 1, 2017 (the “**Indenture**”), by and between the Issuer and Manufacturers and Traders Trust Company, as trustee for the benefit of the Owners of the Series 2017 Bonds (the “**Trustee**”). The Series 2017 Bonds were issued to finance or refinance the costs of acquisition, construction, renovating and equipping of the Project (as defined in the Indenture) for the benefit of The Academy Charter School (the “**School**”), a duly organized and validly existing New York not-for-profit corporation and an organization described in Section 501(c)(3) of the Code, which is exempt from federal income taxation pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended (the “**Code**”).

The Issuer will loan the proceeds of the Series 2017 Bonds to the School pursuant to the terms of a Loan Agreement, dated as of August 1, 2017 (the “**Loan Agreement**”), between the Issuer and the School. The School has evidenced its obligations to make loan payments to the Issuer by the issuance and delivery of (i) a certain Promissory Note, dated August 10, 2017 (the “**Tax Exempt Note**”); and (ii) a certain Promissory Note, dated August 10, 2017 (the “**Taxable Note**”; and, together with the Tax Exempt Note, the “**Notes**”), each from the School to the Issuer. The School has granted mortgage liens on and security interests in the Project to the Issuer pursuant to a Project Loan Mortgage and Security Agreement (the “**Project Loan Mortgage**”), and a Building Loan Mortgage and Security Agreement (the “**Building Loan Mortgage**”; and, together with the Project Loan Mortgage, collectively, the “**Mortgages**”), each dated as of August 1, 2017 and each from the School to the Issuer. As additional collateral to secure its obligations under the Loan Agreement and the Notes, the School has granted to the Issuer collateral mortgage liens on a certain Series 2011 Facility and on a certain Series 2013 Facility (as defined in the Indenture) to the Issuer pursuant to a Series 2017 Collateral Mortgage and Security Agreement, dated as of August 1, 2017 (the “**Series 2017 Collateral Mortgage**”) from the School to the Issuer. The School, the Issuer and the Trustee have entered into a Building Loan Agreement, dated as of August 1, 2017 (the “**Building Loan Agreement**”), by and among the Issuer, the School and the Trustee. The Issuer has assigned to the Trustee as security for the Series 2017 Bonds, for the benefit of the Owners of the Series 2017 Bonds, substantially all of its rights under (i) the Loan Agreement pursuant to the Indenture, (ii) the Mortgages pursuant to an Assignment of Project Loan Mortgage and Security Agreement (the “**Assignment of Project Loan Mortgage**”) and an Assignment of Building Loan Mortgage and Security Agreement (the “**Assignment of Building Loan Mortgage**”; and, together with the Assignment of Project Loan Mortgage, collectively, the “**Assignments**”), each dated as of August 10, 2017 and each from the Issuer to the Trustee. The Issuer further assigned to the Trustee for the benefit of the Owners of the Series 2017 Bonds, substantially all of its rights under the Series 2017 Collateral Mortgage pursuant to a Series 2017 Assignment of Collateral Mortgage and Security Agreement, dated as of August 1, 2017 (the “**Series 2017 Assignment of Collateral Mortgage**”), from the Issuer to the Trustee. The School, the Issuer and the Trustee have entered into an Environmental Compliance and Indemnification Agreement, dated as of August 1, 2017 (the “**Environmental Compliance and Indemnification Agreement**”), whereby the School agrees to comply with all Environmental Laws (as defined therein) applicable to the Project and will indemnify and hold harmless the Issuer for all liability under all such Environmental Laws. The Issuer and the School have entered into a Tax Regulatory Agreement, dated the date hereof (the “**Tax Regulatory Agreement**”), in which the Issuer and the School have made certain representations and covenants, established certain conditions and limitations and created certain expectations, relating to compliance with the requirements imposed by the Code. Robert W. Baird & Co., Incorporated (the “**Underwriter**”) has agreed to purchase and resell the Series 2017 Bonds to one or more purchasers pursuant to the terms of a Bond Purchase Agreement, dated August 1, 2017 (the “**Bond Purchase Agreement**”), among the Issuer, the Underwriter and the School.

The Series 2017 Bonds are each dated August 10, 2017, and bear interest from the date thereof at the rate and pursuant to the respective terms of the Series 2017 Bonds. The Series 2017 Bonds are subject to prepayment or redemption prior to maturity, as a whole or in part, at such time or times, under such circumstances and in such manner as is set forth in the Series 2017 Bonds and the Indenture.

As bond counsel, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates and documents (including all documents constituting the Transcript of Proceedings with respect to the issuance of the Series 2017 Bonds) as we have deemed necessary or appropriate for the purposes of the opinions rendered below. In such examination, we have assumed the genuineness of all signatures, the authenticity and due execution of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies. As to any facts material to our opinion, without having conducted any independent investigation, we have relied upon, and assumed the accuracy and truthfulness of, the aforesaid instruments, certificates and documents.

Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned in the Schedule of Definitions attached as Schedule A to the Indenture.

In rendering the opinions set forth below, we have relied upon, among other things, certain representations and covenants made by the parties in this transaction including: (i) the School in (a) the Bond Purchase Agreement, (b) the Tax Regulatory Agreement, (c) the Loan Agreement, (d) the Mortgages, (e) the Collateral Mortgages, (f) the Closing Certificate of the School, dated the date hereof and (g) the Bond Counsel Questionnaire submitted to us by the School, and (ii) the Issuer in (a) the Bond Purchase Agreement, (b) the Indenture, (c) the Tax Regulatory Agreement, (d) the Loan Agreement, and (e) the Closing Certificate of the Issuer, dated the date hereof. We call your attention to the fact that there are certain requirements with which the Issuer and the School must comply after the date of issuance of the Series 2017A Bonds in order for the interest on the Series 2017A Bonds to remain excluded from gross income for federal income tax purposes. Copies of the aforementioned documents are included in the Transcript of Proceedings.

In addition, in rendering the opinions set forth below, we have relied upon the opinions of counsel to the Issuer, Ryan, Brennan & Donnelly, LLP, Floral Park, New York; Counsel to the School, Rivkin Radler LLP, Uniondale, New York and Tanya Hobson-Williams, P.C., Jamaica, New York; counsel to the Trustee, Bond, Schoeneck & King PLLC, Syracuse, New York, all of even date herewith. Copies of the aforementioned opinions are contained in the Transcript of Proceedings.

Based upon and subject to the foregoing, we are of the opinion that:

1. The Issuer is a duly organized and existing corporate governmental agency

constituting a local development corporation of the State of New York.

2. The Issuer is duly authorized to issue, execute, sell and deliver the Series 2017 Bonds, for the purpose of paying the costs described above.

3. The Resolution has been duly adopted by the Issuer and is in full force and effect.

4. The Bond Purchase Agreement, the Indenture, the Tax Regulatory Agreement, the Loan Agreement, the Assignments, the Series 2017 Collateral Mortgage Assignment and the Building Loan Agreement, have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms.

5. The Series 2017 Bonds have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding special obligations of the Issuer payable solely from the revenues derived from the Loan Agreement, enforceable against the Issuer in accordance with their respective terms.

6. The Series 2017 Bonds do not constitute a debt of the State of New York or of the Town of Hempstead, New York, and neither the State of New York nor the Town of Hempstead, New York, will be liable thereon.

