

*In the opinion of Hiscock & Barclay, LLP, Bond Counsel, under existing statutes and court decisions, (1) interest on the Tax-Exempt Bonds is excluded from gross income for federal income tax purposes, assuming compliance with certain covenants and the accuracy of certain representations, and is not an item of tax preference for purposes of the individual and corporate alternative minimum taxes imposed by the Internal Revenue Code of 1986, as amended (the “Code”); however, for the purpose of computing the alternative minimum tax imposed on certain corporations (as determined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings; and (2) interest on the Tax-Exempt Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof (including The City of New York and the City of Yonkers). **INTEREST ON THE TAXABLE BONDS IS NOT EXCLUDABLE FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES AND IS NOT EXEMPT FROM PERSONAL INCOME TAXES IMPOSED BY THE STATE OF NEW YORK OR ANY OF ITS POLITICAL SUBDIVISIONS. See “TAX MATTERS” herein.***

\$7,125,000

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND
DEVELOPMENT CORPORATION
TAX-EXEMPT REVENUE BONDS
(ENTERPRISE CHARTER SCHOOL PROJECT),
SERIES 2011A**



\$220,000

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND
DEVELOPMENT CORPORATION
TAXABLE REVENUE BONDS
(ENTERPRISE CHARTER SCHOOL PROJECT),
SERIES 2011B**

**Dated: Date of Delivery
Interest Payable: June 1 and December 1**

**Due: December 1, as shown on inside front cover
First Interest Payment Date: June 1, 2011**

The Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Enterprise Charter School Project), Series 2011A (the “Tax-Exempt Bonds”) and the Buffalo and Erie County Industrial Land Development Corporation Taxable Revenue Bonds (Enterprise Charter School Project), Series 2011B (the “Taxable Bonds” and, together with the Tax-Exempt Bonds, the “Series 2011 Bonds”) are to be issued under the Indenture of Trust, dated as of February 1, 2011 (the “Indenture”), between Buffalo and Erie County Industrial Land Development Corporation (the “Issuer”) and Manufacturers and Traders Trust Company, as trustee (“Trustee”), as fully registered bonds without coupons in denominations of \$5,000 and integral multiples thereof.

All payments of principal on the Series 2011 Bonds are payable at the Trust Office of the Trustee described herein, in Buffalo, New York, and interest, payable each June 1 and December 1, commencing June 1, 2011, shall be paid by check of the Trustee mailed to the registered owners of the Series 2011 Bonds at their registered addresses, or in lieu of a check and (i) if so requested before a Record Date by an Owner of at least \$1,000,000 in principal amount of Series 2011 Bonds as determined under the terms of the Indenture, or (ii) for Series 2011 Bonds registered in the name of Cede & Co., by wire transfer to any account in a bank located in the United States of America designated by such Owner.

The Series 2011 Bonds and interest thereon are special limited obligations of the Issuer, payable solely from (i) the moneys received under the Loan Agreement described herein or held by the Trustee under the Indenture described herein, and (ii) upon an Event of Default, amounts realized pursuant to a Guaranty and Mortgage on the Project Facility, all as further described herein, including payments required to be made by:

ENTERPRISE CHARTER SCHOOL

a charter school under the State of New York’s Education Law (referred to herein as the “Institution”).

The Series 2011 Bonds will be subject to redemption prior to maturity, as described under the caption “THE SERIES 2011 BONDS – Redemption Prior to Maturity of Series 2011 Bonds” herein.

THE SERIES 2011 BONDS SHALL NEVER BE A DEBT OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. NONE OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF IS OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF, THE PRINCIPAL OR REDEMPTION PRICE, IF ANY, OF OR INTEREST ON, THE SERIES 2011 BONDS. THE SERIES 2011 BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES OR OTHER RECEIPTS, FUNDS OR MONEYS OF THE ISSUER PLEDGED UNDER THE INDENTURE AND FROM ANY AMOUNTS OTHERWISE AVAILABLE UNDER THE INDENTURE FOR THE PAYMENT OF THE BONDS. THE SERIES 2011 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

The purchase of the Series 2011 Bonds involves significant risks. See the caption “CERTAIN BONDHOLDERS’ RISKS” herein.

The Series 2011 Bonds will be issued only as fully-registered bonds in book-entry-only form, and when delivered, will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York (“DTC”). Individual purchases of beneficial interests in the Series 2011 Bonds will be made in book-entry only form (without certificates). So long as DTC or its nominee is the registered owner of the Series 2011 Bonds, payments of principal, redemption price, and interest on the Series 2011 Bonds will be made directly to DTC or its nominee. Disbursement of such payments to DTC participants is the responsibility of DTC and disbursement of such payments to the beneficial owners in the responsibility of DTC participants.

The Series 2011 Bonds are offered, subject to prior sale, when, as and if issued and accepted by M&T Securities, Inc. (the “Underwriter”), subject to the approving opinion of Hiscock & Barclay, LLP, Buffalo, New York, Bond Counsel to the Issuer, and certain other conditions. In connection with the issuance of the Series 2011 Bonds, certain legal matters for the Institution will be passed on by its counsel, Harter Secrest & Emery LLP, Buffalo, New York, certain legal matters for the Issuer will be passed on by its counsel, Harris Beach, PLLC, Buffalo, New York, and certain legal matters for the Underwriter will be passed on by its counsel, Reed Smith LLP. Delivery and payment in full for the Series 2011 Bonds are anticipated to occur on or about February 17, 2011.



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

**\$7,125,000 TAX-EXEMPT REVENUE BONDS
(ENTERPRISE CHARTER SCHOOL PROJECT), SERIES 2011A**

Maturity Schedule

**\$640,000, 6.00% Term Bonds due December 1, 2019, Priced at 100%, CUSIP[†] 11943KAH5
\$6,485,000, 7.50% Term Bonds due December 1, 2040, Priced at 97.091% to Yield 7.75%, CUSIP[†]
11943KAJ1**

**\$220,000 TAXABLE REVENUE BONDS
(ENTERPRISE CHARTER SCHOOL PROJECT), SERIES 2011B**

Maturity Schedule

\$220,000, 7.00% Term Bonds due December 1, 2013, Priced at 100%, CUSIP[†] 11943KAK8

[†] The above CUSIP (Committee on Uniform Securities Identification Procedures) numbers have been assigned by an organization not affiliated with the Issuer, the Institution or the Underwriter, and such parties are not responsible for the selection or use of the CUSIP numbers. The CUSIP numbers are included solely for the convenience of bondholders and no representation is made as to the correctness of such CUSIP numbers. CUSIP numbers assigned to securities may be changed during the term of such securities based on a number of factors including, but not limited to, the refunding or defeasance of such issue or the use of secondary market financial products. Neither the Issuer, the Institution nor the Underwriter has agreed to, and there is no duty or obligation to, update this Official Statement to reflect any change or correction in the CUSIP numbers set forth above.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2011 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME WITHOUT PRIOR NOTICE.

NO DEALER, BROKER, SALESPERSON OR OTHER PERSON HAS BEEN AUTHORIZED BY THE ISSUER, THE INSTITUTION OR THE UNDERWRITER TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS, OTHER THAN THOSE CONTAINED IN THIS OFFICIAL STATEMENT, AND IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY ANY OF THE FOREGOING. ALL INFORMATION CONTAINED HEREIN HAS BEEN OBTAINED FROM THE ISSUER, THE INSTITUTION, THE DEPOSITORY TRUST COMPANY ("DTC") AND OTHER SOURCES WHICH ARE BELIEVED TO BE ACCURATE AND RELIABLE, BUT NO REPRESENTATION, WARRANTY, OR GUARANTEE IS MADE AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION IN THIS OFFICIAL STATEMENT. NOTHING CONTAINED IN THIS OFFICIAL STATEMENT CONSTITUTES AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THE SERIES 2011 BONDS BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH OFFER, SOLICITATION OR SALE. THE INFORMATION AND EXPRESSIONS OF OPINION HEREIN ARE SUBJECT TO COMPLETION AND AMENDMENT. ALL SUMMARIES CONTAINED IN THIS OFFICIAL STATEMENT ARE SUBJECT IN ALL RESPECTS TO THE COMPLETE CONSTITUTIONAL PROVISION, STATUTE, REGULATION, RULE, COURT DECISION, DOCUMENT OR REPORT REFERRED TO. THE INFORMATION AND EXPRESSIONS OF OPINION CONTAINED HEREIN ARE SUBJECT TO CHANGE WITHOUT NOTICE. NEITHER THE DELIVERY OF THIS OFFICIAL STATEMENT NOR ANY STATEMENT NOR ANY SALE MADE HEREUNDER WILL UNDER ANY CIRCUMSTANCES CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE INSTITUTION SINCE THE DATE HEREOF.

THE SERIES 2011 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 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 2011 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF SECURITIES LAWS OF THE STATES IN WHICH THE SERIES 2011 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN THE 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 2011 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

The Issuer assumes no responsibility with respect to the accuracy or completeness of the information contained in this Official Statement, other than information under the captions "THE ISSUER" and "LITIGATION-The Issuer," all of which information has been furnished by others.

This Official Statement contains summaries of certain documents believed to be accurate, but reference is hereby made to the actual documents, copies of which are incorporated by reference and are available at the offices of the Trustee, and all such summaries are qualified in their entirety by this reference. Prospective purchasers are referred to the Act, the Education Law, the Charter Schools Act, the Charter, the Loan Agreement, the Custody Agreement, the Indenture, the Mortgage, the Guaranty, the Pledge and Assignment, and the Assignment of Mortgage (as each such term is defined herein), which documents are available for inspection at the principal corporate trust office of the Trustee specified herein. During the initial offering period with respect to the Series 2011 Bonds, copies of all such documents in draft or executed form may be obtained by contacting the Underwriter, M&T Securities, Inc., 160 Technology Drive, Suite 201, Canonsburg, Pennsylvania 15317.

The information included herein under the caption "THE SERIES 2011 BONDS -- BOOK-ENTRY-ONLY SYSTEM" concerning DTC has been furnished by DTC. The information included herein under the captions "THE ISSUER" and "LITIGATION-The Issuer" has been furnished by the Issuer for inclusion herein. The information included herein under the captions "THE PROJECT," "SUMMARY OF ESTIMATED SOURCES AND APPLICATIONS OF FUNDS," "SOURCES OF REVENUE," "THE INSTITUTION," "CERTAIN BONDHOLDERS' RISKS," "ENFORCEABILITY OF OBLIGATIONS," "LITIGATION-The Institution" and APPENDIX A and APPENDIX B hereto have been furnished by the Institution for inclusion herein. APPENDIX C and APPENDIX D hereto have been furnished by Bond Counsel for inclusion herein. All other information included herein has been obtained from sources which are believed to be reliable.

This Official Statement contains certain "forward-looking statements" concerning the operations and financial condition of the Institution. These statements are based upon a number of assumptions and estimates which are subject to significant uncertainties, many of which are beyond the control of the Institution. The words "may," "would," "could," "will," "expect," "anticipate," "believe," "intend," "plan," "estimate" and similar expressions are meant to identify these forward-looking statements. *The achievement of certain results or other expectations contained in such forward-looking statements involves known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. The Institution does not plan to issue any updates or revisions to these forward-looking statements if or when changes to its expectations, or events, conditions or circumstances on which such statements are based, occur.* A number of important factors affecting the Institution's financial results could cause actual results to differ materially from those stated in the forward-looking statements. See "CERTAIN BONDHOLDERS' RISKS" and APPENDIX A.

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* The Table of Contents does not list all of the subjects in this Official Statement. In all instances, reference should be made to the complete Official Statement to determine the subjects set forth herein.

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SHORT STATEMENT

THE FOLLOWING IS A SUMMARY OF CERTAIN INFORMATION CONTAINED IN THIS OFFICIAL STATEMENT. THIS SUMMARY IS NOT COMPREHENSIVE OR COMPLETE AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE COMPLETE OFFICIAL STATEMENT. CAPITALIZED TERMS USED HEREIN THAT ARE NOT REQUIRED TO BE CAPITALIZED BY PROPER RULES OF GRAMMAR ARE DEFINED IN THE LOAN AGREEMENT AND INDENTURE REFERRED TO HEREIN AND ELSEWHERE IN THIS OFFICIAL STATEMENT. SEE APPENDIX D – “CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES.”

THE OFFERING OF THE SERIES 2011 BONDS TO POTENTIAL INVESTORS IS MADE ONLY BY MEANS OF THIS ENTIRE OFFICIAL STATEMENT. NO PERSON IS AUTHORIZED TO DETACH THIS SHORT STATEMENT FROM THIS OFFICIAL STATEMENT OR OTHERWISE USE IT WITHOUT THIS ENTIRE OFFICIAL STATEMENT.

THE SERIES 2011 BONDS. The Tax-Exempt Revenue Bonds (Enterprise Charter School Project), Series 2011A (the “Tax-Exempt Bonds”) and the Taxable Revenue Bonds (Enterprise Charter School Project), Series 2011B (the “Taxable Bonds” and, together with the Tax-Exempt Bonds, the “Series 2011 Bonds”) are to be issued by Buffalo and Erie County Industrial Land Development Corporation (the “Issuer”), in denominations of \$5,000 and integral multiples thereof, and will be secured pursuant to an Indenture of Trust, dated as of February 1, 2011 (the “Indenture”), between the Issuer and Manufacturers and Traders Trust Company, as trustee (the “Trustee”). See “THE SERIES 2011 BONDS - General.”

PAYMENT. Interest accrues on the Series 2011 Bonds at the rates set forth on the inside cover page, payable on June 1 and December 1 of each year (commencing June 1, 2011) by check of the Trustee mailed on such dates to the persons who were the registered owners of Series 2011 Bonds as of the 15th day of the month (regardless of whether such day is a Business Day) immediately preceding each Interest Payment Date (or as of certain Special Record Dates in certain events), at their registered addresses, or in lieu of a check and: (i) if so requested before a Record Date by an Owner of at least \$1,000,000 in principal amount of Series 2011 Bonds as determined under the terms of the Indenture, or (ii) for Series 2011 Bonds registered in the name of Cede & Co., by wire transfer to an account in a bank located in the United States of America designated by such Owner. See “THE SERIES 2011 BONDS - General.”

REDEMPTION. The Series 2011 Bonds are subject to prepayment and redemption prior to maturity, as more fully described herein under the caption “THE SERIES 2011 BONDS - Redemption Prior to Maturity of Series 2011 Bonds” as follows: (a) Tax-Exempt Bonds maturing on December 1, 2040 are subject to optional redemption at the direction of the Institution in whole or in part at any time on or after December 1, 2020, at a redemption price equal to 100% of the principal amount of the Tax-Exempt Bonds to be redeemed, plus accrued interest to the redemption date, without premium; (b) extraordinary redemption in whole, but not in part, upon receipt by the Trustee of written notice of a final determination by a court or Regulatory Body of the invalidity, illegality or unenforceability of such Series 2011 Bonds, the Loan Agreement or the Indenture at a redemption price equal to 100% of the principal amount thereof to be redeemed plus accrued interest to the redemption date, without premium; (c) mandatory redemption in whole or in part, to the extent (i) excess bond proceeds shall remain in the Project Fund after completion of construction, renovation and equipping of the Project Facility, or (ii) moneys are transferred to the Redemption Fund or paid to the Trustee for deposit in the Redemption Fund, upon the receipt of property insurance or title insurance proceeds, condemnation awards or proceeds of any conveyance in lieu of condemnation, which are directed to be applied to the redemption of the Series 2011 Bonds pursuant to the Loan Agreement, at a redemption price equal to 100% of the principal amount of the Series 2011 Bonds to be redeemed, plus accrued interest to the redemption date, without premium; (d) mandatory redemption of the Tax-Exempt Bonds in whole, but not in part, due to a Determination of Taxability, at a redemption price equal to 104% of the principal amount thereof together with interest, if any, accrued thereon from the most recent Interest Payment Date to which interest has been paid or duly provided for to the redemption date; and (e) mandatory sinking fund redemption by lot in authorized denominations, at a redemption price equal to 100% of the principal amount thereof to be redeemed plus accrued interest to the redemption date, without premium.

USE OF PROCEEDS. Proceeds of the Series 2011 Bonds are to be applied by Enterprise Charter School (the "Institution"), a charter school under the Education Law (the "Education Law") of the State of New York (the "State") to: (i) finance (A) the acquisition by the Institution of an approximately 3.923 acre parcel of land (the "Land") improved by two (2) buildings totaling approximately 96,271 square feet and related parking lot and other improvements (collectively the "Existing Buildings") located at 275 Oak Street in the City of Buffalo, Erie County, New York, (B) the acquisition and construction on the Land by the Institution of an approximately 10,000 square foot addition and related infrastructure improvements (the "Addition") consisting of an approximately 8,555 square foot school gymnasium and an approximately 1,445 square foot corridor and related improvements in the gymnasium to connect the gymnasium to the Existing Buildings and resurfacing the parking areas and driveway areas, (C) the renovation of the Existing Buildings, including, without limitation, upgrading bathrooms, replacing floor covering and installing updated electronic cable (collectively the Existing Buildings and Addition, the "Improvements"), and (D) the acquisition and installation in and around the Improvements of certain items of furniture, furnishings, equipment, machinery and other tangible personal property (collectively, the "Equipment" and, collectively with the Land and the Improvements, the "Project Facility"); (ii) fund a Debt Service Reserve Fund with respect to the Tax-Exempt Bonds and (iii) pay the costs of issuing the Series 2011 Bonds. See APPENDIX B - "THE INSTITUTION AND THE PROJECT FACILITY." See also "SUMMARY OF ESTIMATED SOURCES AND APPLICATION OF FUNDS."

THE PROJECT. The Institution currently leases, inter alia, the Land and the Existing Buildings from ATC of Buffalo and Erie, County, Inc. ("ATC") pursuant to a Sublease Agreement dated as of June 1, 2003, as subsequently amended (the "Sublease"). ATC, in turn, currently leases, inter alia, the Land and the Existing Buildings from the Erie County Industrial Development Agency (the "ECIDA") pursuant to an Amended and Restated Agency Lease Agreement, dated April 1, 2001, as amended (the "Agency Lease"). The Sublease provides for an option to the Institution to purchase, inter alia, the Land and the Existing Buildings. The Institution has exercised its option to purchase the portion of leased property constituting the Land and the Existing Buildings, and the Institution, ATC and the ECIDA have entered into a Purchase and Sale Agreement dated October 28, 2010, as amended, pursuant to which the Institution agreed to purchase the Land and the Existing Buildings, for a purchase price of approximately \$4,739,116, upon the completion of which, the Institution will be the owner of the Project Facility and will continue to operate the Project Facility as a charter school for grades kindergarten through eighth and lease portions of the Existing Buildings to the State and other not-for-profit corporations for office use.

SECURITY FOR THE SERIES 2011 BONDS. The Indenture pledges and assigns to the Trustee a first security interest in all right, title and interest of the Issuer in and to the Loan Agreement (and the continuing right to receive Gross Revenues including the loan payments to be made by the Institution pursuant to the Loan Agreement) except certain Unassigned Rights including indemnity, payment of fees, and repayment of expenses and advances, monies and securities held by the Trustee under the Indenture and other Property, including proceeds received by the Issuer in the exercise of any remedies under the Bond Documents. The Series 2011 Bonds and payments to be made pursuant to the Loan Agreement will be secured by (i) a first lien on the Gross Revenues of the Institution pursuant to a pledge under the Loan Agreement (subject to the restrictions on the pledge of public education aid set forth in Article 56 of the Education Law, as amended (the "Charter Schools Act") and any parity or subordinated lien permitted under the Loan Agreement), which will be assigned by the Issuer to the Trustee, (ii) a first lien on and security interest in the Project Facility and the other Mortgaged Property (subject to certain Permitted Encumbrances, including any parity or subordinated lien permitted under the Loan Agreement) pursuant to a Mortgage and Security Agreement from the Institution to the Issuer, dated as of February 1, 2011 (the "Mortgage"), which Mortgage will be assigned to the Trustee, (iii) a Guaranty from the Institution to the Trustee, dated as of February 1, 2011 (the "Guaranty") and (iv) funds and accounts (other than the Rebate Fund and, with respect to the Taxable Bonds, the Debt Service Reserve Fund) held by the Trustee under the Indenture. For more information with respect to the Project Facility, see APPENDIX B - "THE INSTITUTION AND THE PROJECT FACILITY." See also APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES." The Tax-Exempt Bonds are also to be secured by the Debt Service Reserve Fund (as further described herein), funded at the time of the issuance of the Tax-Exempt Bonds in an amount equal to the Reserve Fund Requirement. The Series 2011 Bonds are not secured by any interest of the Institution in public education aid payable to the Institution pursuant to the Charter Schools Act. The Series 2011 Bonds are not general obligations of the Issuer and are not payable from any revenues or assets of the Issuer, except for the Issuer's interest in the Loan Agreement (which, except certain Unassigned Rights including indemnity, payment of fees, and repayment of expenses and advances, has been assigned to the

Trustee), and security therefor. The Issuer does not have any taxing authority. See "SECURITY FOR THE SERIES 2011 BONDS."