7. The Code sets forth certain requirements which must be met subsequent to the issuance and delivery of the Series 2017A Bonds for interest thereon to be and remain excluded from gross income for Federal income tax purposes. Noncompliance with such requirements could cause the interest on the Series 2017A Bonds to be included in gross income for Federal income tax purposes retroactive to the date of issue of the Series 2017A Bonds. Pursuant to the Indenture, the Loan Agreement and the Tax Regulatory Agreement, the Issuer and the School have covenanted to maintain the exclusion from gross income of the interest on the Series 2017A Bonds pursuant to Section 103 of the Code. In addition, the Issuer and the School have made certain representations and certifications in the Indenture, the Loan Agreement and the Tax Regulatory Agreement. We are also relying on the opinion of Counsel to the School, as to all matters concerning the status of the School as an organization described in Section 501(c)(3) of the Code and exempt from federal income tax under Section 501(a) of the Code and regarding our understanding that no portion of the Facility will be used in an unrelated trade or business within the meaning of Section 513(a) of the Code. We have not independently verified the accuracy of those certifications and representations or that opinion.

Under existing law, assuming compliance with the tax covenants described herein and the accuracy of the aforementioned representations and certifications, interest on the Series 2017A Bonds is excluded from gross income for Federal income tax purposes under Section 103 of the Code. We are also of the opinion that such interest is not treated as a preference item in

calculating the alternative minimum tax imposed under the Code with respect to individuals and corporations. Interest on the Series 2017A Bonds is, however, included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed on such corporations.

8. Interest on the Series 2017A Bonds is exempt from income taxes imposed by the State of New York or any political subdivision of the State of New York or any political subdivision thereof, including The City of New York, assuming compliance with the tax covenants and the accuracy of the representations and certifications described in opinion 7.

9. Interest on the Series 2017B Bonds is not excluded from gross income for federal income tax purposes under Section 103 of the Code and so will be fully subject to federal income taxation.

10. Interest on the Series 2017B Bonds is not exempt from personal income taxes imposed by the State of New York or any political subdivision of the State of New York.

Except as stated in the paragraphs 7 through 10 above, we express no opinion as to any other Federal or state tax consequences of the ownership or disposition of the Series 2017 Bonds. Furthermore, we express no opinion as to any Federal, state or local tax law consequences with respect to the Series 2017 Bonds, or the interest thereon, if any action is taken with respect to the Series 2017 Bonds or the proceeds thereof upon the advice or approval of other counsel.

The opinions expressed in paragraphs 9 and 10 are not intended or provided to be used by an owner of the Series 2017B Bonds for the purpose of avoiding penalties that may be imposed on the owner of such Series 2017B Bonds. Such opinions are provided to support the promotion or marketing of the Series 2017B Bonds. Each owner of the Series 2017B Bonds should seek advice based on its particular circumstances from an independent tax advisor.

The foregoing opinions are qualified to the extent that the enforceability of the Series 2017 Bonds, the Bond Purchase Agreement, the Indenture, the Loan Agreement and the Tax Regulatory Agreement may be limited by bankruptcy, insolvency or other laws or enactments now or hereafter enacted by the State of New York or the United States affecting the enforcement of creditors' rights and by restrictions on the availability of equitable remedies and to the extent, if any, that enforceability of the indemnification provisions of such documents may be limited under law. We express no opinion with respect to the availability of any specific remedy provided for in any of the bond documents.

In rendering the foregoing opinions, we are not passing upon and do not assume any responsibility for the accuracy, completeness, sufficiency or fairness of any documents, information or financial data supplied by the Issuer, the School or the Trustee in connection with the Series 2017 Bonds, the Bond Purchase Agreement, the Indenture, the Loan Agreement, the

Town of Hempstead Local Development Corporation  
Robert W. Baird & Co., Incorporated  
Manufacturers and Traders Trust Company, as Trustee  
August 10, 2017  
Page 6

Tax Regulatory Agreement, the Mortgages, the Assignments, the Building Loan Agreement, the Environmental Compliance and Indemnification Agreement, the Official Statement, the Continuing Disclosure Agreement or the Project and make no representation that we have independently verified the accuracy, completeness, sufficiency or fairness of any such documents, information or financial data. In addition, we express no opinion herein with respect to the accuracy, completeness, sufficiency or fairness of the Official Statement, dated August 1, 2017, with respect to the Series 2017 Bonds.

We express no opinion herein with respect to the registration requirements under the Securities Act of 1933, as amended, the registration or qualification requirements under the Trust Indenture Act of 1939, as amended, the registration, qualification or other requirements of State Securities laws, or the availability of exemptions therefrom.

We express no opinion as to the sufficiency of the description of the Equipment contained in the Loan Agreement or as to the adequacy, perfection or priority of any security interest in any collateral securing the Series 2017 Bonds.

Furthermore, we express no opinion as to the Continuing Disclosure Agreement. We express no opinion with respect to whether the Issuer and the School (i) have complied with the State Environmental Quality Review Act, (ii) have obtained any or all necessary governmental approvals, consents or permits, or (iii) have complied with the New York Labor Law or other applicable laws, rules, regulations, orders and zoning and building codes, all in connection with the renovation, construction, equipping, furnishing and operation of the Project.

The opinions expressed herein may be relied upon by the addressees and may not be relied upon by any other person without our prior written consent.

Very truly yours,

## APPENDIX F

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement, dated as of August 1, 2017 (the “Continuing Disclosure Agreement”), is executed and delivered by and among The Academy Charter School, a New York nonprofit corporation (the “Borrower”) and Manufacturers and Traders Trust Company, Buffalo, New York, as trustee and dissemination agent (the “Trustee” or “Dissemination Agent”), in connection with the issuance by the Town of Hempstead Local Development Corporation (the “Issuer”) of its \$35,900,000 Tax-Exempt Education Revenue Bonds (The Academy Charter School Project), Series 2017A (the “Series 2017A Bonds”) and \$2,685,000 Taxable Education Revenue Bonds (The Academy Charter School Project), Series 2017B (the “Series 2017B Bonds” and, together with the Series 2017A Bonds, the “Series 2017 Bonds”). The Series 2017 Bonds are being issued pursuant to an Indenture of Trust, dated as of August 1, 2017 (the “Indenture”), between the Issuer and the Trustee. The proceeds of the Series 2017 Bonds are being loaned to the Borrower pursuant to a Loan Agreement, dated as of August 1, 2017 (the “Loan Agreement”), by and between the Issuer and the Borrower. Capitalized terms used but not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

#### Section 1. Purpose of Agreement

Inasmuch as the Series 2017 Bonds are limited obligations of the Issuer, no financial or operating data concerning it is material to any decision to purchase, hold or sell the Series 2017 Bonds, and the Issuer has not covenanted to provide such information. The Borrower has undertaken all responsibilities for any continuing disclosure to Holders of the Series 2017 Bonds as described herein.

This Continuing Disclosure Agreement is being executed and delivered by the Borrower for the benefit of the registered owners of the Series 2017 Bonds (for such purpose beneficial owners of the Series 2017 Bonds shall also be considered registered owners of the Series 2017 Bonds) and to assist Robert W. Baird & Co., Incorporated (the “Underwriter”) in complying with paragraph (b)(5) of Securities and Exchange Commission (“SEC”) Rule 15c2-12 (17 C.F.R. § 240.15c2-12) (the “Rule”). This Continuing Disclosure Agreement constitutes the written Undertaking required by the Rule. Each and every filing made hereunder shall be disseminated by transmission to the Municipal Securities Rulemaking Board (defined below) through the Electronic Municipal Market Access (“EMMA”) System at [www.emma.msrb.org](http://www.emma.msrb.org) or any successor system that the MSRB may prescribe. Such filings will be in the format and will be accompanied by the identifying information prescribed by the MSRB.

#### Section 2. Defined Terms

“*Annual Report*” means the reports required to be provided pursuant to Section 3 hereof.

“*Borrower*” means The Academy Charter School, a New York not-for-profit education corporation.

“*Dissemination Agent*” means, initially, the Trustee, and thereafter, any successor appointed by the Borrower pursuant to the provisions hereof.

“*Indenture*” means the Indenture of Trust, dated as of August 1, 2017, between the Issuer and the Trustee.

“*Interim Report*” means the reports required to be provided pursuant to Section 4 hereof.

“*Listed Event*” shall mean any of the events listed in Section 5(a) of this Agreement of this Agreement.

“*Loan Agreement*” means the Loan Agreement, dated as of August 1, 2017, between the Issuer and the Borrower.

“*MSRB*” means the Municipal Securities Rulemaking Board.

“*Official Statement*” means the Official Statement dated August \_\_, 2017 pertaining to the Series 2017 Bonds.

“Trustee” means Manufacturers and Traders Trust Company, Buffalo, New York, or any successor thereto under the Indenture.

### **Section 3. Annual Reports**

Each year, the Borrower shall cause the Dissemination Agent to provide, on or prior to the 120<sup>th</sup> day after the end of each fiscal year, commencing with the fiscal year that ended June 30, 2013, to the MSRB through EMMA, an Annual Report for the preceding fiscal year which includes all annual information pertinent to such fiscal year as provided below:

#### **(a) Contents**

- (i) *Audited Financials - Accountant:* A copy of the Borrower's annual audited financial statements prepared by an Accountant in accordance with State law, together with a copy of any accompanying management letter and a copy of the accompanying audit report; provided, however, that such annual audited financial statements may be submitted separately from the balance of the Annual Report and that, if such audited financial statements are not available within 120 days of the end of the fiscal year of the Borrower, unaudited financial statements will be provided, and audited financial statements will subsequently be submitted when they become available.
- (ii) *Enrollment and Waiting List Data:* Actual enrollment and waiting list data for the current year, of the sort and in the format (but excluding projected information) initially provided in by the Borrower within Appendix B to the Official Statement, in TABLE B-3: HISTORICAL AND FUTURE PROJECTED ENROLLMENT BY GRADE LEVEL and TABLE B-4: WAITING LIST DATA.
- (iii) *Financial Covenants Certification:* An executed certificate signed by an officer of the Borrower calculating compliance with the covenants as described in Section 8.13 of the Loan Agreement.

#### **(b) Method and Notice Upon Failure to Provide**

Each Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by specific reference other information provided pursuant to this Agreement. If the Borrower fails to provide any Annual Report within the time periods required hereby, then the Borrower shall promptly send a notice of such failure in the manner required under this Agreement.

### **Section 4. Quarterly Interim Reports**

The Borrower will provide or cause the Dissemination Agent to provide to the MSRB through EMMA in the manner required under this Agreement, all documents and information as set forth below.

- (i) unaudited financial statements of the Borrower for the previous calendar quarter reflecting revenues and expenses in comparative form with the Borrower's operating budget as submitted by the Borrower to its governing board, within 45 days of the close of each respective calendar quarter; and
- (ii) copies of each report on enrollment, headcount, membership, attendance and similar statistics with respect to the Borrower submitted by the Borrower to the New York State Education Department during the previous calendar quarter, within 45 days of the close of each respective calendar quarter.

Each Interim Report may be submitted as a single document or as separate documents comprising a package, and may include by specific reference other information provided pursuant to this Agreement.

No notice is required if the Borrower fails to provide the information required by this Section, as the provision of such information is a contractual obligation not required under the Rule.

#### **Section 5. Monthly Construction Progress Reports**

The Borrower will provide or cause the Dissemination Agent to provide to the MSRB through EMMA in the manner required under this Agreement, all documents and information as set forth below.

*Construction Progress Reports.* Within 15 days from the end of each calendar month, the Borrower shall provide a report detailing progress with construction of the Facility.

No notice is required if the Borrower fails to provide the information required by this Section, as the provision of such information is a contractual obligation not required under the Rule.

#### **Section 6. Reporting of Listed Events**

(a) Pursuant to the provisions of this section, the Borrower shall give, or cause the Dissemination Agent to give, notice of the occurrence of any of the following Listed Event with respect to the Series 2017 Bonds in a timely manner not more than ten (10) business days after the occurrence of such event to MSRB:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) Modifications to the rights of the bondowners, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution or sale of property securing repayment of the Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the Borrower (or any other obligated person, as defined in the Rule);

Note to clause (12): For the purposes of the event identified in clause (12) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower (or any other obligated person, as

defined in the Rule) in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or government authority has assumed jurisdiction over substantially all of the assets or business of the Borrower (or any other obligated person, as defined in the Rule), or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower (or any other obligated person, as defined in the Rule);

- (13) The consummation of a merger, consolidation, or acquisition involving the Borrower (or any other obligated person, as defined in the Rule) or the sale of all or substantially all of the assets of the Borrower (or any other obligated person, as defined in the Rule), other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) Appointment of a successor or additional trustee or the change of the name of the trustee, if material.

(b) The Dissemination Agent shall, promptly after obtaining actual knowledge of the occurrence or possible occurrence of any of the Listed Events set forth in subsection (a) above, contact the Disclosure Representative and inform such person of the event. "Actual knowledge" for purposes of this subsection (b) shall mean actual knowledge of an officer of the Corporate Trust Administration of the Dissemination Agent.

(c) Whenever the Borrower obtains knowledge of the occurrence of a Listed Event set forth in clauses (2), (7), (8) (relating to Bond calls only), (10), (13) or (14) of subsection (a) above, whether because of a notice from the Dissemination Agent pursuant to subsection (b) or otherwise, the Borrower shall as soon as possible determine if such event would constitute material information for Bondholders, and if such event is determined by the Borrower to be material, the Borrower shall, or shall cause the Dissemination Agent to, give notice of such event to the MSRB not later than ten (10) Business Days after the occurrence of such event.

(d) If the Borrower elects to have the Dissemination Agent file notice of any Listed Event, the Borrower will provide the notice to the Dissemination Agent within 5 Business Days after the occurrence of the Listed Event, along with an instruction to file the notice with the MSRB.

Each Event Notice shall be so captioned and shall prominently state the date, title and (to the extent less than all of the Series 2017 Bonds are affected by the related material event) CUSIP numbers of the Series 2017 Bonds.

The Borrower may from time to time choose to provide notice of the occurrence of certain other events, in addition to those listed above, but the Borrower does not undertake any commitment to provide such notice of any event except those events listed above.

#### **Section 7. Dissemination Agent; Initial Dissemination Agent**

The Borrower has engaged the Dissemination Agent to assist it in disseminating information hereunder. The Borrower shall send all annual financial information, operating data, interim reports and event notices required by this Agreement to the Dissemination Agent. Unless otherwise agreed to, the Dissemination Agent shall, as soon as practicable but not later than 15 days of receipt of such information forward the same to (i) the MSRB, as described herein and (ii) any Registered or Beneficial Owner of the Series 2017 Bonds who requests such information in writing to the Dissemination Agent or the Borrower. The Dissemination Agent shall have no duty to review the materials described in this paragraph prior to disseminating such materials.