THE INSTITUTION. The Institution is an education corporation organized under the Charter Schools Act (a "charter school") primarily for the purpose of carrying out the function of a charter school for grades kindergarten through eighth. Additional information concerning the Institution is set forth in APPENDIX B. See APPENDIX B - "THE INSTITUTION AND THE PROJECT FACILITY." Audited financial statements of the Institution for its fiscal year ended June 30, 2010, are attached hereto as APPENDIX A. See APPENDIX A - "2010 AUDITED FINANCIAL STATEMENTS."

CHARTER CONTRACT. The Institution is subject to the leadership and general supervision of the Board of Regents of the State (the "Board of Regents"). The Board of Regents is the authorizing body of the Institution and has issued a charter to the Institution (as amended, the "Charter"), incorporating the Institution as a charter school. The Board of Regents oversees and monitors the Institution's Board of Trustees and its compliance with all applicable State and federal laws pertaining to charter schools. The Institution was issued a provisional charter on March 23, 2003. The Charter was renewed on January 12, 2010, for a term ending June 30, 2013, in accordance with a Second Charter Agreement, dated January 4, 2010, between the Institution and the Board of Education of the City School District of the City of Buffalo (the "Buffalo School District"). The Institution will covenant to use its best efforts to maintain the Charter and its existence as a charter school as long as the Series 2011 Bonds are Outstanding.

CHARTER SCHOOLS GENERALLY. The State limits the number of charter schools but increased its charter cap from 200 schools to 460 schools on May 28, 2010, when it enacted Chapter 101 of the Laws of 2010. According to the New York State Education Department (the "Education Department") website (as of December 8, 2010), (a) as of the 2009-10 school year, the State had 140 operating charter schools serving approximately 47,600 students and expects currently operating charter schools to enroll more than 70,000 additional students as they add grades in fulfillment of their charters, and (b) 14 new charter schools have been approved to begin operating in school year 2010-11 or later.

The school district of residence for any student of a charter school is required, under the Charter Schools Act, to pay directly to such charter school for each student enrolled in the charter school who resides in such school district an amount calculated pursuant to the Charter Schools Act ("Per Pupil Aid"), which amount is determined annually by the Education Department for each school district. In addition, pursuant to the Charter Schools Act, each school district shall also pay directly to such charter school any federal or State aid attributable to a student with a disability residing in such school district and attending such charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly ("Disability Aid" and together with Per Pupil Aid, collectively "public education aid").

BOARD OF REGENTS. The Board of Regents supervises all educational activities within the State and presides over the Education Department and the State University of New York.

THE LOAN AGREEMENT. The Institution and the Issuer will enter into the Loan Agreement as a means of financing all or a portion of the costs of the acquisition, reconstruction, construction and equipping of the Project Facility. The Loan Agreement requires, among other things, that the Institution make loan payments prior to each Interest Payment Date in amounts equal to the interest next coming due on the Series 2011 Bonds for which payment has not been duly provided and the principal of and premium, if any, next coming due on the Series 2011 Bonds for which payment has not been duly provided. Pursuant to the Loan Agreement, the Institution will grant a security interest in and pledge the Gross Revenues to the Issuer subject to the restrictions set forth in the Charter Schools Act with respect to the pledge of public education aid. See APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES."

THE INDENTURE. The Indenture authorizes the Trustee to authenticate and deliver the Series 2011 Bonds. The Indenture creates a trust estate for the benefit of the Owners of the Series 2011 Bonds. The Indenture establishes the following funds to be held by the Trustee for the term of the Indenture: the Project Fund, the Bond Fund, the Repair and Replacement Fund, the Debt Service Reserve Fund (with respect to the Tax-Exempt Bonds), the Rebate Fund, the Insurance and Condemnation Fund and the Redemption Fund. The Debt Service Reserve Fund

will be funded with certain proceeds of the Tax-Exempt Bonds, in an amount equal to the Reserve Fund Requirement (which will initially be \$635,500). See APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES."

THE CUSTODY AGREEMENT. The Institution will cause the Buffalo School District, on each bi-monthly payment date, to pay the Buffalo School District's public education aid payable to the Institution on such date directly to Manufacturers and Traders Trust Company, as custodian (the "Custodian") and as Trustee. The Buffalo School District, in the 2010-11 fiscal year of the Institution, will account for approximately 95.5% of the Per Pupil Aid received by the Institution. See "CERTAIN BONDHOLDERS' RISKS -- Legislative Risk and Local School Districts Risk" herein. Upon receipt of such amounts, the Custodian will pay the Trustee, for deposit in the Bond Fund, an amount equal to a proportionate share of the next interest payment and principal payment and premium, if any, on the Series 2011 Bonds for which funds have not already been provided, and for deposit in the Series 2011 Subaccount of the Debt Service Reserve Fund, certain amounts equal to a proportion of any amount by which the Reserve Fund Requirement exceeds the amounts then on deposit in the Series 2011A Subaccount of the Debt Service Reserve Fund. Any funds remaining with the Custodian following such transfers will be transferred to the Institution.

ACTUAL AND FORECAST STUDENT ENROLLMENT AND PER PUPIL AID. Set forth below are the Institution's actual and forecasted enrollment and actual and forecasted Per Pupil Aid (from the Buffalo School District):

<u>School Year</u>	<u>Grades Offered</u>	<u>Enrollment</u>	<u>Per Pupil Aid</u>
05-06 (actual)	K-10	505	\$8,700
06-07 (actual)	K-11	555	\$9,499
07-08 (actual)	K-12	605	\$9,567
08-09 (actual)	K-8	405	\$10,429
09-10 (actual)	K-8	405	\$10,429
10-11 (forecast)	K-8	405	\$12,005*
11-12 (forecast)	K-8	405	\$12,245
12-13 (forecast)	K-8	405	\$12,490
13-14 (forecast)	K-8	405	\$12,740
14-15 (forecast)	K-8	405	\$12,995

* This is the final Per Pupil Aid for the Buffalo School District for 2010-11, as released by the Education Department (https://stateaid.nysed.gov/charter/html_docs/charter_1011_updated_prelim.htm). The 2009-10 State Budget initiated a one year freeze on Per Pupil Aid. The 2010-11 Executive Budget proposed extending that freeze for one additional year, and certain budget bills enacted by the State's Legislature included that provision, but were vetoed by the Governor for reasons unrelated to the freeze on Per Pupil Aid.

TRUSTEE, CUSTODIAN, REGISTRAR, AND PAYING AGENT. Manufacturers and Traders Trust Company, Buffalo, New York, a corporation organized under the banking laws of the State, will serve as the Trustee, Registrar and Paying Agent under the Indenture and as Custodian under the Custody Agreement.

INVESTMENT RISKS. An investment in the Series 2011 Bonds involves significant risks, including, among others, those discussed herein under "CERTAIN BONDHOLDERS' RISKS."

OFFICIAL STATEMENT

relating to

\$7,125,000
**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND
DEVELOPMENT CORPORATION
TAX-EXEMPT REVENUE BONDS
(ENTERPRISE CHARTER SCHOOL PROJECT),
SERIES 2011A**

\$220,000
**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND
DEVELOPMENT CORPORATION
TAXABLE REVENUE BONDS
(ENTERPRISE CHARTER SCHOOL PROJECT),
SERIES 2011B**

INTRODUCTORY STATEMENT

This Official Statement, including the cover page and appendices, provides certain information with respect to Buffalo and Erie County Industrial Land Development Corporation (the "Issuer") and its \$7,125,000 Tax-Exempt Revenue Bonds (Enterprise Charter School Project), Series 2011A (the "Tax-Exempt Bonds") and its \$220,000 Taxable Revenue Bonds (Enterprise Charter School Project), Series 2011B (the "Taxable Bonds" and, together with the Tax-Exempt Bonds, the "Series 2011 Bonds"). The Series 2011 Bonds are being issued pursuant to an Indenture of Trust, dated as of February 1, 2011 (the "Indenture"), between the Issuer and Manufacturers and Traders Trust Company, as trustee (the "Trustee"). The Series 2011 Bonds shall be dated the date of their delivery and shall mature on the dates and bear interest at the rates set forth on the inside front cover hereof. The Series 2011 Bonds are subject to redemption prior to maturity as set forth more fully herein under "THE SERIES 2011 BONDS - Redemption Prior to Maturity of Series 2011 Bonds."

Certain capitalized terms are used throughout this Official Statement that are not required to be capitalized by proper rules of grammar. Such capitalized terms not otherwise defined in this Official Statement have the meanings assigned to them in APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES."

The Series 2011 Bonds are to be issued pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "State"), as amended, and the Resolutions of the Legislature of the County of Erie, New York (the "County"), Nos. 218 and 295 of 2009 and No. 5-3 of 2010 (collectively referred to as, the "Act"), and the certificate of incorporation, bylaws and proceedings of the Issuer. The Series 2011 Bonds will be special, limited obligations of the Issuer payable solely from the moneys received under the Loan Agreement described herein or otherwise held by the Trustee under the Indenture described herein, and upon an Event of Default, amounts realized pursuant to the Loan Agreement, the Guaranty and the Mortgage, all as further described herein.

The Series 2011 Bonds are being issued at the request of Enterprise Charter School (the "Institution"), an education corporation (a "charter school") incorporated under Article 56 of the Education Law of the State, as amended (the "Charter Schools Act"). The Institution operates a charter school under a charter (as amended, the "Charter") issued by the Board of Regents of the State (the "Board of Regents"). The Internal Revenue Service has determined that the Institution is an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), as set forth in its determination letter dated April 28, 2004.

The net proceeds of the Series 2011 Bonds will be used (i) to finance (A) the acquisition by the Institution of an approximately 3.923 acre parcel of land (the "Land") improved by two (2) buildings totaling approximately 96,271 square feet and related parking lot and other improvements (collectively the "Existing Buildings") located at 275 Oak Street in the City of Buffalo, Erie County, New York, (B) the acquisition and construction on the Land by the Institution of an approximately 10,000 square foot addition and related infrastructure improvements (the "Addition") consisting of an approximately 8,555 square foot school gymnasium and an approximately 1,445 square foot corridor and related improvements in the gymnasium to connect the gymnasium to the Existing Buildings and resurfacing the parking areas and driveway areas, (C) the renovation of the Existing Buildings, including, without limitation, upgrading bathrooms, replacing floor covering and installing updated electronic cable (collectively with the Existing Buildings and Addition, the "Improvements"), and (D) the acquisition and installation in and around the Improvements of certain items of furniture, furnishings, equipment, machinery and other tangible personal property (collectively, the "Equipment" and, collectively with the Land and the Improvements, the "Project Facility"), (ii) to fund a Debt Service Reserve Fund for the Tax-Exempt Bonds, and (iii) to pay the costs of issuance of the Series 2011 Bonds. The Institution currently leases, inter alia, the Land and the Existing Buildings from ATC of Buffalo and Erie, County, Inc. ("ATC") pursuant to a Sublease Agreement dated as of June 1, 2003, as subsequently amended (the "Sublease"). ATC, in turn, currently leases, inter alia, the Land and the Existing Buildings from the Erie County Industrial Development Agency (the "ECIDA") pursuant to an Amended and Restated Agency Lease Agreement, dated April 1, 2001, as amended (the "Agency Lease"). The Sublease provides for an option to the Institution to purchase, inter alia, the Land and the Existing Buildings. The Institution has exercised its option to purchase the portion of leased property constituting the Land and the Existing Buildings, and the Institution, ATC and the ECIDA have entered into a Purchase and Sale Agreement dated October 28, 2010, as amended (the "Purchase and Sale Agreement"), pursuant to which the Institution agreed to purchase the Land and the Existing Buildings, for a purchase price of approximately \$4,739,116, upon the completion of which, the Institution will be the owner of the Project Facility and will continue to operate the Project Facility as a charter school for grades of kindergarten through eighth and lease portions of the Existing Buildings to the State and other not-for-profit corporations for office use. See APPENDIX B - "THE INSTITUTION AND THE PROJECT FACILITY," and "SUMMARY OF ESTIMATED SOURCES AND APPLICATION OF FUNDS" herein.

The Issuer and the Institution will execute and deliver a Loan Agreement, dated as of February 1, 2011 (the "Loan Agreement"), under which the Institution will be obligated to make loan payments in amounts sufficient to pay the principal of, and premium, if any, and interest on, the Series 2011 Bonds when due. See APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES." The Series 2011 Bonds and payments to be made pursuant to the Loan Agreement will be secured by (i) a first lien on the Gross Revenues of the Institution pursuant to a pledge under the Loan Agreement (subject to the restrictions on the pledge of public education aid set forth in the Charter Schools Act) and subject to any parity or subordinated lien permitted under the Loan Agreement), which will be assigned by the Issuer to the Trustee, (ii) a first lien on and security interest in the Project Facility and the other Mortgaged Property (subject to certain Permitted Encumbrances, including any parity or subordinated lien permitted under the Loan Agreement) pursuant to a Mortgage and Security Agreement from the Institution to the Issuer, dated as of February 1, 2011 (the "Mortgage"), which Mortgage will be assigned to the Trustee, (iii) a Guaranty from the Institution to the Trustee, dated as of February 1, 2011 (the "Guaranty"), and (iv) funds and accounts (other than the Rebate Fund and, with respect to the Taxable Bonds, the Debt Service Reserve Fund) held by the Trustee under the Indenture.

The Institution also expects to enter into a Custody Agreement, dated as of February 1, 2011 (the "Custody Agreement"), with Manufacturers and Traders Trust Company, as custodian (in such capacity, the "Custodian") and as Trustee, pursuant to which the Institution will cause the School District of the City (the "Buffalo School District"), on each bi-monthly payment date, to pay the Buffalo School District's public education aid payable to the Institution on such date directly to the Custodian. Upon receipt of such amounts, the Custodian will pay the Trustee, for deposit in the Bond Fund, an amount equal to a proportionate share of the next interest payment and principal payment and premium, if any, on the Series 2011 Bonds for which funds have not already been provided, and for deposit in the Series 2011A Subaccount of the Debt Service Reserve Fund, certain amounts equal to any amount by which the Reserve Fund Requirement exceeds the amounts then on deposit in the Debt Service Reserve Fund. Any funds remaining with the Custodian following such transfers will be transferred to the Institution.

Pursuant to the Indenture, the Issuer will pledge and assign to the Trustee a first security interest in the Issuer's interest in the Gross Revenues, including payments to be made by the Institution pursuant to the Loan

Agreement (except certain Unassigned Rights including indemnity, payment of fees, and repayment of expenses and advances). Pursuant to the Guaranty, the Institution will guarantee the payment of principal of, and premium, if any, and interest on the Series 2011 Bonds. The Series 2011 Bonds are additionally secured by certain funds and accounts created under the Indenture, including the Bond Fund. The Tax-Exempt Bonds are also secured by the Debt Service Reserve Fund. For a more detailed description of the security for the Series 2011 Bonds, see "SECURITY FOR THE SERIES 2011 BONDS."

There follows in this Official Statement and in the Appendices hereto descriptions of the Series 2011 Bonds, the security for the Series 2011 Bonds, and summaries of certain related legal documents (including the Loan Agreement, the Custody Agreement, the Mortgage and the Indenture), descriptions of the Institution, the Issuer, the Project Facility, certain Bondholders' risks, a summary of estimated sources and application of funds, and other matters. These summaries and descriptions do not purport to be complete and are expressly made subject to the further provisions of this Official Statement (including the Appendices hereto) as well as to the exact provisions of the complete documents, which may be obtained from the Trustee or, during the offering period for the Series 2011 Bonds, from the Underwriter. Certain information contained in this Official Statement has been furnished by the Institution. Such information furnished by the Institution includes, without limitation, all information concerning the Project Facility, estimated sources and application of funds, sources of revenue and the Institution, including all information set forth in Appendices A and B to this Official Statement. The Issuer has not participated in the preparation of this information or reviewed the accuracy of said information. The Issuer has consented or will consent to the use of this Official Statement but has not made any investigation of the facts contained herein.

The Loan Agreement, the Indenture, the Mortgage and the Guaranty will be entered into and the legal opinions referred to herein will be delivered on or prior to the delivery date of the Series 2011 Bonds.

THE ISSUER

The Issuer was established as a not-for-profit local development corporation of the State pursuant to the purposes and powers contained within the Act, and pursuant to its certificate of incorporation filed on January 13, 1982, as amended on October 15, 1996, with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest and to issue its revenue bonds in furtherance of the foregoing.

The Act further authorizes the Issuer to lease and sell any or all of its facilities, to issue bonds and to make loans for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon.

The sole member of the Issuer is the County of Erie, New York, acting by and through its County Executive. The Issuer currently has seven (7) directors. The persons currently serving as directors of the Issuer are as follows:

<u>Name</u>	<u>Position</u>
Hon. Chris Collins	Chairperson
Philip C. Ackerman	Director
Philip Corwin	Director
Hon. Byron W. Brown	Director
Hon. Barbara Miller-Williams	Director
Hon. Timothy J. Whalen	Director
Michael Hoffert	Director

The persons currently serving as officers of the Issuer are as follows:

<u>Name</u>	<u>Position</u>
Alfred D. Culliton	Chief Operating Officer
Andrew Schoeppich	Treasurer/CFO
John Cappellino	Executive Vice President
David W. Kerchoff	Assistant Treasurer
Karen Fiala	Assistant Treasurer
Shawn M. Griffin	Secretary
Robert G. Murray	Assistant Secretary

The Series 2011 Bonds are limited obligations of the Issuer payable solely from the payments made by the Institution under the Loan Agreement, from the monies held by the Trustee under the Indenture, and the security provided by the Guaranty, the Mortgage and the Loan Agreement. The Issuer, its member and officers are not personally liable with respect to the Series 2011 Bonds. Accordingly, no financial information with respect to the Issuer or its members or officers has been included in this Official Statement.

The Issuer has no taxing power. The Series 2011 Bonds shall never constitute a debt of the State or the County, and neither the faith and credit nor the taxing power of the State, the County or any political subdivision thereof is pledged to the payment of the principal of or interest on the Series 2011 Bonds, and neither the State nor the County shall be liable thereon nor shall the Series 2011 Bonds be payable out of any funds of the Issuer other than those duly pledged therefor pursuant to the Indenture.

The Issuer has not verified, reviewed or approved, and does not make any representations with respect to, the accuracy or completeness of any of the information set forth in this Official Statement, other than information set forth under "THE ISSUER" and "LITIGATION-The Issuer" herein.

THE PROJECT

The Project will include: (i) the acquisition by the Institution of the Land improved by the Existing Buildings, the acquisition and construction on the Land of the Addition and related Improvements, and the acquisition and installation in and around the Improvements of certain Equipment, (ii) funding a Debt Service Reserve Fund for the Tax-Exempt Bonds, and (iii) paying the costs of issuance of the Series 2011 Bonds. The Institution currently leases, inter alia, the Land and the Existing Buildings from ATC pursuant to the Sublease. ATC, in turn, currently leases, inter alia, the Land and the Existing Buildings from the ECIDA pursuant to the Agency Lease. The Sublease provides for an option to the Institution to purchase, inter alia, the Land and the Existing Buildings. The Institution has exercised its option to purchase the portion of leased property constituting the Land and the Existing Buildings, and the Institution, ATC and the ECIDA have entered into the Purchase and Sale Agreement, providing for a purchase price of approximately \$4,739,116, upon the completion of which the Institution will be the owner of the Project Facility and will continue to operate the Project Facility as a charter school for grades of kindergarten through eighth and lease portions of the Existing Buildings to the State and other not-for-profit corporations for office use. See APPENDIX B - "THE INSTITUTION AND THE PROJECT FACILITY."

SUMMARY OF ESTIMATED SOURCES AND APPLICATION OF FUNDS

The estimated sources and application of funds, inclusive of the proceeds of issuance of the Series 2011 Bonds, required in connection with the Project are anticipated to be, as follows:

SOURCES OF FUNDS

Par Amount of Series 2011 Bonds.....	\$7,345,000
Less Original Issue Discount.....	<u>(188,649)</u>
TOTAL SOURCES	<u>\$7,156,351</u>

USES OF FUNDS

Costs of Issuance**	\$ 425,125
Debt Service Reserve Fund.....	635,500
Project Fund.....	1,356,610
Purchase of Project Facility	<u>4,739,116</u>
TOTAL USES	<u>\$7,156,351</u>

** Includes Underwriter's discount, legal fees, trustee fees, printing costs, rating fees and miscellaneous expenses.

THE SERIES 2011 BONDS

General

The Series 2011 Bonds are authorized to be issued in the aggregate principal amount of \$7,345,000. The Series 2011 Bonds are to be dated the date of issuance, and are to bear interest payable semiannually on June 1 and December 1 of each year, commencing June 1, 2011, at the rates per annum, according to years of maturity, set forth on the inside front cover hereof. The Series 2011 Bonds are to mature on December 1 of the years and in the principal amounts set forth on the inside front cover hereof, and will be subject to redemption prior to maturity, including optional redemption, extraordinary redemption and mandatory redemption, as applicable, as set forth below under "Redemption Prior to Maturity of Series 2011 Bonds."