The initial Dissemination Agent shall be the Trustee. The Borrower may discharge the Dissemination Agent or any successor Dissemination Agent, but in such event shall take steps necessary to appoint a successor Dissemination Agent who shall be responsible for undertaking all responsibilities of Dissemination hereunder.

#### **Section 8. Termination of Obligations**

Pursuant to paragraph (b)(5)(iii) of the Rule, the obligation of the Borrower to provide financial and operating information of the Borrower and notices of material events, as set forth herein, shall terminate if and when the Borrower no longer remains an obligated person with respect to the Series 2017 Bonds, which shall occur upon either payment of the Series 2017 Bonds in full or the legal defeasance of the Series 2017 Bonds in accordance with the Indenture.

#### **Section 9. Enforceability and Remedies**

This Continuing Disclosure Agreement is intended to be for the sole benefit of the Trustee, the Underwriter and the registered owners of the Series 2017 Bonds (for such purpose beneficial owners of the Series 2017 Bonds shall also be considered registered owners of the Series 2017 Bonds) and shall create no rights in any other person or entity.

This Continuing Disclosure Agreement shall be enforceable by or on behalf of any registered owner of the Series 2017 Bonds, provided that the right of any registered owner to challenge the timely filing, failure to file or the adequacy of the information furnished pursuant to this Continuing Disclosure Agreement shall be limited to an action by or on behalf of registered owners representing at least 25% of the aggregate outstanding principal amount of the Series 2017 Bonds. This Continuing Disclosure Agreement is also enforceable on behalf of the registered owners of the Series 2017 Bonds by the Trustee, and the Trustee may, and upon the written direction of the registered owners of not less than 25% of the aggregate outstanding principal amount of the Series 2017 Bonds or the Underwriter shall, proceed to protect and enforce the rights of the registered owners of the Series 2017 Bonds pursuant to this Continuing Disclosure Agreement; provided that in all cases the Trustee shall be entitled to the indemnification and other provisions of the Indenture with regard to any actions, and prior to proceeding at the request or direction of the Underwriter the Trustee may require the same types of indemnification and related protections from the Underwriter to which the Trustee would otherwise be entitled under the Indenture if so requested or directed by the registered owners.

Any failure by the Borrower to comply with the provisions of this Continuing Disclosure Agreement shall not be an Event of Default under the Loan Agreement or the Indenture. The registered owners' and the Trustee's rights to enforce the provisions of this Continuing Disclosure Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel the Borrower to perform under this Continuing Disclosure Agreement, and their directors, officers and employees shall incur no liability under this Continuing Disclosure Agreement by reason of any act or failure to act hereunder. Without limiting the generality of the foregoing, neither the commencement nor the successful completion of an action to compel performance under this Section shall entitle the Trustee or any other person to attorneys' fees, financial damages of any sort or any other relief other than an order or injunction compelling performance; provided that the Trustee shall nevertheless be entitled to attorneys' fees and such other rights and amounts as provided in the Indenture.

#### **Section 10. Amendment**

Notwithstanding any other provision of this Continuing Disclosure Agreement, the Borrower and the Trustee may amend this Continuing Disclosure Agreement, and any provision of this Continuing Disclosure Agreement may be waived, without the consent of the registered owners but with the consent of the Trustee, under the following conditions:

- (a) The amendment or waiver may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the Borrower, or type of business conducted;

- (b) This Continuing Disclosure Agreement, as amended or with the provision so waived, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and
- (c) The amendment or waiver does not materially impair the interest of registered owners of the Series 2017 Bonds, as determined either by parties unaffiliated with the Borrower (which shall include the Trustee or nationally recognized bond counsel, or any other party determined by any of them to be unaffiliated), or by approving vote of registered owners of the Series 2017 Bonds pursuant to the terms of the Indenture at the time of the amendment or waiver.

The Borrower shall provide notice of each amendment or waiver for dissemination in the manner specified herein. The initial annual financial or operating information provided by the Borrower after the amendment or waiver shall explain, in narrative form, the reasons for the amendment or waiver and the effect of the change in the type of operating data or financial information being provided.

**Section 10. Counterparts**

This Continuing Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

IN WITNESS WHEREOF, we have set our hands as of the date set forth above.

THE ACADEMY CHARTER SCHOOL,  
As Borrower

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

MANUFACTURERS AND TRADERS TRUST COMPANY,  
as Dissemination Agent

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

**APPENDIX G**

**FORM OF FIRST SUPPLEMENTAL INTERCREDITOR AGREEMENT**

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34-291.00-088

Prepared by:  
Terance Walsh, Esq.  
Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604

## FIRST SUPPLEMENTAL INTERCREDITOR AGREEMENT

THIS FIRST SUPPLEMENTAL INTERCREDITOR AGREEMENT, dated as of August 1, 2017 (this “**First Supplemental Intercreditor Agreement**”), by and among the TOWN OF HEMPSTEAD LOCAL DEVELOPMENT CORPORATION, (the “**Issuer**”), THE ACADEMY CHARTER SCHOOL, INC. (the “**School**”), MANUFACTURERS AND TRADERS TRUST COMPANY, as trustee under the Series 2011 Indenture (hereinafter defined) (the “**Series 2011 Trustee**”), MANUFACTURERS AND TRADERS TRUST COMPANY, as trustee under the Series 2013 Indenture (hereinafter defined) (the “**Series 2013 Trustee**”), MANUFACTURERS AND TRADERS TRUST COMPANY, as trustee under the Series 2017 Indenture (hereinafter defined) (the “**Series 2017 Trustee**”), and MANUFACTURERS AND TRADERS TRUST COMPANY, as custodian under the Custodian Agreement (hereinafter defined) (the “**Custodian**”), and MANUFACTURERS AND TRADERS TRUST COMPANY, as collateral agent hereunder (the “**Collateral Agent**”).

### Background:

A. The Town of Hempstead Local Development Corporation (the “**Issuer**”) has previously issued its \$10,505,000 Tax-Exempt Education Revenue Bonds, Series 2011A (The Academy Charter School Project) (the “**Series 2011A Bonds**”) and its \$235,000 Taxable Education Revenue Bonds, Series 2011B (The Academy Charter School Project) (the “**Series 2011B Bonds**”); and, together with the Series 2011A Bonds, the “**Series 2011 Bonds**”) under and pursuant to a Indenture of Trust dated as of March 1, 2011 (the “**Series 2011 Indenture**”) between the Issuer and the Series 2011 Trustee. The proceeds of the Series 2011 Bonds were loaned to the School pursuant to a Loan Agreement dated as of March 1, 2011 (the “**Series 2011 Loan Agreement**”) between the Issuer and the School, pursuant to which the School, among other things, granted in favor of the Issuer a lien on and security interest in the Pledged Revenues (defined herein) as security for its payment obligations under the Series 2011 Loan Agreement. Pursuant to the Series 2011 Indenture, the Issuer assigned substantially all its rights under the Series 2011 Loan Agreement to the Series 2011 Trustee, as trustee for the holders of the Series 2011 Bonds. The School’s payment obligations under the Series 2011 Loan Agreement are further secured by (i) a certain Acquisition Loan Mortgage, dated as March 1, 2011 (the “**Series 2011 Acquisition Loan Mortgage**”); (ii) a certain Building Loan Mortgage, dated as March 1, 2011 (the “**Series 2011 Building Loan Mortgage**”); (iii) a certain Project Loan Mortgage, dated as March 1, 2011 (the “**Series 2011 Project Loan Mortgage**”); (iv) a certain Series 2011 Collateral Mortgage, dated as of December 1, 2013 (the “**Series 2011 Collateral Mortgage (2013)**”); (v) a certain Series 2011 Collateral Mortgage, dated as of August 1, 2017 (the “**Series 2011 Collateral Mortgage (2017)**”); and, together with the 2011 Acquisition Loan Mortgage, the Series 2011 Project Loan Mortgage, the Series 2011 Building Loan Mortgage, and the Series

2011 Collateral Mortgage (2017), the “**Series 2011 Mortgages**”), each, granted by the School, as mortgagor, to the Issuer, as mortgagee, on certain property owned by the School at 117 North Franklin Street, Hempstead, New York 11550 (the “**Series 2011 Property**”), which such Series 2011 Mortgages were each assigned by the Issuer to the Series 2011 Trustee pursuant to (i) a certain Assignment of Acquisition Loan Mortgage, dated as March 1, 2011 (the “**Series 2011 Assignment of Acquisition Loan Mortgage**”); (ii) a certain Assignment of Project Loan Mortgage, dated as March 1, 2011 (the “**Series 2011 Assignment of Project Loan Mortgage**”); (iii) a certain Assignment of Building Loan Mortgage, dated as March 1, 2011 (the “**Series 2011 Assignment of Building Loan Mortgage**”) and (iv) a certain Assignment of Series 2013 Collateral Mortgage, dated as of December 1, 2013 (the “**Assignment of Series 2011 Collateral Mortgage**”; and, together with the Series 2011 Assignment of Acquisition Loan Mortgage, the Series 2011 Assignment of Building Loan Mortgage and the Series 2011 Assignment of Project Loan Mortgage, the “**Series 2011 Assignment of Mortgages**”).

B. The Issuer has previously issued its \$12,970,000 Tax-Exempt Education Revenue Bonds, Series 2013A (The Academy Charter School Project) (the “**Series 2013A Bonds**”) and its \$545,000 Taxable Education Revenue Bonds, Series 2013B (The Academy Charter School Project) (the “**Series 2013B Bonds**”; and, together with the Series 2013A Bonds, the “**Series 2013 Bonds**”) under and pursuant to an Indenture of Trust dated as of December 1, 2013 (the “**Series 2013 Indenture**”) between the Issuer and the Series 2013 Trustee. The proceeds of the Series 2013 Bonds were loaned to the School pursuant to a Loan Agreement dated as of December 1, 2013 (the “**Series 2013 Loan Agreement**”) between the Issuer and the School, pursuant to which the School, among other things, granted in favor of the Issuer a lien on and security interest in the Pledged Revenues (defined herein) as security for its payment obligations under the Series 2013 Loan Agreement. Pursuant to the Series 2013 Indenture, the Issuer assigned substantially all its rights under the Series 2013 Loan Agreement to the Series 2013 Trustee, as trustee for the holders of the Series 2013 Bonds. The School’s payment obligations under the Series 2013 Loan Agreement are further secured by (i) a certain Acquisition Loan Mortgage, dated as December 1, 2013 (the “**Series 2013 Acquisition Loan Mortgage**”); (ii) a certain Building Loan Mortgage, dated as December 1, 2013 (the “**Series 2013 Building Loan Mortgage**”); (iii) a certain Project Loan Mortgage, dated as December 1, 2013 (the “**Series 2013 Project Loan Mortgage**”); (iv) a certain Series 2013 Collateral Mortgage, dated as of December 1, 2013; (the “**Series 2013 Collateral Mortgage (2013)**”); (v) a certain Series 2013 Collateral Mortgage, dated as of August 1, 2017 (the “**Series 2013 Collateral Mortgage (2017)**” and, together with the Series 2013 Acquisition Loan Mortgage, the Series 2013 Project Loan Mortgage and the Series 2013 Building Loan Mortgage, the “**Series 2013 Mortgages**”), each, granted by the School, as mortgagor, to the Issuer, as mortgagee, on certain property owned by the School at 159 North Franklin Street, Hempstead, New York 11550 (the “**Series 2013 Property**”), which such Series 2013 Mortgages were each assigned by the Issuer to the Series 2013 Trustee pursuant to (i) a certain Assignment of Acquisition Loan Mortgage, dated as December 1, 2013 (the “**Series 2013 Assignment of Acquisition Loan Mortgage**”); (ii) a certain Assignment of Project Loan Mortgage, dated as December 1, 2013 (the “**Series 2013 Assignment of Project Loan Mortgage**”); (iii) a certain Assignment of Building Loan Mortgage, dated as December 1, 2013 (the “**2013 Assignment of Building Loan Mortgage**”) and (iv) a certain Assignment of Series 2013 Collateral Mortgage, dated as of December 1, 2013 (the “**Assignment of 2013 Collateral Mortgage**”; and, together with the Series 2013 Assignment of Acquisition Loan Mortgage, the Series 2013 Assignment of Building Loan

Mortgage and the Series 2013 Assignment of Project Loan Mortgage, the “**Series 2013 Assignment of Mortgages**”).

C. The Issuer, the Series 2011 Trustee, the Series 2013 Trustee and the Custodian previously entered into an Intercreditor Agreement, dated as of December 1, 2013 (the “**Original Intercreditor Agreement**”; and, together with this First Supplemental Intercreditor Agreement, the “**Intercreditor Agreement**”), to provide for (i) the collection and distribution of the Pledged Revenues by the Collateral Agent and (ii) the exercise of any remedies and rights under the 2011 Mortgages by the Series 2011 Trustee and the Series 2013 Mortgages by the Series 2013 Trustee, for the equal and ratable benefit of the owners from time to time of the Series 2011 Bonds and the Series 2013 Bonds and of each other future holder of Parity Indebtedness, as hereinafter defined (if any), all as provided therein.

Concurrently with the execution and delivery of this First Supplemental Intercreditor Agreement, the Issuer is issuing its \$35,900,000 Tax-Exempt Education Revenue Bonds, Series 2017A (The Academy Charter School Project) (the “**Series 2017A Bonds**”) and its \$2,685,000 Taxable Education Revenue Bonds, Series 2017B (The Academy Charter School Project) (the “**Series 2017B Bonds**”; and together with the Series 2017A Bonds, the “**Series 2017 Bonds**”) under and pursuant to an Indenture of Trust dated as of August 1, 2017 (the “**Series 2017 Indenture**”) between the Issuer and the Series 2017 Trustee. The proceeds of the Series 2017 Bonds will be loaned to the School pursuant to a Loan Agreement dated as of August 1, 2017 (the “**Series 2017 Loan Agreement**”) between the Issuer and the School, pursuant to which the School, among other things, will grant in favor of the Issuer a lien on and security interest in the Pledged Revenues as security for its payment obligations under the Series 2017 Loan Agreement. Pursuant to the Series 2017 Indenture, the Issuer will assign substantially all its rights under the Series 2017 Loan Agreement to the Series 2017 Trustee, as trustee for the holders of the Series 2017 Bonds. The School’s payment obligations under the Series 2017 Loan Agreement will be further secured by (i) a certain Building Loan Mortgage, dated as of August 1, 2017 (the “**Series 2017 Building Loan Mortgage**”); (ii) a certain Project Loan Mortgage, dated as of August 1, 2017 (the “**Series 2017 Project Loan Mortgage**”); and (iii) a certain Series 2017 Collateral Mortgage, dated as of August 1, 2017 (the “**Series 2017 Collateral Mortgage**”) and, together with the Series 2017 Project Loan Mortgage, and the 2017 Building Loan Mortgage, the “**Series 2017 Mortgages**”; and, together with the Series 2011 Mortgages and the Series 2013 Mortgages, the “**Mortgages**”), each, granted by the School, as mortgagor, to the Issuer, as mortgagee, on certain property owned by the School at 117 North Franklin Street, Hempstead, New York 11550 (the “**Series 2017 Property**”), which such Series 2017 Mortgages were each assigned by the Issuer to the Series 2017 Trustee pursuant to (i) a certain Assignment of Building Loan Mortgage, dated as August 10, 2017 (the “**Series 2017 Assignment of Building Loan Mortgage**”); and (ii) a certain Assignment of Project Loan Mortgage, dated as August 10, 2017 (the “**Series 2017 Assignment of Project Loan Mortgage**”), and (iii) a certain Assignment of Series 2017 Collateral Mortgage, dated as of August 10, 2017 (the “**Assignment of Series 2017 Collateral Mortgage**”; and, together with the Series 2017 Assignment of Building Loan Mortgage and the Series 2017 Assignment of Project Loan Mortgage, the “**Series 2017 Assignment of Mortgages**”), each from the Issuer to the Series 2017 Trustee.