Interest payable on each Interest Payment Date for the Series 2011 Bonds is to be paid to the registered owners (sometimes referred to herein as the "Holders") of record in the registration records maintained by the Trustee as of the 15th day of the month (regardless of whether such day is a Business Day) immediately preceding the relevant Interest Payment Date, or, in certain events, if payment of the Series 2011 Bonds is not deposited with the Trustee on or before any such Interest Payment Date, to the Holders at the close of business on a Special Record Date established by the Trustee, notice of which shall have been mailed to all Owners not less than 15 days prior to such date.

The Series 2011 Bonds are to be issued in the form of fully registered Series 2011 Bonds, without coupons, each in minimum denominations of \$5,000 and integral multiples thereof. In the event any Series 2011 Bond is mutilated, lost, stolen or destroyed, the Trustee will authenticate a new Series 2011 Bond in accordance with the provisions of the Indenture, and the Trustee may charge the owner of such Series 2011 Bond with its reasonable fees and expenses in connection therewith and require indemnity reasonably satisfactory to the Trustee.

Redemption Prior to Maturity

Optional Redemption. The Tax-Exempt Bonds maturing on December 1, 2040, are subject to optional redemption, in whole or in part at any time on or after December 1, 2020, at the direction of the Institution, at a

redemption price equal to 100% of the principal amount of the Tax-Exempt Bonds to be redeemed, plus accrued interest to the redemption date, without premium.

Mandatory Sinking Fund Redemption of Series 2011 Bonds. The Series 2011 Bonds are subject to mandatory redemption pursuant to the operation of the mandatory sinking fund, as provided for in the Indenture, from payments to be made by the Institution under the Loan Agreement, as follows:

TAX-EXEMPT BONDS

The Tax-Exempt Bonds maturing on December 1, 2019 shall be subject to redemption by lot or such other method of random selection as the Trustee may determine, on December 1 of each year, and in the principal amounts each year, as set forth below, at a price equal to their principal amount plus accrued interest to the date of redemption.

<u>Year</u>	<u>Principal Amount</u>
2014	\$90,000
2015	95,000
2016	105,000
2017	110,000
2018	115,000
2019*	125,000

* Maturity

The Tax-Exempt Bonds maturing on December 1, 2040 shall be subject to redemption by lot or such other method of random selection as the Trustee may determine, on December 1 of each year, and in the principal amounts each year, as set forth below, at a price equal to their principal amount plus accrued interest to the date of redemption.

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2020	\$130,000	2031	\$300,000
2021	140,000	2032	325,000
2022	155,000	2033	350,000
2023	165,000	2034	375,000
2024	180,000	2035	405,000
2025	190,000	2036	440,000
2026	205,000	2037	470,000
2027	225,000	2038	510,000
2028	240,000	2039	550,000
2029	260,000	2040*	590,000
2030	280,000		

* Maturity

TAXABLE BONDS

The Taxable Bonds shall be subject to redemption by lot or such other method of random selection as the Trustee may determine, on December 1 of each year, and in the principal amounts each year, as set forth below, at a price equal to their principal amount plus accrued interest to the date of redemption.

<u>Year</u>	<u>Principal Amount</u>
2011	\$70,000
2012	70,000
2013*	80,000

* Maturity

Mandatory Redemption. The Tax-Exempt Bonds are subject to mandatory redemption, in whole or in part, to the extent (i) excess bond proceeds shall remain in the Project Fund after completion of construction, renovation and equipping of the Project Facility, or (ii) moneys are transferred to the Redemption Fund pursuant to the Indenture or paid to the Trustee for deposit in the Redemption Fund pursuant to the Loan Agreement, upon the receipt of property insurance or title insurance proceeds, condemnation awards or proceeds of any conveyance in lieu of condemnation, at a redemption price equal to 100% of the principal amount of the Tax-Exempt Bonds to be redeemed plus interest accrued to the redemption date, without premium.

Extraordinary Redemption. The Series 2011 Bonds are subject to extraordinary redemption, in whole but not in part, upon receipt by the Trustee of written notice of a final determination by court or Regulatory Body of the invalidity, illegality or unenforceability of such Series 2011 Bonds, the Loan Agreement or the Indenture at a redemption price equal to 100% of the principal amount of the Series 2011 Bonds to be redeemed plus interest accrued to the redemption date, without premium.

Mandatory Redemption of Tax-Exempt Bonds upon a Determination of Taxability. The Tax-Exempt Bonds are subject to mandatory redemption, as a whole, following the occurrence of a Determination of Taxability. In the event of a Determination of Taxability, the Tax-Exempt Bonds shall be redeemed on any date within 45 days of such occurrence specified in writing by the Institution to the Trustee made not less than 40 days prior to the redemption date and in the absence of such request, the Trustee shall, without further direction from the Institution, redeem all of the Tax-Exempt Bonds on the 45th day following such occurrence at a redemption price equal to 104% percent of the principal amount of the Tax-Exempt Bonds together with interest, if any, accrued thereon from the last Interest Payment Date to which interest has been paid or duly provided for to the redemption date.

Notice of Redemption. At least thirty (30) days but not more than forty-five (45) days before each redemption date, the Trustee will give notice, by first class mail, to each Owner of a Series 2011 Bond to be redeemed. Notice of redemption to Owners of \$1,000,000 or more in the aggregate principal amount of Outstanding Bonds shall be given by certified mail or overnight delivery service. The notice shall identify the Bonds to be redeemed and will state (1) the redemption date, (2) the redemption price, (3) that the Bonds called for redemption must be surrendered to collect the redemption price, (4) the address at which the Bonds must be surrendered, (5) that interest on the Bonds called for redemption ceases to accrue on the redemption date, and (6) the CUSIP numbers of the Bonds to be redeemed. If, at the time of mailing of the notice of optional redemption, there shall not have been deposited with the Trustee moneys sufficient to redeem all the Bonds called for redemption, such notice shall state that it is conditional, that is, subject to the deposit of the redemption moneys with the Trustee not later than the close of business on the Business Day prior to the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

Book-Entry Only System

Unless otherwise noted, the following description of the procedures and record keeping with respect to beneficial ownership interests in the Series 2011 Bonds, payment of interest and other payments on the Series 2011 Bonds to Participants or Beneficial Owners (as such terms are defined below) of the Series 2011 Bonds, confirmation and transfer of beneficial ownership interests in the Series 2011 Bonds and by and between DTC, Participants and Beneficial Owners of the Series 2011 Bonds is based solely on information furnished by DTC. Accordingly, the Issuer, the Institution, and the Underwriter do not and cannot make any independent representations concerning these matters.

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the Series 2011 Bonds. The Series 2011 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2011 Bond will be issued for each maturity of each separate series of the Series 2011 Bonds, 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 State's banking law (the "Banking Law"), a "banking organization" within the meaning of the Banking Law, a

member of the Federal Reserve System, a "clearing corporation" within the meaning of the State's 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 2.2 million issues of U.S. and non-U.S. equity issues, 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, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation and Emerging Markets Clearing Corporation (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. 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 and www.dtc.org.

Purchases of Series 2011 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2011 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2011 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2011 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 Series 2011 Bonds, except in the event that use of the book-entry system for the Series 2011 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2011 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 Series 2011 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 Series 2011 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2011 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

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

Redemption notices shall be sent to DTC. If less than all of the Series 2011 Bonds 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 any other DTC nominee) will consent or vote with respect to Series 2011 Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Institution as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Series 2011 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and principal and interest payments on the Series 2011 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the

Issuer or the Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2011 Bonds at any time by giving reasonable notice to Issuer or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Series 2011 Bonds are required to be printed and delivered.

The Institution may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Series 2011 Bonds will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Institution believes to be reliable, but the Institution takes no responsibility for the accuracy thereof.

Use of Certain Terms in Other Sections of the Official Statement. In reviewing this Official Statement, it should be understood that while the Series 2011 Bonds are in the Book-Entry System, references in other sections of this Official Statement to owners of the Series 2011 Bonds or Bondholders shall refer to Cede & Co., as nominee of DTC, and should be read with the understanding that (a) all rights of the Beneficial Owners must be exercised through DTC and the Book-Entry System and (b) notices that are to be given to Holders by the Trustee will be given only to DTC. DTC will forward (or cause to be forwarded) the notices to the Direct Participants by its usual procedures so that the Direct Participants may forward (or cause to be forwarded) such notices to the Beneficial Owners.

SECURITY FOR THE SERIES 2011 BONDS

Limited Obligations

THE SERIES 2011 BONDS SHALL NEVER BE A DEBT OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. NONE OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF IS OBLIGATED TO PAY, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW YORK, THE COUNTY OF ERIE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF, THE PRINCIPAL OR REDEMPTION PRICE, IF ANY, OF OR INTEREST ON, THE SERIES 2011 BONDS. THE SERIES 2011 BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES OR OTHER RECEIPTS, FUNDS OR MONEYS OF THE ISSUER PLEDGED UNDER THE INDENTURE AND FROM ANY AMOUNTS OTHERWISE AVAILABLE UNDER THE INDENTURE FOR THE PAYMENT OF THE SERIES 2011 BONDS. THE SERIES 2011 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER. THE ISSUER HAS NO TAXING POWER.

Assignment of Loan Agreement and Mortgage

Pursuant to the Indenture and a Pledge and Assignment, dated as of February 1, 2011 (the "Pledge and Assignment"), the Issuer is to pledge and assign all of its right, title and interest in and to the Loan Agreement to the Trustee to secure the Series 2011 Bonds, including all loan payments required to be made thereunder by the Institution (except certain Unassigned Rights including indemnity, payment of fees, and repayment of expenses and

advances). Pursuant to the Indenture and an Assignment of Mortgage, dated as of February 1, 2011 (the "Assignment of Mortgage"), the Issuer is to assign, transfer and set over all of its right, title and interest in and to the Mortgage to the Trustee.

Security Interest in Gross Revenues

Under the Loan Agreement, the Institution pledges and grants a security interest to the Issuer in the Gross Revenues, subject to any restrictions set forth in the Charter Schools Act with respect to the pledge or assignment of public education aid, and subject to any parity or subordinated lien permitted under the Loan Agreement. "Gross Revenues" of the Institution include receipts, operating revenues and gains, including, but not limited to, public education aid and other aid received by the Institution pursuant to federal or State law, requirements or grant or other programs, and also including interest earnings on all funds and accounts (except the Rebate Fund) held by the Trustee under the Indenture and the Custodian under the Custody Agreement. Gross Revenues does not, however, include any gifts, grants, bequests, donations and contributions made, designated or restricted for certain specified purposes inconsistent with the application thereof to the payments due under the Loan Agreement or not subject to pledge, and any income derived therefrom to the extent required by such designation or restriction. See APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES -- "Gross Revenues" herein"

Mortgage; Permitted Encumbrances

Under the Mortgage, the Institution grants to the Issuer as security for the Series 2011 Bonds a mortgage of and security interest in the Mortgaged Property, consisting generally of the Project Facility. The Issuer is to assign the Mortgage to the Trustee. The Project Facility and the Mortgaged Property do not include any interest in public education aid to the extent restricted by the Charter Schools Act (but only to the extent applicable). See APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES." See also APPENDIX B - "THE INSTITUTION AND THE PROJECT FACILITY." The lien of the Mortgage is subject to Permitted Encumbrances and any parity or subordinated lien permitted under the Loan Agreement.

The Institution will not be permitted to grant any security interests in Gross Revenues, public education aid (to the extent excluded from Gross Revenues) or the Mortgaged Property, other than (i) to secure the Series 2011 Bonds, (ii) parity or subordinate liens securing other permitted Long-Term Indebtedness, and (iii) Permitted Encumbrances. See APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES."

Guaranty

Pursuant to the Guaranty, the Institution irrevocably guarantees to the Trustee the full and prompt payment of principal of and interest and premium, if any, due on the Series 2011 Bonds and all other sums payable by the Issuer to the Trustee under any document related to the Series 2011 Bonds when and as the same shall become due.

Debt Service Reserve Fund

Under the Indenture, a Debt Service Reserve Fund (referred to generally herein as the "Reserve Fund") is to be maintained by the Trustee for the further security of the Tax-Exempt Bonds. The Reserve Fund Requirement will initially be funded by a deposit of \$635,500 from proceeds of the Tax-Exempt Bonds into a subaccount in the Reserve Fund for the Tax-Exempt Bonds. Under the Loan Agreement and the Indenture, the Institution is required to maintain a sum equal to the Reserve Fund Requirement in the Reserve Fund over the term of the Tax-Exempt Bonds. See APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES." Amounts on deposit in the Series 2011A Subaccount in the Reserve Fund are pledged to the payment of the principal of, and premium, if any, and interest on, the Tax-Exempt Bonds. Amounts in the Reserve Fund may be invested in Investment Securities, as described in APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES."

Financial Covenants

The Institution will covenant in the Loan Agreement that it shall maintain, on an annual basis as of the end of each Fiscal Year: (a) a Debt Service Coverage Ratio equal to or greater than 1.10:1; and (b) a ratio of (i)

aggregate unrestricted cash plus unrestricted marketable securities of the Institution to (ii) total operating expenses of the Institution for such Fiscal Year, excluding depreciation, as shown on the statement of operations of the Institution for such Fiscal Year (the "Liquidity Ratio"), equal to or greater than 7%.

If, as of the last day of any Fiscal Year, the Institution fails to maintain the Debt Service Coverage Ratio or to maintain the Liquidity Ratio, the Institution will promptly employ a Consultant to make recommendations no later than sixty (60) days following the date of engagement of such Consultant as to the methods of operation of the Institution which will result in satisfying each such requirement. Copies of the recommendations of the Consultant shall be filed with the Issuer, the Trustee and a Majority of Owners no later than sixty (60) days following the date of engagement of such Consultant. The Company shall, to the extent feasible, promptly upon its receipt of such recommendations and subject to the approval of such recommendations by a Majority of Owners and the Trustee, and further subject to applicable requirements or restrictions imposed by law or regulation, revise its methods of operation or collections and shall take such other action as shall be in conformity with such recommendations. If the Institution complies in all material respects with the reasonable recommendations of the Consultant in respect to said methods of operation, and the Debt Service Coverage Ratio is not less than 1.00:1.00 at the end of the then most recent Fiscal Year, the Institution will be deemed to have complied with such requirements notwithstanding that the Debt Service Coverage Ratio or the Liquidity Ratio shall be less than the amount required; provided that it shall be an Event of Default if any such failure shall continue for two consecutive Fiscal Years. Notwithstanding compliance by the Institution with the recommendations of the Consultant, if the Debt Service Coverage Ratio is less than 1.00:1.00 at the end of the then most recent Fiscal Year, the Trustee shall, if requested by a Majority of Owners, at any time during the immediately following Fiscal Year (and any Fiscal Year thereafter if such failure shall be continuing), declare an Event of Default.

Defeasance

Upon certain terms and conditions specified in the Indenture, including the deposit of certain funds with the Trustee, the Series 2011 Bonds will be deemed to be paid and the security provided in the Indenture for the Series 2011 Bonds may be discharged prior to the maturity or redemption thereof. See APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES."

SOURCES OF REVENUE

Under the Charter Schools Act, the Institution is entitled to receive public education aid from the School Districts for each student enrolled in the Institution. Such aid is payable on a per student basis by each of the School Districts in which students of the Institution are resident. The amount of aid for each student is determined on the basis of the "expense per pupil" as calculated under the Education Law for the respective School District. The amount of aid to which the Institution is entitled for each student will vary among School Districts based on, inter alia, the actual expense per pupil of the respective School District and the full time equivalent of the student.

The Charter Schools Act defines "expense per pupil" as the product of the approved operating expense for the applicable period, established by the Education Department for the respective School District, and the sum of the total aidable pupil units in the respective School District and weighted pupils with handicapping conditions. The aid for weighted pupils with handicapping conditions is called Public Excess Cost Aid and is included on the bi-monthly billings where applicable.

The Charter Schools Act also requires that each School District pay to the Institution any State or federal aid that is attributable to students with disabilities receiving special education services from the Institution, based upon the enrollment of such students in the Institution's program and the special education services provided. The Institution expects to receive approximately \$230,712 in aid for pupils with disabilities enrolled in special education programs for the 2010-2011 school year.

The Charter Schools Act provides that any aid payable to the Institution may be reduced pursuant to an agreement between the Institution and the Board of Regents. No such agreement is currently in effect. There can be no assurance that in connection with the Institution's application for renewal of its charter or otherwise, the Institution and the Board of Regents will not enter into such agreement in the future.

Each School District is required to make payments of public education aid to the Institution in six substantially equal installments on the first business day of each of the months of July, September, November, January, March and May in the amounts determined in accordance with the Charter Schools Act.

In the event a School District fails to make any of the required payments to the Institution, including those for services provided to pupils with disabilities, the Institution will notify the Commissioner of Education of the State (the "Commissioner") and the Commissioner will calculate and certify the amount of any delinquent payment due and owing to the Institution to the State Comptroller. Upon such certification, the State Comptroller will deduct the certified amount from State funds otherwise due to such School District and pay the amount withheld directly to the Institution.

Sources of Aid to Public Education in the State

Local Aid. The board of education for the Buffalo School District does not have the authority to levy school taxes on real property or otherwise to raise revenues. The Buffalo School District is fiscally dependent upon the City of Buffalo (the "City") for support. Revenues and expenses for public education are included in the municipal budget of the City. Real property taxes to support the Buffalo School District are levied by the City and subject to the constitutional tax limits imposed on the entire municipal budget. School taxes and State aid are received into, and disbursed to the Buffalo School District from, the general funds of the City. The City has experienced recurring difficulty in balancing its municipal budget and problems related to the level and stability of funding for, and allocation of municipal funds to, the Buffalo School District. Such difficulties may recur, and there can be no assurance that the level of local aid received by the Buffalo School District from the City will continue. Any shortfall may require either a counterbalancing increase in revenues from other sources to the extent available or a curtailment of expenditures and may adversely affect the timing and amount of funds available for payment of public education aid to the Institution which would have a material adverse effect on the ability of the Institution to make payments under the Loan Agreement necessary to pay principal of and interest and premium, if any, on the Series 2011 Bonds.

State Aid. State aid for public schools comes primarily from the State's general fund wherein the major revenue source is State income and sales taxes. The balance of State aid for public schools comes from a special revenue fund account supported by lottery receipts. The Buffalo School District receives approximately 74% of its revenues from such aid (collectively, "State School Aid").

State School Aid is allocated among public school districts on the basis of a complex set of components and formulas. The various components and formulas provide for State School Aid to be allocated on a per pupil basis as well on the basis of percentages of the wealth of the State's school districts as measured by real property assessments and income levels of school district residents. The distribution of most State School Aid is based on wealth equalizing formulas which are intended to distribute State School Aid in inverse proportion to the wealth of school districts and their concomitant ability to raise local revenues through real property assessment and taxation.

Additionally, the School Tax Relief ("STAR") program provides to homeowners in the State a State-funded exemption from a portion of school taxes payable with respect to their primary residences. School districts (or in the case of the Buffalo School District, the City) are reimbursed by the State for school taxes exempted pursuant to the STAR program.

Even though the State is obligated under its Constitution to provide for the maintenance and support of a system of free common schools, the State is not obligated either to continue to authorize the operation of charter schools or to continue its current system of State School Aid. Any change in the Charter Schools Act or in the provisions of the Education Law relating to the appropriation of aid funded by the State or failure by the Legislature of the State to appropriate funds sufficient to fund the operation of charter schools could have a material adverse effect on the ability of the Institution to make the loan payments necessary to pay principal of and interest and premium, if any, on the Series 2011 Bonds under the Loan Agreement.

Although State law prescribes a detailed process applicable to the adoption by the State of its annual budget, the State's annual budgetary process has resulted in recent years in the adoption of annual State budgets later, and in some instances substantially later, than April 1, which is the start of the State's fiscal year. No

assurance can be given as to the date of adoption of future annual State budgets or as to the availability of State funds for public education purposes while an annual State budget remains pending. The Institution is not legally authorized to issue revenue anticipation notes secured by an assignment or pledge of any public education aid.