D. In connection with the issuance of (i) the Series 2011 Bonds, the School, the Series 2011 Trustee and the Custodian entered into a certain Custody Agreement, dated as of

March 1, 2011 (the “**Original Custody Agreement**”), (ii) the Series 2013 Bonds, the School, the 2011 Trustee, the Custodian and the 2013 Trustee entered into a certain Amended and Restated Custody Agreement, dated as of December 1, 2013 (the “**Amended and Restated Custody Agreement**”), and (iii) the Series 2017 Bonds, the School, the 2011 Trustee, the 2013 Trustee, the 2017 Trustee and the Custodian entered into a certain Custody Agreement, dated as of March 1, 2011 (the “**Second Amended and Restated Custody Agreement**”; and, together with the Original Custody Agreement and the Amended and Restated Custody Agreement, the “**Custody Agreement**”). Pursuant to the Custody Agreement, the School will cause payments of Education Aid due to the School from the School Districts named in the Custody Agreement to be delivered to the Custodian, and the Custodian will in turn make transfers of certain moneys to the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee for deposit under the Series 2011 Indenture, the Series 2013 Indenture, and the Series 2017 Indenture all as set forth therein.

E. In accordance with the provisions of each of the Series 2011 Loan Agreement, the Series 2013 Loan Agreement, and the Series 2017 Loan Agreement, the grant by the School of a lien on and security interest in its Pledged Revenues in favor of the Series 2011 Trustee (as assignee of the Issuer), with respect to the Series 2011 Bonds, in favor of the Series 2013 Trustee (as assignee of the Issuer), with respect to the Series 2013 Bonds, and in favor of the Series 2017 Trustee (as assignee of the Issuer), with respect to the Series 2017 Bonds is intended to secure, equally and ratably, the School’s obligations under the Series 2011 Loan Agreement, the Series 2013 Loan Agreement and the Series 2017 Loan Agreement.

F. In accordance with the provisions of each of the Mortgages, the grant by the School of (i) the Series 2011 Mortgages in favor of the Series 2011 Trustee, (ii) the Series 2013 Mortgages in favor of the Series 2013 Trustee, and (iii) the Series 2017 Mortgages in favor of the Series 2017 Trustee, is intended to secure, equally and ratably, the School’s obligations under the Series 2011 Loan Agreement, the Series 2013 Loan Agreement and the Series 2011 Loan Agreement.

G. In light of the foregoing, the parties are entering into this First Supplemental Intercreditor Agreement to provide for (i) the collection and distribution of the Pledged Revenues by the Collateral Agent and (ii) the exercise of any remedies and rights under the Series 2011 Mortgages by the Series 2011 Trustee, the Series 2013 Mortgages by the Series 2013 Trustee, and the Series 2017 Mortgages by the Series 2017 Trustee, for the equal and ratable benefit of the owners from time to time of the Series 2011 Bonds, the Series 2013 Bonds and the Series 2017 Bonds and of each other future holder of Parity Indebtedness, as hereinafter defined (if any), all as provided herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises and agreements of the parties herein, and intending to be legally bound, the parties hereby agree as follows:

Section 1. Definitions.

Capitalized terms used herein that are defined in the recitals hereto shall have the meanings set forth therein. Capitalized terms used herein that are defined in the Indentures shall

have the meanings set forth therein unless the context clearly requires otherwise. In addition, the following additional terms used herein shall be defined as follows.

*“Event of Default”* means any “Event of Default” or similar event described in any Parity Debt Agreement (as defined below) (after the passage of any applicable grace period) or the Mortgages.

*“Parity Debt Agreement”* means each of the Series 2011 Loan Agreement, the Series 2011 Note, the Series 2013 Loan Agreement, the Series 2013 Note, the Series 2017 Loan Agreement, and the Series 2017 Note, together with each other instrument or agreement evidencing indebtedness of the School identified as an additional Parity Debt Agreement in any Supplement entered into for the purpose of identifying the indebtedness evidenced thereby as additional Parity Indebtedness of the School.

*“Parity Indebtedness”* shall have the meanings assigned thereto in the Series 2011 Indenture, the Series 2013 Indenture and the Series 2017 Indenture.

*“Parity Secured Party”* means each of: (i) the Series 2011 Trustee (as assignee of the Issuer), in respect of the obligations of the School under the Series 2011 Loan Agreement and the Series 2013 Note; (ii) the Series 2013 Trustee (as assignee of the Issuer), in respect of the obligations of the School under the Series 2013 Loan Agreement and the Series 2013 Note, (iii) the Series 2017 Trustee (as assignee of the Issuer), in respect of the obligations of the School under the Series 2017 Loan Agreement and the Series 2017 Note, and (iv) each holder of additional Parity Indebtedness identified as an additional Parity Secured Party in any Supplement entered into for the purpose of identifying the indebtedness evidenced thereby as additional Parity Indebtedness of the School.

*“Supplement”* means any Supplement to this Intercreditor Agreement delivered pursuant to Section 6 hereof.

*“Pledged Revenues”* means the (i) “Gross Revenues” as defined in the Series 2011 Indenture, the Series 2013 Indenture and the Series 2017 Indenture and any similar term used to define the pledged revenues of the School in any additional Parity Debt Agreement; (ii) any Net Proceeds of casualty insurance or condemnation awards pursuant to Article VII of the Series 2011 Loan Agreement or the Series 2013 Loan Agreement or the Series 2017 Loan Agreement; (iii) Net Proceeds from any foreclosure of any Mortgage or other security agreement by the Trustee; (iv) amounts under the Second Amended and Restated Custody Agreement; (v) any other amounts required by the School to be paid to the Series 2011 Trustee under the Series 2011 Loan Agreement or to the Series 2013 Trustee under the Series 2013 Loan Agreement or the Series 2017 Trustee under the Series 2017 Loan Agreement; and (vi) proceeds of the Key Person Life Insurance Policy required pursuant to Section 8.23 of the Series 2013 Loan Agreement and Section 8.23 of the Series 2017 Loan Agreement.

Section 2. Parity Indebtedness.

By their execution of this First Supplemental Intercreditor Agreement, the parties hereto acknowledge and agree that the grant by the School of (i) a lien on and security interest in the Pledged Revenues and (ii) a mortgage on each of the Series 2011 Property, the Series 2013 Property and the Series 2017 Property to each Parity Secured Party shall secure the indebtedness of the School under each Parity Debt Agreement and the Mortgages equally and ratably in accordance with this First Supplemental Intercreditor Agreement without regard to the time any such lien, security agreement or mortgage was created or the order of attachment or perfection of any such lien, security agreement or mortgage or the filing of any financing statement in respect thereof or any other circumstance whatsoever.

Section 3. Mortgage Foreclosure Proceeds. The exercise of rights and remedies under the 2011 Mortgages shall be exercised by the Series 2011 Trustee and any and all proceeds shall be applied as further defined under this Section 3. The exercise of rights and remedies under the Series 2013 Mortgages shall be exercised by the Series 2013 Trustee and any and all proceeds shall be applied as further directed under this Section 3. The exercise of rights and remedies under the Series 2017 Mortgages shall be exercised by the Series 2017 Trustee and any and all proceeds shall be applied as further directed under this Section 3. The proceeds from the sale under the Mortgages of all or any part of the Series 2011 Property and/or the Series 2013 Property and/or the Series 2017 Property shall promptly be remitted to the Collateral Agent upon receipt and in the form received. The Collateral Agent shall allocate the proceeds to each Parity Secured Party for the equal and ratable benefit of each Parity Secured Party.

Section 4. Application of Pledged Revenues.

(a) In order to secure the interests of each Parity Secured Party in the Pledged Revenues, the Collateral Agent shall act for the benefit of each Parity Secured Party. Upon the occurrence or continuation of any Event of Default, which occurrence or continuation of any Event of Default under any Parity Debt Agreement shall cause the School to deliver or cause to be delivered no less frequently than weekly its Pledged Revenues to the Collateral Agent to be applied for the equal and ratable benefit of each Parity Secured Party.

(b) The Collateral Agent shall apply the available Pledged Revenues received in accordance with subsection (a) above to the payment of the School's obligations under each Parity Debt Agreement, respectively, on a *pro rata* basis in proportion to the aggregate amount due under each Parity Debt Agreement (less, in each case, the amount of any available funds pledged exclusively for the benefit of the Parity Secured Party, including, without limitation, any debt service fund or debt service reserve fund securing any applicable Parity Indebtedness), divided by the total amount of Parity Indebtedness at the time outstanding pursuant to the Parity Debt Agreements. For purposes of this paragraph, in the event one or more Parity Debt Agreements require the payment of interest on a monthly basis and one or more Parity Debt Agreements require the payment of interest on a semi-annual basis, the Collateral Agent shall treat one-sixth of the amount of any semi-annual interest payment as being due in each month and in the event one or more Parity Debt Agreements require the payment of principal on a monthly basis and one or more Parity Debt Agreements require the payment of principal on an annual basis, the Collateral Agent shall treat one-twelfth of the amount of any annual principal

payment as being due in each month. The Collateral Agent shall promptly make available to each Parity Secured Party any portion of the Pledged Revenues to which each Parity Secured Party is entitled under this Section.

(c) Each Parity Secured Party shall promptly give written notice to each other Parity Secured Party and to the Collateral Agent of the occurrence of (i) any Event of Default or (ii) any other event which with the giving of notice, the passage of time or both would be an Event of Default of which it has knowledge or (iii) fifteen (15) days prior written notice of the exercise, cure, waiver of any rights or remedies relating to any Event of Default, or (iv) any notice received from the Borrower, Issuer, or any third party referencing an Event of Default, in accordance with the terms of any Parity Debt Agreement, as applicable.

(d) At the written request of the Collateral Agent, each other Parity Secured Party shall provide the Collateral Agent information needed to determine the amount, if any, to be distributed to such other Parity Secured Party pursuant to subsection (b) above.

(e) The Collateral Agent shall provide notice to the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee of any exercise of its rights under this First Supplemental Intercreditor Agreement.

Section 5. Property Held by Parity Secured Party.

If and to the extent that, at any time an Event of Default shall have occurred and be continuing and any Parity Secured Party (other than the Series 2011 Trustee acting as trustee under the Series 2011 Indenture, the Series 2013 Trustee acting as trustee under the Series 2013 Indenture and the Series 2017 Trustee acting as trustee under the Series 2017 Indenture) shall be then be in possession of or thereafter have, acquire or be entitled to receive, by exercise of any right of set-off, bankers lien or other right, lien or security interest, whether created by any law or contract, any portion of the Pledged Revenues or any proceeds thereof, including any cash, investments or other property held in any deposit or investment account maintained by the School with such Parity Secured Party, such Parity Secured Party shall promptly deliver the same to the Collateral Agent for application as provided in Section 3 above and prior to such delivery, shall hold and maintain such property for the benefit and security of all of the Parity Secured Parties and.

Section 6. Additional Parity Indebtedness.

(a) The School will cause each holder of additional Parity Indebtedness of the School hereafter incurred to enter into a Supplement, pursuant to which such holder shall agree to the collection and distribution of the Pledged Revenues for the equal and ratable benefit and security of all holders of Parity Indebtedness in the manner provided herein.

(b) In connection with each Supplement, the School shall prepare a schedule, substantially in the form of Schedule 1 to the Intercreditor Agreement, identifying as of the date of such Supplement, the following: (i) each prior Supplement (if any); (ii) each Parity Debt Agreement then outstanding; and (iii) each Parity Secured Party (including the current address and facsimile number or other address or direction for electronic delivery of notices under the

Intercreditor Agreement). The School shall deliver a copy of any such Supplement to each Parity Secured Party.

Section 7. Accountings. The Collateral Agent shall keep and maintain adequate records pertaining to all disbursements hereunder and shall annually file an accounting thereof with the Series 2011 Trustee, the Series 2013 Trustee, the Series 2017 Trustee and the School.

Section 8. Payment of Expenses. The School shall pay when billed all reasonable fees, compensation and expenses of the Collateral Agent under the Intercreditor Agreement, including reasonable fees for legal counsel. The School agrees to indemnify the Collateral Agent for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Collateral Agent arising out of or in connection with the Intercreditor Agreement or any action taken under or contemplated by the Intercreditor Agreement. In case any such claim should be made or action brought against the Collateral Agent in respect of which indemnity may be sought against the School, the Collateral Agent shall, as a condition of its right to indemnification hereunder, promptly notice the School in writing setting forth the particulars of such claim or action. The Collateral Agent shall be entitled to participate at its own expense in the defense of any such action, or if it so elects to assume such defense, in which case such defense shall be conducted at the Collateral Agent's expense by counsel chosen by the Collateral Agent and reasonably satisfactory to the School. This Section 8 shall survive the termination of the Intercreditor Agreement. The Series 2011 Trustee or the Series 2013 Trustee or the Series 2017 Trustee, may (but shall not be obligated to) advance such cost or expense of the Collateral Agent. Any amount so paid under this Section 8 shall be given a preference in payment over any Bonds and interest thereon, and shall be paid out of the proceeds of revenues collected from the Trust Estate, if not otherwise caused to be paid.

Section 9. Appointment of Successor Collateral Agent.