DEBT SERVICE REQUIREMENTS FOR THE TAX-EXEMPT BONDS

<u>Fiscal Year (June 30)</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2011	-	\$151,601.67	\$151,601.67
2012	-	524,775.00	524,775.00
2013	-	524,775.00	524,775.00
2014	-	524,775.00	524,775.00
2015	\$ 90,000.00	522,075.00	612,075.00
2016	95,000.00	516,525.00	611,525.00
2017	105,000.00	510,525.00	615,525.00
2018	110,000.00	504,075.00	614,075.00
2019	115,000.00	497,325.00	612,325.00
2020	125,000.00	490,125.00	615,125.00
2021	130,000.00	481,500.00	611,500.00
2022	140,000.00	471,375.00	611,375.00
2023	155,000.00	460,312.50	615,312.50
2024	165,000.00	448,312.50	613,312.50
2025	180,000.00	435,375.00	615,375.00
2026	190,000.00	421,500.00	611,500.00
2027	205,000.00	406,687.50	611,687.50
2028	225,000.00	390,562.50	615,562.50
2029	240,000.00	373,125.00	613,125.00
2020	260,000.00	354,375.00	614,375.00
2031	280,000.00	334,125.00	614,125.00
2032	300,000.00	312,375.00	612,375.00
2033	325,000.00	288,937.50	613,937.50
2034	350,000.00	263,625.00	613,625.00
2035	375,000.00	236,437.50	611,437.50
2036	405,000.00	207,187.50	612,187.50
2037	440,000.00	175,500.00	615,500.00
2038	470,000.00	141,375.00	611,375.00
2039	510,000.00	104,625.00	614,625.00
2040	550,000.00	64,875.00	614,875.00
2041	590,000.00	22,125.00	612,125.00

DEBT SERVICE REQUIREMENTS FOR THE TAXABLE BONDS

<u>Fiscal Year (June 30)</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2011	-	\$ 4,448.89	\$ 4,448.89
2012	\$70,000.00	12,950.00	82,950.00
2013	70,000.00	8,050.00	78,050.00
2014	80,000.00	2,800.00	82,800.00

THE INSTITUTION

The Institution is a charter school and an organization described in Section 501(c)(3) of the Code, exempt from the payment of income taxes under Section 501(a) of the Code. Pursuant to the Charter Schools Act, the Institution shall be deemed an independent and autonomous public school (except as otherwise provided in the Charter Schools Act) and the Board of Regents shall be deemed to be the public agents authorized to supervise and oversee the Institution.

The current mailing address and telephone number of the Institution are: Enterprise Charter School, 275 Oak Street, Buffalo, New York 14203, (716) 855-2114.

For more information with respect to the Institution, see APPENDIX B - "THE INSTITUTION AND THE PROJECT FACILITY." Audited financial statements of the Institution for its fiscal year ended June 30, 2010, are attached hereto as APPENDIX A.

CERTAIN BONDHOLDERS' RISKS

No person should purchase any of the Series 2011 Bonds without carefully reviewing the following information, which summarizes some, but not all, factors that should be carefully considered before such purchase.

Limited Obligations

The Series 2011 Bonds and the interest thereon are special, limited obligations of the Issuer and will not constitute general obligations of the Issuer, the County or the State. The Issuer is obligated to make payments on the Series 2011 Bonds only to the extent of payments made by the Institution under the Loan Agreement, or from any amounts received by the Trustee from enforcement of the Mortgage or the Guaranty or from property, rights and interests held in the trust estate and pledged therefor pursuant to the Indenture. The Issuer has no taxing power. Neither the full faith and credit of the Issuer, the State, the County nor any other political subdivision of the State is pledged to the payment of principal of or interest on the Series 2011 Bonds. The Institution's ability to repay the Series 2011 Bonds will depend, among other things, on the overall financial condition of the Institution, the ability of the Institution to continue to maintain its Charter, enrollment levels in the Institution, and the timing and amount of Per Pupil Aid received by the Institution from the School Districts. No representation or assurance can be made that the revenues derived from the operation of the Institution, including, without limitation, public education aid and other Gross Revenues, will be sufficient to make the required payments under the Loan Agreement.

Existing and Prospective Operations

The Institution operates independently of State public schools and school districts (including the School Districts), but, pursuant to the Charter Schools Act, is entitled to receive from the School Districts Per Pupil Aid for each student resident in the respective School District who is enrolled in the Institution.

No assurances can be given that the revenues generated or to be generated by the Institution will be sufficient to provide for payment of all operating and other costs incurred by the Institution, including related debt service requirements on the Series 2011 Bonds and any other indebtedness of the Institution. The Institution is not expected to have any significant operations or assets other than the Project Facility and Per Pupil Aid from the School Districts. Accordingly, if the Institution does not generate sufficient revenues based upon student enrollment, it is unlikely that the Institution will have other resources with which to make payments under the Loan Agreement necessary to pay in full when due all principal of, and premium, if any, and interest on, the Series 2011 Bonds. See "SOURCES OF REVENUE" herein.

The revenues and expenses associated with the existing and prospective operations of the Institution will be affected by future events and conditions relating generally to, among other things, demand in the Institution's service area for alternative education facilities, the ability of the Institution to continue to provide the kinds of facilities and services desired or required by students, economic developments in the affected service area, competition from existing or future educational facilities (including public schools), the fiscal condition of the

respective School Districts obligated to pay Per Pupil Aid to the Institution, the fiscal condition of the State, the ability of the Institution to maintain its Charter and the ability of the Institution under existing and future market conditions to maintain high enrollment rates. The Institution is subject to competition from other charter schools, public schools, private schools and parochial schools. There can be no assurance that additional competing charter schools will not be chartered by the State in the future.

The Institution's enrollment is limited by the Education Department to 405 students in grades kindergarten through eighth for the 2010-11, 2011-12 and 2012-13 school years.

Legislative Risk and Local School Districts Risk

The State is not constitutionally obligated to continue to finance public education or continue to provide financial support at current levels to State public schools and school districts. Accordingly, particularly in light of the recurring difficulties encountered by the State in balancing its budget, which problems may recur, no assurance can be given that present State public education aid levels will be maintained in the future. Any change in the enabling legislation that created charter schools, failure by the School Districts to appropriate sufficient funds to fund their respective operations or failure by the legislature of the State to appropriate funds sufficient to fund public education aid could have a material adverse effect on the ability of the Institution to make payments under the Loan Agreement coming due thereafter. Under the Charter Schools Act, the Institution is entitled to receive, from School Districts, public education aid for each student enrolled in the Institution. Such aid is payable on a per student basis by each of the School Districts in which students of the Institution are resident. The amount of aid for each student is determined on the basis of the "expense per pupil" as calculated in the Education Law for the respective School District. The amount of aid to which the Institution is entitled for each student will vary among School Districts based on the actual expense per pupil of the respective School District.

Approximately 95.5% of the students enrolled at the Institution for the 2010-11 school year (as of December 31, 2010) reside in the Buffalo School District. The Buffalo School District is one of the so-called "Big Five" school districts and is fiscally dependent on the City. The City receives payments of State School Aid and federal aid allocable to the Buffalo School District and collects school taxes. The City has experienced recurring difficulties in balancing its municipal budget and problems related to the level and stability of funding for, and allocation of municipal funds to, the Buffalo School District. There can therefore be no assurance that (i) the City will make timely aid payments, (ii) the level of aid from real property taxes and other City funds received by the Buffalo School District from the City will continue or (iii) the Buffalo School District will have sufficient revenues to satisfy its obligations under the Charter Schools Act to pay to the Institution the public education aid required under the Charter Schools Act for students resident in the Buffalo School District. Any shortfall in the public education aid payable by the Buffalo School District or any other School District, or delay in such payment, may affect the Institution's ability to pay its operating expenses and the payments under the Loan Agreement necessary to pay principal of, premium, if any, and interest on the Series 2011 Bonds. Under the Charter Schools Act, the Institution has the ability to request an intercept of State School Aid payable to a School District in the event that a School District is more than 30 days late in making its public education aid payments to the Institution. See "SOURCES OF REVENUE" and "Fiscal Problems Affecting Buffalo and the Buffalo School District" herein.

For 2010-2011, approximately 95.5% of student revenue is expected to come from the Buffalo School District. For the 2010-2011 school year, the Institution budgeted to receive \$12,005 per student residing in the Buffalo School District. On June 30, 2010, the State's Governor vetoed the education budget proposed by the State's Legislature. The education budget contained an extension of the freeze for amounts of public education aid required to be paid to charter schools at the 2008-09 levels.

For 2010-11, Per Pupil Aid equals the product of the respective school district's 2008-09 approved operating expense per pupil (AOE/TAPU) multiplied by the percentage increase between the 2009-10 statewide total approved operating expense and the 2007-08 statewide total approved operating expense (111.8%).

The 2009-10 State Budget contained a one year freeze on the amount of public education aid school districts were required to pay to charter schools. The 2010-11 Executive Budget proposed extending that freeze for one additional year, and the budget bills enacted by the State's Legislature included that provision. That legislation was vetoed by the Governor for reasons unrelated to the freeze in charter school basic tuition. These estimates do

not reflect that proposed provision. As of December 31, 2010, the Per Pupil Aid payments for 2010-11 from the Buffalo School District are in effect at \$12,005 per pupil.

The Institution's students come from the following School Districts:

<u>District</u>	<u>2008-2009</u>	<u>2009-2010</u>	<u>2010-2011 (as of 12/31/10)</u>	<u>2010-2011 % of total</u>	<u>Per-Student Expenditure (as of 2010-11 school year)</u>
Buffalo City School District	395	394	387	95.5%	\$12,005
Sweet Home Central School District	0	0	1	.2%	\$11,954
Lancaster City School District	1	1	2	.4%	\$8,442
Cheektowaga Central School District	3	2	0	0%	\$10,235
Cleveland Hill Union Free School District	1		2	.4%	\$10,428
Lackawanna City School District	1	3	4	.9%	\$11,969
Ken-Ton School District	0	0	3	.7%	\$9,477
Williamsville School District	0	0	0	0	\$10,904
Amherst School District	0	0	1	.2%	\$10,721
Maryvale School District	1	2	0	0	\$10,433
West Seneca School District	0	0	3	.7%	\$10,179
Depew School District	2	3	2	.4%	\$10,409
Cheektowaga Sloan School District	1	0	0	0	\$11,946

Fiscal Problems Affecting Buffalo and the Buffalo School District

The City has experienced a steady decline in population over at least the past 30 years and a decline in employment since 1990. Between 1990 and 2000, the population of the City declined by 35,475 or 10.81% and the City lost more than 29% of its manufacturing employment. These declines, together with other financial obligations and fiscal constraints, have resulted in significant budgetary problems for the City.

In May 2003, the State declared a state of fiscal crisis with respect to the City and enacted the Buffalo Fiscal Stability Authority Act, Chapter 122 of the State Laws of 2003, which was further amended on May 24, 2004 pursuant to Chapter 86 of the State Laws of 2004 (collectively, the "BFSA Act"). Pursuant to the BFSA Act, the Buffalo Fiscal Stability Authority (the "BFSA"), a public benefit corporation of the State, is currently exercising a broad range of financial control and oversight powers over the City and certain "covered organizations" (as defined in the BFSA Act), including, without limitation, the Buffalo School District, the Buffalo Municipal Housing Authority, and any governmental agency, public authority or public benefit corporation which receives or may receive moneys directly, indirectly or contingently from the City, excluding the BFSA, and any such entity specifically exempted under the BFSA Act.

The BFSA Act reserves to the City the ability to determine program and expenditure priorities within available financial resources.

No Taxing Authority of Institution or Buffalo School District

Neither the Buffalo School District nor the Institution has any taxing power. The Institution is completely dependent on the School Districts, including the Buffalo School District, for payment of public education aid to make loan payments under the Loan Agreement necessary to pay the principal of, premium, if any, and interest on, the Series 2011 Bonds. Any event that would delay, reduce or eliminate public education aid from the School Districts, including, but not limited to, any decrease in the number of students enrolled at the Institution, State legislative action capping or reducing public education aid generally or in particular to charter schools, any reductions or delays in approving School Districts' budgets, and an interruption or reduction in the funds allocated to the Buffalo School District by the City or the State could have a material adverse effect on the ability of the Institution to make loan payments under the Loan Agreement necessary to pay principal of, premium, if any, and interest on the Series 2011 Bonds. Under the Charter Schools Act, the Institution has the ability to request, subject to certification by the Commissioner, that the State Comptroller intercept public education aid payable to the Institution from a School District in the event that such School District is more than 30 days late in making such payments.

Fiscal Dependence of Buffalo School District

The major source of local revenue for education in most State school districts is the tax levied by the local board of education on taxable residential and commercial real property located within the boundaries of such school district. However, the Buffalo School District does not have the authority to levy school taxes on real property or otherwise to raise revenues. The Buffalo School District is fiscally dependent upon the City for support. See "SOURCES OF REVENUE" herein.

Property taxes and State School Aid are received into, and disbursed to the Buffalo School District from, the general funds of the City. The City has experienced recurring difficulty in balancing its municipal budget and problems related to the level and stability of funding for, and allocation of municipal funds to, the Buffalo School District. There can be no assurance that the level of aid received by the Buffalo School District from the City will continue. See "Fiscal Problems Affecting Buffalo and the Buffalo School District" herein.

Delay in or Termination of Public Education Aid

Any event that would cause a delay, reduction or elimination of the public education aid monies from the Buffalo School District and other School Districts would have a material adverse effect on the ability of the Institution to make loan payments under the Loan Agreement coming due thereafter. In the event of a failure by a School District to make payments of public education aid required to be made to the Institution pursuant to the Charter Schools Act, at the request of the Institution, and subject to certification by the Commissioner, the State Comptroller is required to deduct from any State School Aid which become due to such School District an amount equal to such unpaid amount and to pay over such amount to the Institution. The Institution has not caused such a deduction to be made in the past even though payments received from the Buffalo School District have been tardy. See "SOURCES OF REVENUE" herein.

Although State law prescribes a detailed process applicable to the adoption by the State of its annual budget, the State's annual budgetary process has resulted in recent years in the adoption of annual State budgets later, and in some instances substantially later, than April 1, which is the start of the State's fiscal year. No assurance can be given as to the date of adoption of future annual State budgets or as to the availability of State funds for public education purposes while an annual State budget remains pending. The Institution is not legally authorized to issue revenue anticipation notes secured by an assignment or pledge of public education aid to be received. Conflicts over public education aid, including Disability Aid, can create delays in funding. Because charter schools in the State are required to comply with the federal Individuals with Disabilities Education Act ("IDEA"), they are required to either arrange for students with disabilities to receive services from the local school district or provide special education services themselves, sometimes giving rise to disagreements over who is entitled to Disability Aid.

Factors Associated With Education

There are a number of factors affecting elementary and secondary school education in general, including at the Institution, which could have an adverse effect on the Institution's financial position and its ability to make loan payments required under the Loan Agreement. These factors include, but are not limited to, increasing costs of compliance with federal or state regulatory laws or regulations, including, without limitation, the No Child Left Behind Act of 2001 ("NCLB"); laws or regulations concerning environmental quality, work safety and accommodating persons with disabilities, including IDEA; any unionization of the Institution's work force with consequent impact on wage scales and operating costs of the Institution; the ability to attract a sufficient number of students; change in existing statutes pertaining to the powers of the Institution; inability of the Institution to maintain its Charter; and legislation or regulations which may affect the continued existence of charter schools or availability, amount or timing of funding. The Institution cannot assess or predict the likelihood of any of these events occurring or the ultimate effect of these factors on its operations or its ability to make the loan payments.

Compliance with the No Child Left Behind Act of 2001

The Institution has been in good standing under the NCLB (not in need of improvement, requiring corrective action, planning for restructuring, requiring academic progress or under registration review) for every school year with the exception of 2005-6 and 2006-7 school years in which the Institution was designated a school in need of improvement for stagnate scores in eighth grade English Language Arts. The Institution has since been a school in good standing under NCLB. In compliance with NCLB, schools that are identified for improvement, not having met adequate yearly progress for two consecutive years, must revise their school improvement plans and submit revised school improvement plans for review and approval.

Non-Renewal or Termination of Charter

The Institution is subject to the leadership and general supervision of the Board of Regents. The Board of Regents is the authorizing body of the Institution and has issued a Charter to the Institution incorporating the Institution as a charter school. The Board of Regents oversees and monitors the Institution's Board of Trustees and their compliance with all applicable State and federal laws pertaining to charter schools. The Charter was most recently renewed for a term ending June 30, 2013, unless earlier terminated or renewed. There can be no assurance that the Charter will be further renewed. Additionally, the Charter may be terminated if: (i) the Institution's outcome of student assessment measures falls below the level which would allow the State Commissioner of Education to revoke the registration of a public school and student achievement on such measures has not shown improvement over the preceding three years; (ii) there are serious violations of law; (iii) there are material and substantial violations of the Charter including fiscal mismanagement; (iv) the State Public Employment Relations Board makes a determination that the Institution demonstrates a practice and pattern of egregious and intentional violations of the State's Civil Service Law involving interference with or discrimination against employee rights under the State's 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. However, pursuant to the Charter Schools Act, if no basis for terminating the Charter is established other than as described in clause (v), and the Institution 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 enrollment in the Institution, and efforts to academically support such students enrolled in the Institution, then the Board of Regents may permit the Charter to remain in effect or be renewed. Charter schools may also be placed on probation. The Charter Schools Act provides that any individual or group may bring a complaint alleging a violation of the law or a school's charter to the board of trustees of such school and, if unsatisfied with the outcome, may bring such complaint to the chartering entity and, if still dissatisfied, to the Board of Regents.

Competition for Students

The Institution competes for students with the Buffalo School District (within whose geographic boundaries the Institution is located) and with the surrounding public schools and school districts (including the School Districts), as well as other charter, private and parochial schools within or near the Institution. The

Institution's students may reside anywhere within the State. For the 2010-11 school year, approximately 95.5% of the students attending the Institution are (as of December 31, 2010) residents of the Buffalo School District, which serves approximately 20,000 students in grades kindergarten through eighth, with the remaining students residents of the other School Districts. There are presently 17 charter schools serving over 7,000 students in the geographic area of Buffalo. See "APPENDIX B – THE INSTITUTION AND THE PROJECT FACILITY."

Charter Schools Generally

The operations of the Institution relate primarily to the ownership and operation of a charter school located in Buffalo, New York. Such operations are dependent on sufficient demand for such facilities, adequate revenues from enrollment at the facilities and control of expenses. The operation of a charter school is highly regulated through the charter authorizing body and the New York State Education Department (the "Education Department"). A charter school may not charge tuition to a student attending the charter school. Recent legislation provides for a new student enrollment preference based upon a student residing in the school district in which the charter school is located. The failure of the Institution to meet the requirements of the regulations, termination, revocation or non-renewal of the Institution's Charter by the Board of Regents, or the inability to secure a Charter from another authorizing body would have a material adverse effect on the ability of the Institution to make loan payments under the Loan Agreement. See "Risk Factors - Non-Renewal or Termination of Charter Agreement."

Future Need for Project

Changes in economic, social or other conditions could affect demographics of the City, the Buffalo School District and the other School Districts, and reduce the Institution's ability, need or willingness to utilize the Project Facility for the operation of a charter school. The Institution is not legally prohibited from acquiring or constructing of additional facilities at any time. Changes in future needs may have an adverse effect upon the ability of the Institution to make loan payments under the Loan Agreement.

Limitation of Pledge of Gross Revenues by Institution

The Institution may not legally assign or pledge any interest in public education aid payable to the Institution pursuant to the Charter Schools Act to secure its obligations under the Loan Agreement or to provide security with respect to the Series 2011 Bonds. At closing, the Institution will give (i) a direction to the Buffalo School District to pay public education aid due from the Buffalo School District to the Institution to the Custodian under the Custody Agreement and (ii) an irrevocable direction to the Custodian to apply such amounts as directed by the Trustee to make deposits in the Bond Fund and the Debt Service Reserve Fund, as further provided in the Custody Agreement. Such directions shall expressly provide that they do not constitute a pledge or assignment of any interest of the Institution in public education aid payable to the Institution.

Remedies may be Unenforceable

Remedies provided for in the Loan Agreement, the Indenture, the Mortgage and the Guaranty may be unenforceable as a result of the application of principles of equity or of State and federal laws relating to bankruptcy, other forms of debtor relief, and creditors' rights generally. Furthermore, it is not certain whether a court would permit the exercise of the remedies of repossession and sale or leasing with respect to the Project Facility. The enforcement of any remedies provided in the Loan Agreement, the Indenture, the Mortgage and the Guaranty could prove both expensive and time consuming.

Inability to Liquidate or Delay in Liquidating the Project

An Event of Default gives the Trustee the right to possession of, and the right to sell, the Project Facility pursuant to a foreclosure sale under the Mortgage. The Project Facility is intended to be used primarily for educational purposes of the Institution with portions leased to the State and two not-for-profit corporations for office space. Because of such use, a potential purchaser of the Series 2011 Bonds should not anticipate that a sale of the Project Facility could be accomplished rapidly, or at all. Any sale of the Project Facility may require compliance with the laws of the State applicable thereto. Such compliance may be difficult, time-consuming and expensive.

Any delays in the ability of the Trustee to foreclose on the Mortgage will result in delays in the payment of the Series 2011 Bonds.

The Project Facility is specifically constructed for use as a school facility and may not be readily adaptable to other uses. As a result, in the event of a sale of the Project Facility, the number of uses which could be made of the property, and the number of entities which would be interested in purchasing the Project Facility, could be limited, and the sale price would thus be adversely affected. The location of the Project Facility may also limit the number of potential purchasers. The ability of the Trustee to sell the Project Facility to third parties, thereby liquidating the investment, would be limited as a result of the nature of the Project Facility. For these reasons no assurance can be made that the amount realized upon any sale of the Project Facility will be fully sufficient to pay and discharge the Series 2011 Bonds. In particular, there can be no representation that the cost of the property included in the Project Facility constitutes a realizable amount upon any forced sale thereof. In the event the Trustee takes possession of the Project Facility, the Project Facility may be subject to real property taxation.

Tax-Exempt Status

Under present Federal and State law, regulations and rulings, the income of organizations described in Section 501(c)(3) of the Code, such as the Institution, is exempt from Federal and State income tax, except for any unrelated business income. Failure of the Institution to maintain its status as an organization described in Section 501(c)(3) of the Code or changes in the Code or any other such laws, or the regulations, rulings or interpretations thereof could adversely affect the Institution. Such failure would adversely affect the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income taxation purposes.

Moreover, the ongoing tax-exempt status of interest on the Tax-Exempt Bonds is conditioned, under relevant provisions of the Code, on compliance by the Institution with various requirements set forth, inter alia, in Sections 145 and 148 of the Code, requiring, among other things, that the Project Facility be owned throughout the term of the Series 2011 Bonds by a governmental unit or an organization described in Section 501(c)(3) of the Code, that not more than five percent of the proceeds of the Series 2011 Bonds (inclusive of proceeds applied to defray issuance costs) be applied to any "private business use," any use giving rise to "unrelated business income," or other uses inconsistent with the educational purposes of the Institution, as an organization described in Section 501(c)(3) of the Code, and that certain investment earnings in respect of the Series 2011 Bonds be subject to non-arbitrage requirements imposed under Section 148 of the Code, including requirements to perform certain "rebate" computations and to make certain "rebate" payments of "arbitrage" earnings, all as further provided in the Code and applicable regulations, rulings and decisions. Failure to comply with such requirements could result in the inclusion of interest on the Tax-Exempt Bonds in gross income of the owners thereof, for federal income taxation purposes, retroactive to the date of issuance of the Tax-Exempt Bonds.

Under current State law, the Project Facility is exempt from taxation, fees, assessments or special ad valorem taxes to the same extent as public schools. There can be no assurances that the Project Facility will not be subjected in the future to taxation. Moreover, no assurances can be given that the effect of any tax payments on the Institution would not be either adverse or material.

Collateral Security

The Series 2011 Bonds are secured by (a) a lien on Gross Revenues pursuant to the Loan Agreement (subject to the prohibition on liens on public education aid under the Charter Schools Act and subject to any parity or subordinated lien permitted under the Loan Agreement), and (b) a mortgage lien on and security interest in the Mortgaged Property (subject to Permitted Encumbrances and any parity or subordinated lien permitted under the Loan Agreement), each of which have been assigned by the Issuer to the Trustee. Upon an Event of Default, no assurances can be given that the Trustee would be able to lease or sell the Mortgaged Property to third parties, or that the amount the Trustee would be able to receive upon foreclosure would be sufficient to pay all principal of, and premium, if any, and interest on the Series 2011 Bonds (whether or not any other parity obligations then exist).

The pledge of and security interest in the Gross Revenues and the Mortgaged Property created pursuant to the Loan Agreement and the Mortgage may be limited by the following: (i) statutory liens; (ii) rights arising in favor of the United States of America or any agency thereof; (iii) present or future prohibitions against assignment

contained in any federal statutes or regulations; (iv) constructive trusts, equitable liens or other rights impressed or conferred by any state or federal court in the exercise of its equitable jurisdiction; (v) federal bankruptcy or state insolvency laws affecting assignments of revenues earned after any effective institution of bankruptcy or insolvency proceedings by or against the Institution; (vi) rights of third parties in any revenues, including revenues converted to cash, not in possession of the Trustee; (vii) Permitted Encumbrances; (viii) any parity or subordinated lien permitted under the Loan Agreement, and (ix) the requirement that appropriate continuation statements be filed in accordance with the State Uniform Commercial Code.

The Charter Schools Act prohibits the pledge or assignment by the Institution of monies provided or to be provided as public education aid by School Districts pursuant to the Charter Schools Act in connection with acquisition, construction, or renovation of a charter school facility such as the Project Facility. Accordingly, the Institution has not pledged, assigned, or granted a security interest in, the public education aid it receives from School Districts pursuant to the Charter Schools Act, to the Issuer, the Custodian or the Trustee, as security for the Series 2011 Bonds or for the Institution's obligations under the Loan Agreement.

The Institution will be permitted to, in the future, grant certain security interests in its property (other than Gross Revenues, public education aid and the Mortgaged Property) and, on a parity or subordinate basis with the Liens securing the Series 2011 Bonds, on Gross Revenues, public education aid and on the Mortgaged Property, to secure other Long-Term Indebtedness. The Loan Agreement provides that the lien on Gross Revenues to secure the Series 2011 Bonds will not include a lien on public education aid to the extent prohibited under the Charter Schools Act and will restrict the Institution from granting a lien on public education aid for working capital and other purposes (except to the extent public education aid is included in Gross Revenues). See APPENDIX D - "CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES."

Potential Environmental Risks

There are potential risks relating to environmental liability associated with the ownership or operation of, or secured lending with respect to, any real property. If hazardous substances are found to be located on real property, owners or operators of, or secured lenders regarding, such property may be held liable for costs and other liabilities relating to such hazardous substances on a strict liability basis. In the event of repossession, purchase or participation in the management of the Project Facility by the Trustee or the Bondholders, the Trustee and/or the Bondholders may be held liable for costs and other liabilities relating to hazardous substances, if any, on the site of the Project on a strict liability basis and such costs might exceed the value of such property.

LCS Inc. Environmental and Real Estate Consultants ("LCS") has prepared a Business / Lender Phase I Environmental Site Assessment Report dated May 28, 2010 (the "Phase I") for the site of the Project Facility (the "Site") following the guidance of the ASTM E 1527-00 Phase I Standard Practice for Environmental Site Assessments. The Phase I discloses the following recognized environmental conditions on the Site:

- According to the Sanborn maps, the following of potential concerns were identified on-site:
 1. 1889: blacksmith and Metz & Meyer furniture
 2. 1899: sheet iron works, blacksmith and Metz & Meyer furniture
 3. 1925: coal shed, auto tops, sheet metal works and one gasoline tank on the southeastern corner of the subject property
 4. 1951: auto tops, coal shed, sheet metal works and one gasoline tank on the southeastern corner of the subject property
 5. 1981: one gasoline tank on the southeastern corner of the subject property
 6. One gasoline tank was identified in at least the 1925 and 1951 Sanborn maps in the Elm Street and right of way immediately east adjacent to the subject property

- According to city directories, the following potential concerns were identified on-site:
 1. Germain Cleaning & Dyeing from at least 1936 through 1952
 2. Peters Co. Sheet Metal from at least 1936 through 1952
 3. Auto repair in at least 1936
 4. Pheoll screw manufacturing in at least 1942
 5. Manhardt-Alexander, Inc., printers in at least 1952

6. Bryant Manufacturing Co. in at least 1967

- LCS reviewed the Building Department/Fire Department file for the subject property. According to historical permits, a permit was issued in 1951 to replace one 270-gallon underground storage tank (“UST”) with one 1,000-gallon gasoline UST at 289-293 Oak Street. Additionally, a permit was issued in 1957 to place one 1,000-gallon gasoline UST at 147 Genesee Street.
- According to documentation reviewed, three USTs were historically identified on-site by the KayVer Group, Inc.; one along Sycamore Street, another along Oak Street and the third along East Genesee Street.
- According to KayVer, all of the USTs identified on-site had been removed and no further investigation was warranted. It should also be noted that the UST along Elm Street was not identified by KayVer.
- Adjacent properties of potential concern were identified from at least 1889 through present.
- One of the east adjacent properties was identified as Down-Town Tire.
- One of the west adjacent properties was identified as The Farthing Press.
- An east adjacent property listed as Kayser Beauty Supplies/G.A. Kayser & Sons, Inc., addressed at 327 Elm Street, was identified as a NYSDEC registered UST facility.

While not considered recognized environmental conditions under the ASTM standard, the following were also noted in the Phase I:

- According to the EDR report, the subject property was identified within the FINDS database due to a National Center for Education Statistics (NCES) listing.
- Paints were noted in the loading dock area of the main building. Biohazardous waste was noted in several Sharps containers. No releases or spills were noted in the vicinity of these materials and wastes.
- One grease trap was noted in the kitchen of the school; such is reportedly cleaned out by the employees and discarded in the general refuse

The Asbestos Hazard Emergency Response Act (“AHERA”) requires all public and nonpublic elementary schools to inspect all friable and non-friable, known or assumed asbestos-containing building materials (“ACBM”) in facilities which are owned, leased or otherwise used as a school building every three years. The Institution is in compliance with the requirements of AHERA.

Prepayment Risk

Under the Indenture, the Institution has the option to prepay the Series 2011 Bonds in whole or in part. The Tax-Exempt Bonds are also subject to mandatory redemption, in whole, in the event of a Determination of Taxability. In addition, the Series 2011 Bonds are subject to mandatory and extraordinary redemption as described in “THE SERIES 2011 BONDS – Redemption Prior to Maturity.” Any such prepayment will be used to call Series 2011 Bonds (or Tax-Exempt Bonds in connection with any Determination of Taxability) in Authorized Denominations selected by lot or other method of random selection as the Trustee may determine at a price equal to their principal amount, plus interest accrued to the redemption date (and in the case of a mandatory redemption of Tax-Exempt Bonds as a result of a Determination of Taxability, a price equal to 104% of the principal amount, plus interest accrued to the redemption date).

Damage or Destruction

Although the Institution will be required to obtain certain insurance, as set forth in the Loan Agreement, there can be no assurance that the Project Facility will not suffer losses for which insurance cannot be or has not been obtained or that the amount of any such loss, or the period during which the Institution cannot generate revenues, will not exceed the coverage of such insurance policies.

Effect of Bankruptcy on Security for the Series 2011 Bonds

Bankruptcy proceedings and equity principles may delay or otherwise adversely affect the enforcement of Bondholders' rights to the property granted as security for the Series 2011 Bonds and their claim or claims to moneys owed them as unsecured claimants, if any. Furthermore, if the security for the Series 2011 Bonds is inadequate for payment in full of the Series 2011 Bonds, bankruptcy proceedings and equity principles may also limit any attempt by the Trustee to seek payment from other property of the Institution, if any. See "Remedies May be Unenforceable."

A bankruptcy filing would operate as an automatic stay of the commencement or continuation of any judicial or other proceeding against the Institution or Issuer, as applicable, and their respective property and as an automatic stay of any act or proceeding to enforce a lien against such property. Moreover, following such a filing, the Gross Revenues and Mortgaged Property acquired after the filing (and under some conditions prior to the filing) would not be subject to the liens and security interests created under the Loan Agreement and the Mortgage. In addition, the bankruptcy court has the power to issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code; such court order could require that the property of the Institution or the Issuer, as applicable, including the Mortgaged Property and the Gross Revenues and proceeds thereof, be used for the benefit of the Institution or the Issuer, as applicable, despite the lien and security interest of the Trustee therein.

Federal bankruptcy law also permits adoption of a reorganization plan even though it has not been accepted by the holders of a majority in aggregate principal amount of the outstanding Series 2011 Bonds if the Bondholders are provided with the benefit of their original lien or the "indubitable equivalent." In addition, if a bankruptcy court concludes that the Bondholders have "adequate protection," it may (i) substitute other security subject to the lien of the Bondholders and (ii) subordinate the lien of the Bondholders (a) to claims by persons supplying goods and services to the Institution after bankruptcy and (b) to the administrative expenses of the bankruptcy proceeding. The bankruptcy court may also have the power to invalidate certain provisions of the Indenture, the Loan Agreement and Mortgage that make bankruptcy and related actions by the Institution or the Issuer an Event of Default thereunder.

Lack of Secondary Market

Although the Underwriter intends to engage in secondary market trading of the Series 2011 Bonds (subject to applicable state securities laws), the Underwriter is not obligated to repurchase any of the Series 2011 Bonds at the request of the owners thereof and cannot assure that there will be a continuing secondary market in the Series 2011 Bonds. In the secondary market for securities similar to the Series 2011 Bonds, the difference between the bid and asked price may be greater than the bid and asked spread for more traditional types of municipal securities. It is not expected that an active trading market for the Series 2011 Bonds will ever develop.

Opposition of Teacher Unions and School Districts to Charter Schools

Some teacher unions and school districts in the United States have opposed the enactment of charter school legislation and have indicated opposition to for-profit management of public schools. School districts, including school districts in the State, have challenged the authorization of charter schools. On April 19, 2001, the New York Appellate Division, Third Department, issued a decision, *Roosevelt v. Board of Trustees*, holding that school districts may challenge Board of Regents determinations constituting the basis of approvals of charter issuance through proceedings under Article 78 of the State's Civil Practice Law and Rules. In addition, State law provides for additional procedural requirements for the issuance, revision and renewal of charters, including, a requirement of school district public hearings on charters newly proposed, revised or renewed. Moreover, the Charter Schools Act

permits the school district in which a charter school is located to visit, examine and inspect the charter school for purposes of ensuring that the charter school is in compliance with all applicable laws, regulations and charter provisions, and such school district may forward any evidence of non-compliance to the Board of Regents and chartering entity.

Collective Bargaining

The Charter Schools Act provides that employees of a new charter school with enrollment exceeding 250 students on the first day of instruction or with average daily student enrollments exceeding 250 students within the first two instructional years is automatically certified as a separate collective bargaining unit of the same organization that represents teaching staff of the school district in which the charter school is located. Currently, the teachers employed by the Institution are not represented by a collective bargaining unit.

Additional Bonds and Additional Debt

The Institution may issue Long-Term Indebtedness (including indebtedness in respect of Additional Bonds), provided that the following conditions are met: (A) the proceeds of such Long Term Indebtedness will be used to finance (1) the improvement of the Project Facility or additions thereto, (2) the acquisition or installation of equipment or other personal property therein, (3) the acquisition, construction or renovation of an additional school facility of the Institution or (4) the acquisition or installation of equipment or other personal property therein; (B) the Debt Service Coverage Ratio of the Institution for the Fiscal Year prior to the Fiscal Year in which such Long Term Indebtedness is to be incurred is equal to or greater than 1.10:1.00; (C) the Institution shall have furnished to the Trustee either (a) a certificate to the effect that the Income Available for Debt Service of the Institution in the most recent Fiscal Year preceding the date on which the proposed Long Term Indebtedness is to be incurred was more than 115% of the maximum Debt Service for any Fiscal Year in which such proposed Long-Term Indebtedness is to be incurred, but before the final stated maturity of principal of all then Outstanding Series 2011 Bonds; or (b) a written report of a Consultant to the effect that the estimated Income Available for Debt Service (including such requirements for the proposed Long-Term Indebtedness but excluding such requirements for any then outstanding Long Term Indebtedness to be refinanced by the proposed Long-Term Indebtedness) of the Institution for each of the two (2) consecutive Fiscal Years beginning after the Fiscal Year in which such proposed Long Term Indebtedness is to be incurred, will not be less than 125% of the maximum Debt Service (including such requirements for the proposed Long-Term Indebtedness but excluding such requirements for any then outstanding Long Term Indebtedness to be refinanced by the proposed Long-Term Indebtedness) for any Fiscal Year beginning after the Fiscal Year in which the proposed Long Term Indebtedness is to be incurred, but before the final stated maturity of principal of all then Outstanding Series 2011 Bonds; and (D) the Mortgage shall be in effect and no "Event of Default" shall have occurred or be continuing under the Mortgage or the Loan Agreement.

Long-Term Indebtedness issued to refund any portion of the Outstanding Series 2011 Bonds is subject to additional requirements as set forth in the Loan Agreement.

The Institution may incur such Short-Term Indebtedness for working capital purposes as in its judgment is deemed expedient, provided that in no event shall the Institution incur Short-Term Indebtedness which is secured by an interest in the Gross Revenues or the Mortgaged Property or which in the aggregate is in excess of the greater of (A) 10% of the Gross Revenues for the Fiscal Year prior to the Fiscal Year in which such Short Term Indebtedness is to be incurred or (B) \$500,000, subject to an annual 14 day "clean down" (subject to an extension or waiver as a result of any delay in receipt by the Institution of public education aid).

In addition to the permitted Indebtedness set forth above, the Institution may incur additional Short-Term Indebtedness and Long-Term Indebtedness in an amount which, in the aggregate, does not result in annual debt service for all such Indebtedness which exceeds the greater of (i) 2% of the Gross Revenues for the Fiscal Year prior to the Fiscal Year in which all such Indebtedness is to be incurred or (ii) \$50,000.

Other Possible Risk Factors

The occurrence of any of the following events, or other unanticipated events, could adversely affect the operations of the Institution:

- (a) Establishment of mandatory governmental wage, rent or price controls;
- (b) Inability to control increases in operating costs, including salaries, wages and fringe benefits, supplies and other expenses, given an inability to obtain corresponding increases in operating revenues;
- (c) Unionization, employee strikes and other adverse labor actions which could result in a substantial increase in expenditures without a corresponding increase in revenues; and
- (d) Adoption of other federal, state or local legislation or regulations having an adverse effect on the future operating or financial performance of the Institution.

MARKET FACTORS

The financial condition of the Institution as well as the market for the 2011 Series Bonds could be affected by a variety of factors, some of which are beyond the Institution's control. There can be no assurances that adverse events in the State, the City or the Buffalo School District will not occur which might affect the market price of, and the market for, the 2011 Series Bonds. If a significant default or other financial crisis should occur in the affairs of the State, the City, the Buffalo School District or of any of their agencies or political subdivisions, it could impair the acceptability of obligations payable by borrowers within their respective boundaries, and both the ability of the Institution to arrange for additional borrowings and the market for and market value of outstanding debt obligations, including the 2011 Series Bonds, could be adversely affected.

The Institution depends in significant part on financial assistance from the State. Accordingly, in this year or future years, if the State should experience difficulty in borrowing funds in anticipation of the receipt of State taxes or if the State experiences delays in the adoption of the State budget, the State may have to delay payments of State School Aid to State municipalities and school districts, including the Buffalo School District, until sufficient State funds are available to make such payments. The Institution may be adversely affected by such delay. In the past, delays in adoption of the State budget have resulted in delays in the payment of State School Aid to State municipalities and school districts, including the Buffalo School District.

State School Aid requires appropriations by the State's Legislature. There can be no assurance that the State's Legislature will continue appropriations of State School Aid at the levels of past years. Also, State School Aid formulas may be changed by act of the State's Legislature. No assurance can be given that the State's Legislature will not modify or eliminate State School Aid as it currently exists.

ENFORCEABILITY OF OBLIGATIONS

General

While the Series 2011 Bonds are secured pursuant to the Loan Agreement, the Indenture, the Guaranty and the Mortgage, the practical realization of such security upon any default will depend upon the exercise of various remedies specified by the Loan Agreement, the Indenture, the Guaranty and the Mortgage. These and other remedies are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional, statutory and judicial law, the remedies specified by the Indenture, the Loan Agreement, the Guaranty and the Mortgage may not be readily available or may be limited. A court may decide not to order the specific performance of covenants contained in such documents. The various legal opinions to be delivered concurrently with the delivery of the Series 2011 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by State and federal laws affecting remedies and by bankruptcy, reorganization or other laws affecting the enforcement of creditors' rights. No assurance can be provided that the

principal amount of the Series 2011 Bonds outstanding from time to time constitutes a realizable amount upon any foreclosure or forced sale of the Project Facility.

Certain Provisions of New York Law Applicable to Charter Schools and Certain Provisions of the Charter

The Education Law requires that, in the event that the Board of Regents has revoked the charter of any charter school or dissolved such charter school, or in the event that a provisional charter has expired, the board of trustees of the corporation shall, within three months after such revocation, dissolution or expiration, petition the State supreme court having jurisdiction for an order directing the disposition of any and all property belonging to the corporation. The State supreme court is required to direct the sale of sufficient assets of such a charter school to pay any outstanding debts and, if the corporation's charter contains a provision indicating a proposed disposition of assets upon dissolution, to follow such provision in its order as far as practicable. The trustees of such a charter school are empowered to continue in office after charter revocation or dissolution for the purpose of settlement of the corporation's affairs. The court may direct any surplus monies, after payment of such a charter school's debts and liquidation expenses, be applied to any educational, religious, benevolent, charitable or other purposes that the corporation's board of trustees may indicate in the petition. The Charter Schools Act requires that the applications to establish a charter school set forth procedures to be followed upon closure or dissolution of the charter school, including provisions for the transfer of students and student records to the school district in which the charter school is located, and provide for the disposition of the charter school's assets to the school district or to another charter school located within such school district. The Charter provides that the Institution Board shall, after providing for the payment of all the debts of the Institution upon dissolution, dispose of its remaining assets to another charter school that is federally tax-exempt and located within the school district in which the Institution is located, or, if no such charter school exists, to the school district in which the Institution is located for a public purpose. In such event, the Charter further requires the Institution to follow any procedures required by the Board of Regents to ensure an orderly dissolution process in addition to complying with the applicable provisions of the Education Law. See "ENFORCEABILITY OF OBLIGATIONS -Application of Principles of Equity and Exercise of Judicial Discretion in Cases Bearing Upon Public Interests."