(a) In case the Collateral Agent hereunder shall resign, or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor Collateral Agent may be appointed by the Parity Secured Parties by an instrument signed by each Parity Secured Party and delivered to such successor Collateral Agent, the predecessor Collateral Agent, the Series 2011 Trustee, the Series 2013 Trustee, the Series 2017 Trustee, the Issuer and the School.

(b) No Collateral Agent shall resign hereunder until a successor Collateral Agent shall be appointed hereunder. If the position of Collateral Agent shall become vacant for any reason the School shall cooperate with the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee to appoint a successor Collateral Agent and shall use their best efforts to obtain acceptance of such appointment of successor Collateral Agent within sixty (60) days from such vacancy or notice of resignation. Within twenty (20) days after such appointment and acceptance, the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee shall notify in writing the School and the Holders of all Bonds.

(c) The Collateral Agent may be removed for any reason at any time by written notice prepared by the Series 2011 Trustee, the Series 2013 Trustee and the Series 2017 Trustee.

(d) Section 17 of this Agreement shall control the replacement of the Collateral Agent in the event of a replacement by a successor Trustee under the Series 2011 Indenture, the Series 2013 Indenture or the Series 2017 Indenture.

Section 10. Notices.

Any notice hereunder shall be given to the applicable party in writing by first class mail postage prepaid or by recognized overnight courier service, and shall be delivered to the School as follows:

To the School:

The Academy Charter School  
117 North Franklin Street  
Hempstead, New York 11550  
Attention: Board Chair

To the Issuer:

Town of Hempstead Local Development Corporation  
350 Front Street, 2nd Floor  
Hempstead, New York 11550-4037  
Attention: Executive Director and Chief Executive Officer

To the 2011 Trustee:

Manufacturers and Traders Trust Company  
1 M&T Plaza, 7th Floor  
Buffalo, New York 14203  
Attention: Corporate Trust Department

To the 2013 Trustee:

Manufacturers and Traders Trust Company  
1 M&T Plaza, 7th Floor  
Buffalo, New York 14203  
Attention: Corporate Trust Department

To the 2017 Trustee:

Manufacturers and Traders Trust Company  
1 M&T Plaza, 7th Floor  
Buffalo, New York 14203  
Attention: Corporate Trust Department

To the Custody Agent:

Manufacturers and Traders Trust Company  
1 M&T Plaza, 7th Floor  
Buffalo, New York 14203  
Attention: Corporate Trust Department

Any notice given to any Parity Secured Party shall be delivered to the address of such Parity Secured Party as provided on Schedule 1 hereto (including any amended Schedule 1 provided in any Supplement hereto).

Section 11. Governing Law.

This Intercreditor Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to principles of conflicts of laws contained therein.

Section 12. Agreement Controlling.

To the extent there is a conflict or inconsistency between the terms of this Agreement, the Mortgages, the Indenture, or any amendment or modification of either thereof, this Agreement shall control as among the parties hereto.

Section 13. Individual Bondholder Action Restricted.

The Bondholders shall have the rights under Section 8.08 of the 2011 Indenture, the 2013 Indenture or the 2017 Indenture.

Section 14. Integration.

This First Supplemental Intercreditor Agreement sets forth the entire agreement among the parties hereto relating to the transactions contemplated hereby and supersedes any prior oral or written statements or agreements with respect to such transactions.

Section 15. Amendments.

Except as provided in Section 6 hereof in connection with the issuance of additional Parity Indebtedness, this First Supplemental Intercreditor Agreement may not be amended, modified or supplemented except in writing signed by each of the parties hereto.

Section 16. Counterparts.

This First Supplemental Intercreditor Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

Section 17. Rights of the Collateral Agent; Successor Collateral Agent.

The parties hereto acknowledge and agree that, in exercising its rights and performing its duties as Collateral Agent, the Collateral Agent shall be entitled to the rights, protections, immunities and indemnities provided to it as Trustee by the Series 2011 Indenture, the Series 2013 Indenture, the Series 2017 Indenture, the Series 2011 Loan Agreement, the Series 2013 Loan Agreement and the Series 2017 Loan Agreement as if such rights, protections, immunities and indemnities were set forth in full herein. If the Collateral Agent is replaced with a successor trustee under the Series 2011 Indenture, the Series 2013 Indenture, and the Series 2017 Indenture, then such successor trustee shall automatically become the Collateral Agent under this First Supplemental Intercreditor Agreement.

IN WITNESS WHEREOF, each of the parties hereto have caused this Intercreditor Agreement to be duly executed on its behalf by its duly authorized officer or representative as of date set forth above.

**MANUFACTURERS AND TRADERS TRUST  
COMPANY, as the Series 2011 Trustee**

By: \_\_\_\_\_  
Name: Maureen A. Auld  
Title: Assistant Vice President

**MANUFACTURERS AND TRADERS TRUST  
COMPANY, as the Series 2013 Trustee**

By: \_\_\_\_\_  
Name: Maureen A. Auld  
Title: Assistant Vice President

**MANUFACTURERS AND TRADERS TRUST  
COMPANY, as the Series 2017 Trustee**

By: \_\_\_\_\_  
Name: Maureen A. Auld  
Title: Assistant Vice President

**MANUFACTURERS AND TRADERS TRUST  
COMPANY, as the Custodian**

By: \_\_\_\_\_  
Name: Maureen A. Auld  
Title: Assistant Vice President

**MANUFACTURERS AND TRADERS TRUST  
COMPANY, as the Collateral Agent**

By: \_\_\_\_\_  
Name: Maureen A. Auld  
Title: Assistant Vice President

**ACADEMY CHARTER SCHOOL,  
a New York not-for-profit education  
corporation**

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

Name: Barrington Goldson

Title: Board Chair

**TOWN OF HEMPSTEAD LOCAL  
DEVELOPMENT CORPORATION**

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

Name: Frederick E. Parola

Title: Executive Director and Chief Executive Officer



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

On the \_\_\_ day of August in the year 2017, before me, the undersigned, personally appeared **Maureen A. Auld**, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

---

Notary Public

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

On the \_\_\_ day of August in the year 2017, before me, the undersigned, personally appeared **Frederick E. Parola**, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

---

Notary Public

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

On the 9th day of August in the year 2017, before me, the undersigned, personally appeared **Barrington Goldson**, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

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Notary Public

## SCHEDULE 1

### Schedule of Parity Indebtedness

1. Prior Supplements to Intercreditor Agreement.

NONE.

2. Parity Debt Agreements:

- (a) Loan Agreement, dated as of March 1, 2011, between the Issuer and the School (as amended and supplemented from time to time, the “**Series 2011 Loan Agreement**”);
- (b) Loan Agreement, dated as of December 1, 2013, between the Issuer and the School (as amended and supplemented from time to time, the “**Series 2013 Loan Agreement**”); and
- (c) Loan Agreement, dated as of July 1, 2017, between the Issuer and the School (as amended and supplemented from time to time, the “**Series 2017 Loan Agreement**”).

3. Parity Secured Parties:

(a) Series 2011 Trustee:

Manufacturers and Traders Trust Company  
1 M&T Plaza, 7th Floor  
Buffalo, New York 14203  
Attention: Corporate Trust Department

(b) Series 2013 Trustee:

Manufacturers and Traders Trust Company  
1 M&T Plaza, 7th Floor  
Buffalo, New York 14203  
Attention: Corporate Trust Department

(c) Series 2017 Trustee:

Manufacturers and Traders Trust Company  
1 M&T Plaza, 7th Floor  
Buffalo, New York 14203  
Attention: Corporate Trust Department

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