New York Foreclosure Procedures

In order to recover the debt due on a defaulted mortgage loan, the holder of the mortgage loan may either commence an action on the mortgage debt or commence an action to foreclose the mortgage. State law restricts the ability of the holder of a mortgage loan to simultaneously bring an action to recover the mortgage debt and foreclose the mortgage. For purposes of these restrictions, actions to recover the mortgage debt include actions against the party primarily liable on the mortgage debt, actions against any guarantor of the mortgage debt and certain actions on title insurance policies insuring the mortgage premises. If an election is made to commence an action to foreclose the mortgage, no other action on the mortgage debt may be commenced to recover any part of the mortgage debt without leave of the court. If an election is made to commence an action on the mortgage debt, where final judgment has been rendered in such an action, an action may not be commenced to foreclose the mortgage unless an execution has been issued against the property of the defendant, which has been returned wholly or partially unsatisfied. In addition, there is case law indicating that if an action is commenced on the mortgage debt where final judgment has not been rendered and a subsequent action is commenced to foreclose the mortgage, then the action on the mortgage debt may be stayed or discontinued to prevent the mortgagee from pursuing both actions simultaneously.

Where a foreclosure action is brought, every person having an estate or interest in possession or otherwise in the property whose interest is claimed to be subject and subordinate to the mortgage must be made a party defendant to the action in order to have its interest in the property extinguished. Judicial foreclosure in the State is a lengthy process, as judicial intervention is required at all stages, including, but not limited to: (i) the appointment of a referee to compute the amount due; (ii) the appointment of a receiver to operate the property during the pendency of the action; (iii) the confirmation of the referee's oath and report; (iv) the issuance of the judgment of foreclosure and sale; (v) the confirmation of the sale; and (vi) the issuance of a deficiency judgment and/or rights to surplus monies. If during the pendency of the action the mortgagor pays into court the amount due for principal, interest, the costs of the action and the expenses of the proceedings to sell, if any, the court will: (i) dismiss the complaint without costs against the mortgagee if the payment is made before judgment directing the sale; or (ii) stay all proceedings upon judgment if the payment is made after judgment directing sale but before sale.

Where the mortgage debt remains partly unsatisfied after the sale of the property, the court, upon application, may award the mortgagee a deficiency judgment for the unsatisfied portion of the mortgage debt, or as much thereof as the court may deem just and equitable, against a mortgagor who has appeared or has been personally served in the action. Prior to entering a deficiency judgment the court determines the fair and reasonable market value of the mortgaged premises as of the date such premises were bid in at auction or as of such nearest earlier date upon which there shall have been any market value thereof. In calculating the deficiency judgment, the court will reduce the amount to which the mortgagee is entitled by the higher of the bid price of the mortgaged property or the fair market value of the mortgaged property, as determined by the court.

The mortgagee may also, at its discretion, negotiate with the delinquent mortgagor to offer a deed in lieu of foreclosure to the mortgagee, subject to existing Liens. In some situations this would allow the mortgagee to reduce the cost of, and the time involved in, acquiring the property.

Bankruptcy

If a voluntary petition for relief under Chapter 7 or Chapter 11 of the United States Bankruptcy Code were filed with respect to the Institution, the filing would operate as an automatic stay of the commencement or continuation of any civil action or other proceeding, including, without limitation, foreclosure proceedings, against such mortgagor and its property. Under Chapter 7 or Chapter 11, an involuntary proceeding may not be maintained against a not-for-profit corporation pursuant to a petition filed by its creditors. Subject to a bankruptcy court's order, the mortgagor's property, including its revenues, could be used for the benefit of the mortgagor, despite the rights granted the mortgagee or any trustee. A bankruptcy court also has the power to invalidate certain provisions of the mortgage that make the initiation of bankruptcy and related proceedings by or against the mortgagor an event of default thereunder.

In addition, if a bankruptcy court concludes that a mortgagee is "adequately protected," it might: (i) substitute other security for the property presently pledged; and (ii) subordinate the lien of the mortgagee or a trustee to (a) claims by persons supplying goods and services to the mortgagor after commencement of such bankruptcy proceedings, (b) the administrative expenses of the bankruptcy proceedings and (c) liens granted lenders providing funds to the mortgagor during the pendency of the bankruptcy case.

In bankruptcy proceedings initiated by the filing of a petition under Chapter 11, a mortgagor or another party-in-interest could elect to file a plan of reorganization which seeks to modify the rights of creditors generally, or any class of creditors, including secured creditors. In the event a mortgagor files under Chapter 11, the mortgagor may seek to modify the terms of the mortgage note and the mortgage in a plan of reorganization. In a reorganization case, a mortgagee holds a secured claim equal to the lesser of the value of the mortgaged premises or the debt. If the adjusted value of the premises exceeds the pre-petition debt, then the mortgagee has the right to post-petition interest to the extent of such excess. If the adjusted value of the collateral is less than the debt, then the mortgagee generally is not entitled to post-petition interest and the difference (or deficiency) will be treated as an unsecured claim. With respect to the mortgagee's secured claim, if the debtor intends to retain the premises, the debtor will generally propose to treat the mortgage as unimpaired by curing any defaults and reinstating the terms of the mortgage. Alternatively, the debtor may seek to alter the terms; however, the mortgagee is entitled to retain its lien under a plan and must receive deferred cash payments totaling the amount of the claim with a present value not less than the value of the mortgagee's interest in the mortgaged premises. If the premises are to be sold by the debtor, the mortgagee can bid at the bankruptcy court sale and offset its claim against the selling price at such sale.

Application of Principles of Equity and Exercise of Judicial Discretion in Cases Bearing Upon Public Interests

The timing and practical availability to creditors of contractual or statutory remedies requiring judicial action to enable such creditors to exercise rights with respect to facilities whose current operation provides public benefits may be influenced by public interest considerations. See "SECURITY FOR THE SERIES 2011 BONDS-The Assignment and the Mortgage" and "CERTAIN BONDHOLDERS' RISKS-Non-Renewal or Termination of Charter Agreement" and "-Inability to Liquidate or Delay in Liquidating the Project" and "APPENDIX B - THE INSTITUTION AND THE PROJECT FACILITY."

TAX MATTERS

Tax-Exempt Bonds

In the opinion of Bond Counsel, under existing statutes and court decisions, interest on the Tax-Exempt Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"); interest on the Tax-Exempt Bonds is not treated as a preference item in calculating the federal alternative minimum tax imposed on individuals or corporations; however, for the purpose of computing the alternative minimum tax imposed on certain corporations (as determined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings.

The Code imposes various requirements that must be met in order that interest on the Tax-Exempt Bonds will be and remain excludable from gross income for federal income tax purposes. Included among these requirements are restrictions on the investment and use of proceeds of the Tax-Exempt Bonds and the rebate of certain earnings in respect of such investments to the United States. Failure to comply with the requirements of the Code may cause interest on the Tax-Exempt Bonds to be includable in gross income for purposes of federal income tax retroactive to the date of original execution and delivery of the Tax-Exempt Bonds, regardless of the date on which the event causing such inclusion occurs. The Issuer and the Institution have made certain covenants contained in the Indenture, Loan Agreement and Tax Compliance Agreement to comply with the requirements of the Code and have made representations in the Indenture, Loan Agreement and Tax Compliance Agreement addressing various matters relating to the requirements of the Code. The opinion of Bond Counsel assumes continuing compliance with such covenants as well as the accuracy of such representations made by the Issuer and the Institution.

Certain requirements and procedures contained or referred to in the Indenture, Loan Agreement and Tax Compliance Agreement may be changed, and certain actions may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of Bond Counsel. The opinion of Hiscock & Barclay, LLP states that such firm, as Bond Counsel, expresses no opinion as to any Tax-Exempt Bond or the interest thereon if any such change occurs or action is taken upon the advice or approval of Bond Counsel other than Hiscock & Barclay, LLP.

Prospective purchasers of the Tax-Exempt Bonds should be aware that ownership of, accrual or receipt of interest on, or disposition of the Tax-Exempt Bonds may have collateral federal income tax consequences for certain taxpayers, including financial institutions, insurance companies, Subchapter S Corporations, certain foreign corporations, individual recipients of social security or railroad retirement benefits, individuals benefiting from the earned income credit and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry such obligations. Prospective purchasers should consult their tax advisers as to any possible collateral consequences of their ownership of, accrual or receipt of interest on, or disposition of the Tax-Exempt Bonds. Bond Counsel expresses no opinion regarding any such collateral federal income tax consequences.

Interest paid on tax-exempt obligations is subject to information reporting to the Internal Revenue Service (the "IRS") in a manner similar to interest paid on taxable obligations. Although information reporting does not, in and of itself, affect the excludability of such interest from gross income for federal income tax purposes, the reporting requirement causes payment of interest on the bonds to be subject to backup withholding. Interest on the Tax-Exempt Bonds may be subject to backup withholding if such interest is paid to a registered owner who or which (i) fails to provide certain identifying information (such as the registered owner's taxpayer identification number) in the manner required by the IRS, or (ii) has been identified by the IRS as being subject to backup withholding. Amounts withheld under the backup withholding rules will be paid to the IRS as federal income tax withheld on behalf of the registered owner of the Tax-Exempt Bonds and will be allowed as a refund or credit against such owner's federal income tax liability (or the federal income tax liability of the beneficial owner of the Tax-Exempt Bonds, if other than the registered owner).

In the opinion of Bond Counsel, interest on the Tax-Exempt Bonds is exempt, under existing statutes, from personal income taxes of the State of New York or its political subdivisions (including the City of New York and the City of Yonkers). See "Appendix C – Proposed Form of Opinion of Bond Counsel". The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the Tax-Exempt Bonds for federal income tax purposes. It is

not binding on the IRS or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of the Issuer or the Institution, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS.

Original Issue Discount

“Original issue discount” (“OID”) is the excess of the sum of all amounts payable at the stated maturity of a Series 2011 Bond (excluding certain “qualified stated interest” that is unconditionally payable at least annually at prescribed rates) over the issue price of that maturity. In general, the “issue price” of a maturity means the first price at which a substantial amount of the Tax-Exempt Bonds of that maturity was sold (excluding sales to bond houses, brokers, or similar persons acting in the capacity as underwriters, placement agents, or wholesalers). In general, the issue price for each maturity of the Tax-Exempt Bonds is expected to be the initial public offering price set forth on the inside cover page of this Official Statement. Bond Counsel further is of the opinion that, for any Series 2011 Bond having OID (a “Discount Bond”), OID that has accrued and is properly allocable to the owners of the Discount Bonds under Section 1288 of the Code is excludable from gross income for federal income tax purposes to the same extent as other interest on the Tax-Exempt Bonds.

In general, under Section 1288 of the Code, OID on a Discount Bond accrues under a constant yield method, based on periodic compounding of interest over prescribed accrual periods using a compounding rate determined by reference to the yield on that Discount Bond. An owner’s adjusted basis in a Discount Bond is increased by accrued OID for purposes of determining gain or loss on sale, exchange, or other disposition of such Bond. Accrued OID may be taken into account as an increase in the amount of tax-exempt income received or deemed to have been received for purposes of determining various other tax consequences of owning a Discount Bond even though there will not be a corresponding cash payment.

Owners of Discount Bonds should consult their own tax advisers with respect to the treatment of original issue discount for federal income tax purposes, including various special rules relating thereto, and the state and local tax consequences of acquiring, holding, and disposing of Discount Bonds.

Taxable Bonds

The following discussion is a brief summary of the principal federal income tax consequences of the acquisition, ownership and disposition of Taxable Bonds by original purchasers of the Taxable Bonds who are “U.S. Holders”, as defined herein. This summary (i) is based on the Code, Treasury Regulations, revenue rulings and court decisions, all as currently in effect and all subject to change at any time, possibly with retroactive effect; (ii) assumes that the Taxable Bonds will be held as “capital assets”; and (iii) does not discuss all of the federal income tax consequences that may be relevant to a holder in light of its particular circumstances or to holders subject to special rules, such as insurance companies, financial institutions, tax-exempt organizations, dealers in securities or foreign currencies, persons holding the Taxable Bonds as a position in a “hedge” or “straddle”, holders whose functional currency (as defined in Section 985 of the Code) is not the United States dollar, holders who acquire Taxable Bonds in the secondary market, or individuals, estates and trusts subject to the tax on unearned income imposed by Section 1411 of the Code.

Holders of Taxable Bonds should consult with their own tax advisors concerning the federal income tax and other consequences with respect to the acquisition, ownership and disposition of the Taxable Bonds as well as any tax consequences that may arise under the laws of any state, local or foreign tax jurisdiction.

Disposition and Defeasance

Generally, upon the sale, exchange, redemption, or other disposition (which would include a legal defeasance) of a Taxable Bond, a holder generally will recognize taxable gain or loss in an amount equal to the difference between the amount realized (other than amounts attributable to accrued interest not previously includable in income) and such holder’s adjusted tax basis in the Taxable Bond.

For federal income tax purposes, the defeasance of Taxable Bonds pursuant to the Indenture could result in a deemed exchange under Section 1001 of the Code and a recognition by such owner of taxable income or loss, without any corresponding receipt of moneys. In addition, the character and timing of receipt of payments on the Taxable Bonds subsequent to any such defeasance could also be affected.

Backup Withholding and Information Reporting

In general, information reporting requirements will apply to non-corporate holders with respect to payments of principal, payments of interest, and the proceeds of the sale of a Taxable Bond before maturity within the United States. Backup withholding may apply to holders of Taxable Bonds under Section 3406 of the Code. Any amounts withheld under the backup withholding rules from a payment to a beneficial owner, and which constitutes over-withholding, would be allowed as a refund or a credit against such beneficial owner's federal income tax provided the required information is furnished to the Internal Revenue Service.

U.S. Holders

The term "U.S. Holder" means a beneficial owner of a Taxable Bond that is: (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or of any political subdivision thereof, (iii) an estate the income of which is subject to United States federal income taxation regardless of its source or (iv) a trust whose administration is subject to the primary jurisdiction of a United States court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust.

In the opinion of Bond Counsel, interest on the Taxable Bonds is not exempt from personal income taxes imposed by the State or any of its political subdivisions.

LEGAL MATTERS

The Series 2011 Bonds are offered, subject to prior sale, when, as and if issued and accepted by the Underwriter, subject to the approving opinion of Hiscock & Barclay, LLP, Buffalo, New York, Bond Counsel, and certain other conditions. In connection with the issuance of the Series 2011 Bonds, certain legal matters for the Institution will be passed upon by its counsel, Harter Secrest & Emery LLP, Buffalo, New York, certain legal matters for the Issuer will be passed upon by its counsel, Harris Beach, PLLC, Buffalo, New York, and certain legal matters for the Underwriter will be passed upon by its counsel, Reed Smith LLP.

LITIGATION

The Issuer

There is not now pending or, to the knowledge of the Issuer, threatened any litigation restraining or enjoining the issuance or delivery of the Series 2011 Bonds or questioning or affecting the validity of the Series 2011 Bonds or the proceedings or authority under which they are to be issued. Neither the creation, organization or existence of the Issuer nor the title of any of the present members or other officials of the Issuer to their respective offices is being contested. There is no litigation pending or, to the Issuer's knowledge, threatened which in any manner questions the right of the Issuer to enter into the any of the Bond Documents or to secure the Series 2011 Bonds in the manner provided in the Indenture or the Act.

The Institution

There is not now pending or, to the knowledge of the Institution, threatened any litigation restraining or enjoining the execution or delivery by the Institution of any of the Bond Documents, or questioning or affecting the validity of the Bond Documents, or the proceedings or authority under which the Bond Documents are to be executed and delivered by the Institution. Neither the creation, organization or existence of the Institution nor the title of any of the present members of the Board of Trustees of the Institution to their respective offices is being

contested. There is no litigation pending or, to the Institution's knowledge, threatened which in any manner questions the right of the Institution to enter into any of the Bond Documents.

UNDERWRITING

Pursuant to the terms of a Bond Purchase Agreement to be entered into by the Issuer, the Institution and the Underwriter, the Underwriter will agree to purchase the Series 2011 Bonds from the Issuer upon the terms and conditions therein set forth, but all of the Series 2011 Bonds offered hereby must be purchased by the Underwriter if any are so purchased. The Bond Purchase Agreement also provides that the Institution will indemnify the Issuer and the Underwriter against losses, claims and liabilities arising out of any materially incorrect statement or information contained in or material information omitted from this Official Statement. The initial public offering prices set forth on the inside front cover page of this Official Statement may be changed by the Underwriter from time to time without any requirement of prior notice. The Underwriter reserves the right to sell Bonds to certain dealers and other at prices lower than those offered to the public.

The Series 2011 Bonds are offered, subject to prior sale, when, as and if issued by the Issuer and accepted by the Underwriter, subject to the approval as to validity and certain other matters by Bond Counsel, the approval of certain matters by counsel to the Institution, and certain other conditions.

The aggregate purchase price payable by the Underwriter for the Series 2011 Bonds is \$7,046,176.35. Such purchase price represents the par amount of the Series 2011 Bonds (\$7,345,000), less underwriter's discount (\$110,175), and less original issue discount (\$188,648.65). Concessions from the initial prices may be allowed to selected dealers and special purchasers. The initial prices are subject to change after the date hereof.

Subject to prevailing market conditions, the Underwriter intends, but is not obligated, to maintain a secondary market for the Series 2011 Bonds. The Underwriter is not, however, obligated to repurchase any Series 2011 Bonds at the request of the Holder thereof.

CONTINUING DISCLOSURE

The substantial form of the Continuing Disclosure Agreement to be entered into between the Institution and the Trustee is attached hereto as APPENDIX E to this Official Statement (the "Continuing Disclosure Agreement"). Pursuant to the Continuing Disclosure Agreement, the Institution will covenant and agree to provide (a) annual financial information to the Trustee within 150 days after the end of each fiscal year of the Institution and (b) quarterly financial information to the Trustee within 45 days after the end of fiscal quarter of the Institution. Annual financial information shall include (i) the annual financial statements of the Institution, as audited by a firm of independent certified public accountants, (ii) information and calculations in reasonable detail, certified by the President or the chief financial officer of the Institution, demonstrating whether or not the Institution has complied with the financial covenants described in the section herein captioned "SECURITY FOR THE SERIES 2011 BONDS – Financial Covenants" for its most recently ended fiscal year, and (iii) certain information regarding amendments to the Continuing Disclosure Agreement. Quarterly financial information shall include unaudited quarterly financial statements of the Institution, and (ii) enrollment and wait list information (by grade) for the Institution.

The Trustee shall provide such annual financial information and quarterly financial information to the Municipal Securities Rulemaking Board (the "MSRB") through its Electronic Municipal Market Access ("EMMA") system within five business days after receipt by the Trustee.

In addition, the Institution will agree in the Continuing Disclosure Agreement that, if an event listed below occurs, the Institution shall provide, in a timely manner (but in all cases in sufficient time for the Trustee to send notice thereof to the MSRB through the EMMA system within ten business days after the occurrence of such event), written notice of such event to the Trustee. The Trustee shall send notice of such event to the MSRB through the EMMA system not later than 10 business days after the occurrence of such event. These notice events include the following:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or a similar event of the obligated person;
- (xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, 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
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material.

The Continuing Disclosure Agreement may be amended, by written agreement of the parties, without the consent of the holders of the Series 2011 Bonds (except to the extent described below), if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the Institution or the type of business conducted thereby, (2) the Continuing Disclosure Agreement as so amended would have complied with the requirements of SEC Rule 15c2-12 (the "Rule") as of the date of the Continuing Disclosure Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the Institution shall have delivered to the Trustee an opinion of counsel, addressed to the Institution and the Trustee, to the same effect as set forth in clause (2) above, (4) either (i) the Institution shall have delivered to the Trustee an opinion of counsel or a determination by a person, in each case unaffiliated with the Issuer or the Institution (such as bond counsel or the Trustee) and acceptable to the Institution, addressed to the Institution and the Trustee, to the effect that the amendment does not materially impair the interests of the holders of the Series 2011 Bonds or (ii) the holders of the Series 2011 Bonds consent to the amendment to this Agreement pursuant to the same procedures as are required for amendments to the Indenture with consent of holders of Series 2011 Bonds pursuant to the Indenture, and (5) the Trustee shall have delivered copies of such opinion(s) and amendment to the MSRB through the EMMA system and to the Issuer. The Trustee shall so deliver such opinion(s) and amendment with one business day after receipt by the Trustee.

The provisions of the Continuing Disclosure Agreement shall inure to the benefit of the holders from time to time of the Series 2011 Bonds, including beneficial owners of Series 2011 Bonds held in a book-entry system by a securities depository. The obligations of the Institution to comply with the provisions of the Continuing Disclosure Agreement shall generally be enforceable by any holder of Outstanding Series 2011 Bonds, or by the Trustee on behalf of the holders of Outstanding Series 2011 Bonds; *provided, however*, that the Trustee shall not be required to take any enforcement action except at the direction of the holders of not less than a majority in aggregate principal amount of the Series 2011 Bonds at the time Outstanding, who shall have provided the Trustee with adequate security and indemnity. The holders' and Trustee's rights to enforce the provisions of the Continuing Disclosure Agreement shall be limited solely to a right, by action for specific performance, to compel performance of the Institution's obligations under the Continuing Disclosure Agreement. Any failure by the Institution 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 or the Loan Agreement, and the rights and remedies provided by the Indenture or the Loan Agreement upon the occurrence of a default or an Event of Default shall not apply to any such failure.

SECURITIES LAWS CONSIDERATIONS FOR RESIDENTS OF CERTAIN STATES

The offering of the Series 2011 Bonds is to be undertaken only in those jurisdictions in which such offering may be lawfully made in accordance with the relevant provisions of all applicable state and federal securities laws.

CERTAIN RELATIONSHIPS AMONG FINANCING PARTICIPANTS

Manufacturers and Traders Trust Company is acting as Trustee pursuant to the Indenture and Dissemination Agent under the Continuing Disclosure Agreement. Manufacturers and Traders Trust Company is also acting as Custodian pursuant to the Custody Agreement and, in such capacity, will act as the Institution's agent to receive all public education aid from the Buffalo School District and make payments as required pursuant thereto. The Issuer's affiliate, Erie County Industrial Development Agency, is the current owner of the Project Facility and the seller of the Project Facility to the Institution, and the Issuer's affiliate, ATC of Buffalo and Erie County, Inc., as sublessor, is the Institution's current landlord, leasing the Project Facility to the Institution.

RATING

Fitch Ratings ("Fitch") has given the Series 2011 Bonds a rating of "BBB" based upon the Institution's financial condition. Such rating reflects only the view of Fitch, and any desired explanation of the significance of such rating should be obtained from Fitch. There is no assurance that such rating will apply for any given period of time or that it will not be lowered or withdrawn entirely if, in the judgment of Fitch, circumstances so warrant. The Underwriter has undertaken no responsibility to bring to the attention of the holders of the Series 2011 Bonds any proposed revision or withdrawal of the rating on the Series 2011 Bonds or to oppose any such proposed revision or withdrawal. Any downward revision or withdrawal of such rating could have an adverse effect on the market price of the Series 2011 Bonds. Such rating should not be taken as a recommendation to buy or hold the Series 2011 Bonds.

FINANCIAL STATEMENTS

The financial statements of the Institution for the year ended June 30, 2010, which are included as APPENDIX A to this Official Statement, have been audited by Toski, Schaefer & Co., P.C., independent certified public accountants, to the extent and for the period indicated in their report thereon which also appears in APPENDIX A. Such financial statements have been included in reliance upon the report of Toski, Schaefer & Co., P.C.

MISCELLANEOUS

The Institution has furnished all information in this Official Statement and the Appendices attached to this Official Statement relating to the Institution, the Project Facility, and the Estimated Sources and Application of Funds, including all information set forth in Appendices A and B hereto. Bond Counsel has furnished the Appendices C and D attached to this Official Statement.

All statements in this Official Statement involving matters of opinion or belief, whether or not expressly so stated, are intended as such and not as representations of fact.

The Issuer has consented to the use of this Official Statement, but has not participated in the preparation of this Official Statement and has made no independent investigation with respect to the information contained in this Official Statement and, accordingly, the Issuer assumes no responsibility for the sufficiency, accuracy or completeness of such information, other than information set forth under "THE ISSUER" and "LITIGATION-The Issuer" herein. The Institution has authorized the distribution of this Official Statement.

ENTERPRISE CHARTER SCHOOL

By: /s/ Brenda W. McDuffie
Chair, Board of Trustees

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

By: /s/ David W. Kerchoff
Assistant Treasurer

APPENDIX A

2010 AUDITED FINANCIAL STATEMENTS

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ENTERPRISE CHARTER SCHOOL
Financial Statements and
Supplementary Information
June 30, 2010
(With Independent Auditors' Report Thereon)

ENTERPRISE CHARTER SCHOOL

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* * * * *

TOSKI, SCHAEFER & CO., P.C.
CERTIFIED PUBLIC ACCOUNTANTS

555 INTERNATIONAL DR.
WILLIAMSVILLE, NY 14221
(716) 834-0700

14 CORPORATE WOODS BLVD.
ALBANY, NY 12211
(518) 935-1069

INDEPENDENT AUDITORS' REPORT

The Board of Trustees
Enterprise Charter School:

We have audited the accompanying statement of financial position of Enterprise Charter School as of June 30, 2010, and the related statements of activities, functional expenses and cash flows for the year then ended. These financial statements are the responsibility of the School's management. 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 of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Enterprise Charter School as of June 30, 2010, and the changes in its net assets and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

In accordance with Government Auditing Standards, we have also issued our report dated October 1, 2010 on our consideration of Enterprise Charter School's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, 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 and should be considered in assessing the results of our audit.

Our audit was performed for the purpose of forming an opinion on the basic financial statements of Enterprise Charter School taken as a whole. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by U.S. Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-Profit Organizations, and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated, in all material respects, in relation to the basic financial statements taken as a whole.

Toski, Schaefer & Co. P.C.

Williamsville, New York
October 1, 2010

ENTERPRISE CHARTER SCHOOL
Statement of Financial Position
June 30, 2010

Assets

Current assets:		
Cash		\$ 846,615
Receivables:		
Transportation advance - Buffalo Public School System		181,675
School districts		9,718
Grants		123,552
Other		<u>19,965</u>
Total receivables		<u>334,910</u>
Prepaid expenses:		
Pension		24,222
Other		<u>52,036</u>
Total prepaid expenses		<u>76,258</u>
Total current assets		<u>1,257,783</u>
Property and equipment, at cost		1,782,243
Less accumulated depreciation		<u>(628,485)</u>
Net property and equipment		<u>1,153,758</u>
Other assets - security deposit		<u>52,250</u>
Total assets		<u>\$ 2,463,791</u>

(Continued)

See accompanying notes to financial statements.

ENTERPRISE CHARTER SCHOOL
Statement of Financial Position, Continued

Liabilities and Net Assets

Liabilities:	
Accounts payable	\$ 193,225
Accrued expenses:	
Payroll and payroll taxes	341,665
Pension	<u>134,859</u>
Total accrued expenses	<u>476,524</u>
Total liabilities	<u>669,749</u>
Net assets:	
Unrestricted	1,792,186
Temporarily restricted	<u>1,856</u>
Total net assets	<u>1,794,042</u>
Total liabilities and net assets	<u>\$ 2,463,791</u>

See accompanying notes to financial statements.

ENTERPRISE CHARTER SCHOOL
Statement of Activities
Year ended June 30, 2010

Unrestricted revenue:	
Public School Districts:	
Resident student enrollment	\$ 4,094,257
Students with disabilities	271,253
Other revenue from public school districts	117,560
Grant income	728,704
Uniform income	11,544
Rental income	4,103
Interest income	3,198
Arbitration award	242,489
Other	16,837
Net assets released from restrictions	<u>144</u>
Total unrestricted revenue	<u>5,490,089</u>
Unrestricted expenses:	
Program services:	
Regular education	3,925,598
Special education	317,612
Other programs	<u>247,118</u>
Total program services	4,490,328
Management and general	<u>674,982</u>
Total unrestricted expenses	<u>5,165,310</u>
Increase in unrestricted net assets	<u>324,779</u>
Changes in temporarily restricted net assets:	
Grant income	2,000
Net assets released from restrictions	<u>(144)</u>
Increase in temporarily restricted net assets	<u>1,856</u>
Increase in net assets	<u>326,635</u>
Net assets at beginning of year, as previously stated	1,623,857
Prior period adjustment	<u>(156,450)</u>
Net assets at beginning of year, as restated	<u>1,467,407</u>
Net assets at end of year	<u>\$ 1,794,042</u>

See accompanying notes to financial statements.

UNIVERSITY OF TEEFOO
Statement of Functional Expenses
Year ended June 30, 2010

	Program Services			Management and general	Total
	Regular education	Special education	Other programs		
Salaries	\$ 1,972,814	190,294	133,572	422,762	2,719,442
Payroll taxes	159,745	15,409	10,816	34,232	220,202
Employee benefits	319,251	30,794	21,615	68,414	440,074
Instructional consultants	113,642	-	-	-	113,642
Educational supplies and materials	49,623	-	-	-	49,623
Student services	1,979	110	110	-	2,199
Student activities	5,262	292	292	-	5,846
Field trips	5,658	314	314	-	6,286
Summer school	1,149	64	64	-	1,277
Student transportation	70,080	3,893	3,893	-	77,866
Student uniforms	14,887	827	827	-	16,541
Student testing and assessment	14,914	829	829	-	16,572
Occupancy	662,596	41,412	41,412	-	745,420
Repairs and maintenance	46,024	2,876	2,876	82,825	828,245
Staff development	9,442	590	590	5,753	57,529
Meetings, conferences and travel	13,309	832	832	1,180	11,802
Office expenses	26,179	1,636	1,636	1,663	16,636
Postage and delivery	4,148	259	259	3,272	32,723
Printing and production	9,061	566	566	518	5,184
Equipment rental	37,794	2,362	2,362	1,133	11,326
Professional fees	71,558	4,472	4,472	4,724	47,242
Legal fees	127,113	7,945	7,945	8,945	89,447
Insurance	50,471	3,154	3,154	15,889	158,892
Dues and subscriptions	12,785	799	799	6,309	63,088
Telephone	14,377	899	899	1,598	15,981
Technology expense	10,281	643	643	1,797	17,972
Advertising	8,259	516	516	1,286	12,853
Depreciation	86,674	5,417	5,417	1,033	10,324
Interest	688	43	43	10,834	108,342
Miscellaneous	5,835	365	365	86	860
Total expenses	\$ 3,925,598	317,612	247,118	674,982	5,165,310

See accompanying notes to financial statements.

ENTERPRISE CHARTER SCHOOL
Statement of Cash Flows
Year ended June 30, 2010

Cash flows from operating activities:	
Increase in net assets	\$ 326,635
Adjustments to reconcile increase in net assets to net cash provided by operating activities:	
Depreciation	108,342
Allowance for doubtful accounts	(1,915)
Changes in:	
Receivables	179,608
Prepaid expenses	(27,434)
Accounts payable	39,170
Accrued expenses	(116,216)
Deferred revenue	(132,488)
Net cash provided by operating activities	375,702
Cash flows from investing activities - additions to property and equipment	(51,786)
Net increase in cash	323,916
Cash at beginning of year	522,699
Cash at end of year	\$ 846,615
Supplemental schedule of cash flow information - cash paid during the year for interest	\$ 860

See accompanying notes to financial statements.

ENTERPRISE CHARTER SCHOOL

Notes to Financial Statements

June 30, 2010

(1) Summary of Significant Accounting Policies

(a) Nature of Activities

Enterprise Charter School (the School) was chartered by the Board of Regents of the University at the State of New York (the State) on March 25, 2003 for a term of five years pursuant to Article 56 of the New York State Education Law. The School is a K-8 public school funded from City of Buffalo, New York State, and Federal funds. In January 2010, the State extended the School's (K-8) charter through June 30, 2013.

(b) Basis of Accounting

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America.

(c) Basis of Presentation

The School reports information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets and permanently restricted net assets. Accordingly, net assets of the School and changes therein are classified and reported as follows:

Unrestricted net assets - Net assets that are not subject to donor-imposed stipulations and may be used for any purpose designated by the School's Board of Trustees.

Temporarily restricted net assets - Net assets subject to donor-imposed stipulations that may or will be met either by actions of the School and/or the passage of time.

(d) Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

(e) Cash

For purposes of the statements of cash flows, the School considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

(f) Concentration of Credit Risk

Financial instruments that potentially subject the School to concentration of credit risk consist principally of cash and cash equivalent accounts in financial institutions. Although the accounts exceed the federally insured deposit amount, management does not anticipate nonperformance by the financial institution.

(g) Accounts Receivable and Bad Debts

Receivables are recorded less an allowance for doubtful accounts. The allowance is estimated based upon a periodic review of the accounts receivable by management.

ENTERPRISE CHARTER SCHOOL
Notes to Financial Statements, Continued

(1) Summary of Significant Accounting Policies, Continued

(h) Capitalization and Depreciation

Property and equipment are recorded at cost or fair market value at the date of the gift in the case of donated equipment. If donors stipulate how long the assets must be used, the contributions are recorded as restricted support. In the absence of such stipulations, contributions of equipment are recorded as unrestricted support. Depreciation is provided for in amounts sufficient to relate the cost of depreciable assets to operations over their estimated service lives using the straight-line method. Improvements are capitalized, while expenditures for maintenance and repairs are charged to expense as incurred. Upon disposal of depreciable property, the appropriate property accounts are reduced by the related costs and accumulated depreciation. The resulting gains and losses are reflected in the statement of activities.

(i) Long-Lived Assets

The School reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. In determining whether there is an impairment of long-lived assets, the School compares the sum of the expected future net cash flows (undiscounted and without interest charges) to the carrying amount of the assets. At June 30, 2010, no impairment in value has been recognized.

(j) Deferred Revenue and Revenue Recognition

Grant awards accounted for as exchange transactions are recorded as revenue when expenditures have been incurred in compliance with the grant restrictions. Amounts unspent are recorded in the statement of financial position as deferred revenue.

(k) Donated Equipment, Materials, Supplies and Personal Services

Donated equipment, materials and supplies are reflected in the financial statements based on the fair market value at the time of donation.

Donated personal services meeting the requirements for recognition in the financial statements was not material and has not been recorded. However, many individuals volunteer their time and perform a variety of tasks that assist the School.

(l) Promises to Give

Contributions are recognized when the donor makes an unconditional promise to give to the School. Contributions that are restricted by the donor are reported as increases in unrestricted net assets if the restrictions expire in the year in which the contributions are recognized. All other donor-restricted contributions are reported as increases in temporarily or permanently restricted net assets depending on the nature of the restrictions. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets.

ENTERPRISE CHARTER SCHOOL
Notes to Financial Statements, Continued

(1) Summary of Significant Accounting Policies, Continued

(m) Expense Allocation

The costs of providing various programs and other activities have been summarized on a functional basis in the statement of activities and in the statement of functional expenses. Accordingly, certain costs have been allocated among the programs and supporting services benefited.

(n) Recent Accounting Pronouncements

In June 2009, the Financial Accounting Standards Board (FASB) issued the Accounting Standards Codification (the ASC). Effective July 2009, the ASC is the single source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with U.S. generally accepted accounting principles (GAAP). The ASC is intended to reorganize, rather than change, existing GAAP. Accordingly, all references to currently existing GAAP have been removed and have been replaced with plain English explanations of the School's accounting policies. The adoption of the ASC did not have a material impact on the School's financial position or results of operations.

(o) Income Taxes

The School is exempt from income taxes under Section 501(c)(3) of the Internal Revenue Code, therefore, no provision for income taxes is reflected in the financial statements. Management believes there are no uncertainties in income taxes or tax positions that require disclosure in the financial statements.

(2) Property and Equipment

Property and equipment are recorded at cost. A summary of property and equipment at June 30, 2010 is as follows:

Leasehold improvements	\$ 872,104
Furniture and equipment	546,424
Books	156,724
Vehicles	20,750
Construction in progress	<u>186,241</u>
	1,782,243
Less accumulated depreciation	<u>(628,485)</u>
Net property and equipment	\$ <u>1,153,758</u>

(3) Note Payable

The School has a \$450,000 line of credit with HSBC Bank at the prime rate of interest plus 1% (4.25% at June 30, 2010). At June 30, 2010, there was no outstanding balance on the line of credit.

ENTERPRISE CHARTER SCHOOL
Notes to Financial Statements, Continued

(4) Lease Obligations

The School leases its facility under an operating lease which expired in August 2008. During 2008, the School exercised its first option to extend the term of this lease. The lease extension was through June 30, 2010. The School also leased parking spaces through a separate agreement, which expired in July 2008. This agreement was not renewed. The School continues to rent the facility and parking spaces on a month-to-month basis, until the purchase of the facility is finalized as outlined in note 12. Total rent expense under these operating leases for the year ended June 30, 2010 amounted to \$828,245.

(5) Arbitration Award

An arbitration award was made in favor of Enterprise Charter School in the amount of \$242,489 during the year ended June 30, 2010 as a result of a settlement with their landlord. This amount has been recorded as unrestricted revenue in the accompanying statement of activities.

(6) Pension Plans

The School participates in the New York State and Local Employees' Retirement System (ERS) and the New York State Teachers' Retirement System (TRS), which are cost-sharing multiple employer, public employees retirement systems. The Systems offer a wide range of plans and benefits which are related to years of service and final average salary, vesting of retirement benefits, death and disability. All benefits generally vest after ten years of service.

(a) New York State Teachers' Retirement System

TRS is administered by the New York State Teachers' Retirement Board and provides retirement, disability, withdrawal and death benefits to plan members and beneficiaries as authorized by the Education Law and the Retirement and Social Security Law of the State of New York. The TRS issues a publicly available financial report that contains financial statements and required supplementary information for the System. The report may be obtained by writing to NYSTRS, 10 Corporate Woods Drive, Albany, New York 12211-2395.

ENTERPRISE CHARTER SCHOOL
Notes to Financial Statements, Continued

(6) Pension Plans, Continued

(b) New York State and Local Employees' Retirement System,

ERS provides retirement benefits as well as death and disability benefits. The New York State Retirement and Social Security Law govern obligations of employers and employees to contribute benefits to employees. ERS issues a publicly available financial report that includes financial statements and required supplementary information. The report may be obtained by writing to the New York State and Local Employees' Retirement System, 110 State Street, Albany, New York 12244.

(c) Funding Policies

The Systems require plan member contributions of 3% of their annual salary except for those plan members who joined prior to July 1976 or have greater than 10 years of service. Those joining after January 1, 2010 are required to contribute 3.5% of their annual salary. For ERS, the Comptroller annually certifies the rates expressed as a percentage of payroll of members used in computing the contributions required to be made by employers to the pension accumulation fund. The rates for ERS are 6.9 % and 11.3% of the annual covered payroll as of March 31, 2010 and 2009, respectively. Required annual contributions to ERS by the School as of June 30, 2010 and 2009 amounted to \$13,625 and \$9,487, respectively. Pursuant to Article 11 of the Education law, rates are established annually for TRS by the New York State Teachers' Retirement Board at an actuarially determined rate. The rate for TRS is 6.19% of the annual covered payroll as of June 30, 2010. Required annual contributions of \$135,388 were paid to TRS by the School for the year ended June 30, 2010.

(7) Litigation Settlement

The School was the defendant in a lawsuit regarding a lease dispute with a real estate partnership (the Plaintiff). A lease agreement between the parties for the School's use of a building as a gymnasium was executed in 2005, however, the School neither took possession of the premises nor made any rent payments pursuant to the agreement. The Court issued a summary judgment in favor of the Plaintiff in January 2008 and the School was ordered to pay \$20,325 for accrued rent and late charges. A stipulation of settlement for \$72,500 was issued in June 2008 of which \$52,500 was outstanding as of June 30, 2008, scheduled to be paid in six installments of \$8,750 each, with interest of 6%, on or before November 1, 2009. The balance was paid during the year ended June 30, 2010.

(8) Accrued Sick, Vacation and Personal Time

The School has contracts with certain employees that upon their termination the school will pay accrued sick, vacation and personal time. The liability for these amounts is included in accrued payroll and payroll taxes in the accompanying statement of financial position.

ENTERPRISE CHARTER SCHOOL
Notes to Financial Statements, Continued

(9) Advertising Costs

Advertising costs are expensed as incurred. Advertising expense amounted to \$10,324 for the year ended June 30, 2010.

(10) Charter Agreement

On January 12, 2010, the Board of Regents for and on behalf of the New York State Education Department granted a second renewal charter to Enterprise Charter School for a term up to and including June 30, 2013 in accordance with the Second Charter Agreement, dated January 4, 2010 between the Enterprise Charter School and the Board of Education of the City School District of the City of Buffalo.

(11) Prior Period Adjustment

During the year ended June 30, 2010, it was discovered that accrued payroll as of June 30, 2009 was understated by \$156,450. The beginning net assets have been adjusted by this amount.

(12) Subsequent Events

On July 1, 2010, the Board of Trustees of Enterprise Charter School approved the exercise of a purchase option to acquire the building the School had been leasing. Under the purchase agreement, the cost of the facility is a fixed sum of \$500,000, plus a negotiated fixed sum of \$90,000, plus the unamortized balances of tenant improvements and the outstanding principal balances of the three existing mortgages. The gross purchase price under the purchase option amounted to \$5,535,929 as of May 31, 2010.

On September 21, 2010, Enterprise Charter School received authorization to release from restrictions State Stimulus Grant funds in the amount of \$132,488 that had been carried as deferred revenue since June 30, 2007. This was due to identification of alternative allowable expenditures during the grant period that complied with the original grant.

The School has evaluated events after June 30, 2010, and through October 1, 2010, which is the date the financial statements were available to be issued, and determined that any events or transactions occurring during this period that would require recognition or disclosure are properly addressed in these financial statements.

ENTERPRISE CHARTER SCHOOL
Schedule of Expenditures of Federal Awards
Year ended June 30, 2010

<u>Federal Grantor/Pass Through Grantor/Program Title</u>	<u>Federal CFDA Number</u>	<u>Pass-through Grantors Number</u>	<u>Federal Expenditures</u>
U.S. Department of Education - passed through NYS			
Education Department:			
Title I Grants to Local Educational Agencies	84.010	21090856	\$ 29,563
Title I Grants to Local Educational Agencies	84.010	21100856	318,931
Title I Grants to Local Educational Agencies	84.010	11092058	5,397
Title I Grants to Local Educational Agencies, Recovery Act	84.389	5021100856	111,973
Improving Teacher Quality State Grants	84.367	147100856	45,327
Education Technology State Grants	84.318	292100856	3,441
Safe and Drug-Free Schools and Communities - State Grants	84.186	180100856	4,641
Reading First State Grants	84.357	243100186	<u>35,129</u>
Total Federal Awards			<u>\$ 554,402</u>

Basis of Presentation

The schedule of expenditures of Federal awards includes the Federal grant activity of Enterprise Charter School and is presented on the accrual basis of accounting. The information in this schedule is presented in accordance with the requirements of OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

TOSKI, SCHAEFER & CO., P.C.
CERTIFIED PUBLIC ACCOUNTANTS

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**INDEPENDENT AUDITORS' 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**

The Board of Trustees
Enterprise Charter School:

We have audited the financial statements of Enterprise Charter School as of and for the year ended June 30, 2010, and have issued our report thereon dated October 1, 2010. 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.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered Enterprise Charter School's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Enterprise Charter School's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of Enterprise Charter School's internal control over financial reporting.

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 School's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether Enterprise 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 audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

This report is intended solely for the information and use of management, the Board of Trustees, and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Toski, Schaefer & Co, P.C.

Williamsville, New York
October 1, 2010

TOSKI, SCHAEFER & CO., P.C.
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**INDEPENDENT AUDITORS' REPORT ON COMPLIANCE WITH REQUIREMENTS
THAT COULD HAVE A DIRECT AND MATERIAL EFFECT ON EACH MAJOR
PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE IN
ACCORDANCE WITH OMB CIRCULAR A-133**

The Board of Trustees
Enterprise Charter School:

Compliance

We have audited the compliance of Enterprise Charter School's compliance with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) Circular A-133 Compliance Supplement that could have a direct and material effect on Enterprise Charter School's major federal program for the year ended June 30, 2010. Enterprise Charter School's major federal program is identified in the summary of auditors' results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts and grants applicable to its major federal program is the responsibility of Enterprise Charter School's management. Our responsibility is to express an opinion on Enterprise Charter School's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about Enterprise Charter School's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination on Enterprise Charter School's compliance with those requirements.

In our opinion, Enterprise Charter School complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on its major federal program for the year ended June 30, 2010.

Internal Control Over Compliance

Management of Enterprise Charter School is responsible for establishing and maintaining effective internal control over compliance with requirements of laws, regulations, contracts and grants applicable to federal programs. In planning and performing our audit, we considered Enterprise Charter School's internal control over compliance with the requirements that could have a direct and material effect on a major federal program to determine the auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of Enterprise Charter School's internal control over compliance.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A material weakness in internal control over compliance is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above.

This report is intended solely for the information and use of the Board of Trustees, management and others within the organization and federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Toski, Schaefer & Co. P.C.

Williamsville, New York
October 1, 2010

ENTERPRISE CHARTER SCHOOL
 Schedule of Findings and Questioned Costs
 Year ended June 30, 2010

Part I - SUMMARY OF AUDITOR'S RESULTS

Financial Statements:

- | | |
|---|----------------------------------|
| Type of auditor's report issued: | Unqualified |
| Internal control over financial reporting: | |
| 1. Material weakness(ies) identified? | ___ Yes <u> x </u> No |
| 2. Significant deficiency(ies) identified not considered to be material weakness(es)? | ___ Yes <u> x </u> None reported |
| 3. Noncompliance material to financial statements noted? | ___ Yes <u> x </u> No |

Federal Awards:

- | | |
|---|----------------------------------|
| Internal control over major programs: | |
| 4. Material weakness(es) identified? | ___ Yes <u> x </u> No |
| 5. Significant deficiency(ies) identified not considered to be material weakness(es)? | ___ Yes <u> x </u> None reported |

Type of auditor's report issued on compliance for major programs:

- | | |
|--|-----------------------|
| 6. Any audit findings disclosed that are required to be reported in accordance with OMB Circular A-133 (section .510(a)) | ___ Yes <u> x </u> No |
| 7. The Authority's major programs audited were: | |

Name of Federal Program

Title I Grants to Local Educational Agencies	CFDA Number 84.010
Title I Grants to Local Educational Agencies, Recovery Act	84.389

- | | |
|---|-----------------------|
| 8. Dollar threshold used to distinguish between Type A and Type B programs? | \$300,000 |
| 9. Auditee qualified as low-risk auditee? | <u> x </u> Yes ___ No |

Part II - FINANCIAL STATEMENT FINDINGS SECTION

No reportable findings.

Part III - FINDINGS AND QUESTIONED COSTS - MAJOR FEDERAL AWARD PROGRAMS AUDIT

No reportable findings.

ENTERPRISE CHARTER SCHOOL
Status of Prior Year Findings
Year ended June 30, 2010

There were no findings reported for the year ended June 30, 2009.

APPENDIX B

THE INSTITUTION AND THE PROJECT FACILITY

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APPENDIX B

THE INSTITUTION

General

Enterprise Charter School (the "Institution") is a New York charter school established pursuant to its Charter and the New York Charter Schools Act of 1998 (the "Charter Schools Act"). The Institution began operations in Fall 2003 offering grades K-8 with an initial enrollment of 405 students. Enrollment for grades K-8 has been at capacity of 405 for each of the past 7 school years, and is again at capacity for the current 2010-2011 school year.

Recruitment

The Institution undertakes recruitment activities including:

- Advertising on radio and community newspapers
- Setting up informational tables at community events
- Hosting Open Houses
- Taking part in Charter School Fairs

Unique Characteristics:

- The Institution offers Project Based Learning (PBL) where students are motivated to pursue their own interests, question and make decisions about how they will find answers and solve problems.
- The Institution enhances learning through a teaching technique called looping. Teachers and students remain together for two years. This allows for more teaching time as teachers and students are familiar with each other and are aware of what is expected from day one.
- Staff members eat with students on a daily basis to impress on socialization skills.

Operation:

The Institution has a longer school year than traditional public schools, from approximately the second week of August to the last week of June. The Institution has a longer school day, beginning at 9:15am and ending at 4:15pm. In addition the Institution also offers a breakfast program beginning at 7:00am and an after-school program until 6:30pm.

Mission Statement

The mission statement of the Institution is: Engaging young minds through projects and partnerships. The Vision of the Institution is to provide students with the

knowledge, skills and dispositions to grow and problem solve, giving them the resources to lead and succeed in school and the community at large.

To strengthen and empower the institute's school community, students are offered academic, social, and life skills through various projects, using traditional and non-traditional methodologies and technical enhancements.

School Community:

The Institution offers an innovative school program based on supporting every child's knowledge, skills, and dispositions to grow and problem solve, giving them the resources to succeed in school and become active in the community. Using tools such as Project Based Learning (PBL), this school and its partners provide students with unique educational opportunities presently not available in other public schools. These opportunities empower students to generate positive environments and to develop the necessary tools for intrinsic lifelong learning and ongoing academic success.

School Features:

- **Instruction based on New York State Learning Standards:** the Institution's curriculum reflects the rigorous NYS Learning Standards and core curriculum requirements.
- **Conflict resolution training:** Staff members are trained to engage students to resolve conflicts peacefully and to encourage pro-social skills by facilitating affective communication during Peace Circle time.
- **Two culminating projects per school year:** While projects are woven into subjects throughout the year, the whole school wraps its hands around project topics everyone can work together on in the fall and the spring.
- **Enrichment Activities during the regular school day:** Academic intervention services are offered during the regular school day for those students who need additional supports and enriching activities like band and cultural arts are offered for those students who qualify.
- **Before and after school programs:** The school is open from 7:00 am until 6:30 pm to accommodate the needs of working families and to ensure, through our partnering agencies, that our children are engaged in high quality after school activities.
- **Field Trips:** The Institution offers multiple opportunities for community-based field trips to augment classroom instruction.
- **Broad Learning Opportunities:** Art, music, physical education, computers, technology and foreign language are all offered at all grade levels.
- **Direct instruction and differentiated instruction to meet individual needs:** Teachers deliver instruction explicitly to all students and break into small groups or centers to meet the multiple needs of their students.
- **Support services:** Available in the areas of reading, mathematics and special education in order to help students reduce or eliminate academic difficulties.

- **Wellness programs:** A full time Counselor and Registered Nurse are on staff to assist the school in developing a wellness program

Through the use of tools such as project based learning (PBL), the Institution and its partnering agencies provide students with unique educational opportunities that empower students to create positive environments, and to have the necessary tools for continued educational success.

Organization

The Institution is an independent and autonomous public school entitled to receive public education aid from School Districts in which its students are residents. It has all corporate powers necessary and desirable to carry out a charter school program in accordance with the Charter Schools Act, other applicable laws and regulations and the terms of its Charter. The establishment and organization of the Institution is governed by the Charter Schools Act. The Board of Trustees of the Institution has the final authority for policy and operational decisions of the Institution. The Board of Regents of the State of New York oversees the Institution. The Institution is an organization described in Section 501(c)(3) of the Code, exempt from the payment of income taxes under Section 501(a) of the Code.

Charter schools provide competition for traditional public schools, are different from them in some respects, and provide parents and students with choice in public education. Under the Charter Schools Act, charter schools are deemed to be non-public schools for certain purposes, which generally entitles charter schools to additional services from school districts, such as transportation and special education services. They must be organized and administered pursuant to their charters. Charter schools may not charge tuition or fees other than the payment of fees on the same basis as public schools. They may receive funding and other assistance from private persons and organizations.

Under the Charter Schools Act, charter schools must be non-sectarian in their programs, admissions policies, employment practices and all other operations. They may not discriminate against any student, employee or other person on the basis of ethnicity, national origin, gender, disability or any other ground that would be unlawful if done by a public school. 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. However, a single sex charter school or a charter school designed to provide expanding living opportunities for students at risk of academic failure is permitted. Charter schools are required to enroll eligible students who submit a timely application, unless the number of applications exceeds the capacity of the grade level or of the building, in which case students are required to be accepted from among applicants by a random selection process. However, preference is permitted to be given to students returning to the charter school in the second or subsequent year of operation (unless expelled for cause), to students residing in the school district in which the school is located, and to siblings of students already enrolled in the school.

The Institution's Charter has a three-year term extending through June 30, 2013, and is subject to renewal thereafter. It may be terminated prior to the expiration date if the Institution's outcome of student assessment measures falls below the level which would allow the Commissioner of Education of the State to revoke the registration of a public school and student achievement on such measures has not shown improvement over the preceding three years, if there are serious violations of law, if there are material and substantial violations of the Charter including fiscal mismanagement, or if the Public Employment Relations Board makes a determination that the Institution demonstrates a practice and pattern of egregious and intentional violations of the New York Civil Service Law involving interference with or discrimination against employee rights under the Civil Service Law. Upon receipt of a notice of intent to terminate a charter, a charter school has at least thirty (30) days to correct the problems associated with the proposed revocation, and must be provided with an opportunity to be heard, consistent with the requirements of due process.

The Institution strives to maintain two classes of every grade level with an average of 23 students in each classroom.

Curriculum

Project Based Learning

A project-based learning (PBL) method is a comprehensive approach to instruction. Students participate in projects and practice an interdisciplinary array of skills from math, language arts, fine arts, geography, science, and technology. The collaborative nature of the investigation enhances student's experiences as well as promotes a greater appreciation for social responsibility.

PBL is a model for classroom activity that shifts away from the classroom practices of short, isolated, teacher-centered lessons and instead emphasizes learning activities that are long-term, interdisciplinary, student-centered, and integrated with real world issues and practices.

One immediate benefit of practicing PBL is the unique way that it can motivate students by engaging them in their own learning. PBL provides opportunities for students to pursue their own interests, questions and make decisions about how they will find the answers to solve problems.

PBL also provides opportunities for interdisciplinary learning. Students apply and integrate the content of different subject areas at authentic moments in the production process, instead of in isolation or in an artificial setting.

PBL helps make learning relevant and useful to students by establishing connections to life outside the classroom, addressing real world concerns, and developing real world skills. Many of the skills learned through PBL are those desired by today's employer, including the ability to work well with others, make thoughtful decisions, take initiative, and solve complex problems.

Instruction is delivered primarily through the use of learning centers where students can practice skills at their own developmental pace and level of learning. Students are expected to master a set of skills for all content areas in order to be promoted to the next grade level. Students receive multiple and varied ways to master skills and are offered ample supports when they are struggling.

The Institution believes in the instruction of the whole child. Therefore a time is set aside each day to address social skill development and to encourage positive behavioral outcomes. Programs such as Second Step are used to teach children about important skills like empathy and how to address problems without violence. Additionally, there is also an enrichment period at the end of each day for students to get additional remedial help or to explore an area of interest such as art or music.

Parental Involvement

The Institution has a parent-teacher association formed in 2003, with membership of 36 families and staff. There are two parent representatives on the Board of Trustees who governs the school. Families are encouraged to attend the monthly Family Fun Nights.

Measuring Student Progress; Educational Support

The Institution reports to their authorizer and to the State Education Department annual progress on student performance. The school's goals as set by its charter are as follows:

1. Annually decrease the number of students at Level 1 by 10% on the required state assessments.
2. Annually increase the number of students at Level 3 by 10% on the required state assessments.
3. Increase its scores according to the Commissioner's Performance Index for AYP each year.
4. Provide measurable achievement outcomes that exceed New York State's Performance Index for AYP each year by 20%.
5. By the end of the second renewal term, students in grades 3-8 who have been continuously enrolled at the Institution will perform on par with the state average for proficiency on the NYS ELA and math assessments.
6. 80% of the students in grades K-3 who are continuously enrolled will achieve benchmark status according to DIBELS by year-end test results.
7. 80% of the students in grades 3-8 who are continuously enrolled at the Institution will maintain a Level 3 or increase to a Level 4 on the NYS ELA and math assessments.
8. 75% of the continuously enrolled students in grades 1-8 will demonstrate a year's growth on the Terra Nova reading and math assessments.

9. The Institution will be fully enrolled 100% of the time between August and April, as measured by enrollment reports submitted to the state education department on a bi-monthly basis.
10. 90% of the parents will report they are satisfied with the Institution, as measured by an annual survey.
11. 100% of teachers will report that they have access to high quality professional development opportunities, as measured by an annual survey.

Goals 1-3 have been consistently met for the last 4 years. We added new goals (4-11) during our second renewal term to demonstrate a broader range of performance. This past year the state education department changed the criterion for classifying a student in the level 3 category and as a result we did not make AYP for ELA. We will adjust our goals to be more consistent with the new performance requirements.

As part of its reporting, when the Institution has not met one of its goals it will submit an action plan for how it will work to achieve that goal for the following school year. There are several support services that are in place to ensure our students' success. Students are tested on school-made benchmark assessments to help them monitor how well the students are mastering the curriculum. They are further monitored using progress monitoring tools to see how well students are mastering age level appropriate skills.

When a student is struggling with the acquisition of a particular skill interventions are tried so that the student can achieve mastery. If the initial intervention does not work students can be assisted by one the specialists (reading, ESL, or special education teacher) to develop other interventions and may further be referred to the School Based Intervention Team.

Academic Performance

Grades 3 – 8 State ELA Assessments Results

<i>Year of Test</i>	Gr 3	Gr 4	Gr 5	Gr 6	Gr 7	Gr 8	AYP
	% Proficient						
2009-10	19	15	15	20	15	17	147
2008-09	51	81	52	59	51	43	155
2007-08	57	36	51	26	47	31	139
2006-07	34	46	30	39	22	28	124
2005-06	23	32	30	30	22	18	106

Grades 3 – 8 State Math Assessments Results

<i>Year of Test</i>	Gr 3	Gr 4	Gr 5	Gr 6	Gr 7	Gr 8	AYP
	% Proficient						
2009-10	27	29	63	34	27	15	175
2008-09	91	91	76	80	74	52	174
2007-08	81	73	76	35	60	53	157
2006-07	80	62	40	68	46	43	145
2005-06	59	47	28	27	4	2	96

Board of Trustees

The Board of Trustees offers a diverse range of expertise to the leadership and governance of the Institution. Pursuant to the Institution’s Bylaws, the Board of Trustees shall consist of no fewer than 9 and no more than 11 members. The Board of Trustees for the Institution is as follows:

<u>Name</u>	<u>Position</u>	<u>Term Expires</u>
Brenda W. McDuffie	Chairperson At-Large	7/1/2011
Richard Morrisroe	At-Large	7/1/2012
Mike Helman	Treasurer At-Large	7/1/2011
Kristy Witkowski	Secretary Staff Representative	7/1/2013
Darius Pridgen	At-Large	7/1/2011
Leslie Cohan	At-Large	7/1/2013
Richard J. Lee	At-Large	7/1/2013
Pam King	At-Large	7/1/2013
Tiffany Thomas	Parent Representative	7/1/2011
Rachel Martin	Parent Representative	7/1/2012
Megan Battista	Staff Representative	7/1/2012

Background Information of Board of Trustees

Brenda McDuffie: Brenda is our longest seated board member with 8 years, and is the President and CEO of the Buffalo Urban League. Brenda has sat on a number of other local Boards including Independent Health of WNY. She offers a broad network of expertise and board leadership.

Richard Lee: Richard has been a board member since 2004 and represents our Institutional Partner, Buffalo State College, in his service. He has a strong background in special education and had held several leadership positions at the College. He serves on the Academic Committee.

Mike Helman: Mike is a 4-year board member, and is the Executive Director of the Learning Disabilities Association of Western New York. He is a member of the New York State OMRDD Commissioner’s Advisory Council and the Co-chair of the Council’s Sub-Committee on Special Education. Mike is Treasurer and chairs the Finance Committee.

Pam King: Pam is a 5-year member of the board and serves as a Youth Coordinator for the Howard Lewis Parent Center. She currently serves as the chair of the Academic Committee.

Darius Pridgen: Darius is the newly elected representative for the Ellicot District on the Buffalo Common Council and Senior Pastor of True Bethel Baptist Church. He has served on the board since 2009.

Leslie Cohan: Leslie is counsel for Health Now and serves on the Personnel Committee. She is new to the Board this year.

Richard Morrisroe: Richard is a law student at the University of Buffalo and a member of the Finance Committee. He is new to the Board this year.

Megan Battista: Megan is a staff representative on the Board, and has taught 3rd and 5th grade at the Institution since 2009. She has served on the board since June 2010.

Kristy Witkowski: Kristy is a staff representative on the Board, and has taught 7th and 8th grade science at the Institution since 2009. She has served on the board since June 2010.

Rachel Martin: Rachel is a parent representative on the Board, and is currently a nursing student at Empire State College. She is new to the Board this year.

Tiffany Thomas: Tiffany is a parent representative on the Board and is currently the president of the Institution's PTA. She has served on the Board since 2005.

Administration and Faculty

Jill A. Norton, Chief Executive Officer. Ms. Norton is a founding member of the Institution, and serves as the school leader. She began working for the Buffalo Public Schools as an ESL teacher after graduating from LeMoyne College in 1990. She left the district in 1992 moving to Houston, Texas where she taught for two years as the English Teacher for the Gifted and Talented program at Holland Middle School. Her time there was spent participating in the Greater Houston area Writing Project as a summer fellow and continuing on as a Rice University Writing Project member during the 93-94 school year. Jill returned to Buffalo in 1995 as an ESL teacher at PS#76. Since then she has worked as a computer teacher for the Private Industry Council helping students build databases for non-profit groups in the area. In September of 2001, she accepted the position of technology integration specialist at PS#18, but later was asked to move to the Coordinator's position. As Coordinator she met regularly with teachers to revamp curriculum to best meet NYS standards, assisted the administration of numerous programs brought into the building, provided troubleshooting and mentoring and sought out innovative programs to implement in the building. In 2001 she began writing the charter that would become Enterprise Charter School. The school's charter was granted in March 2003 and she began work there as the Associate Director (Chief Academic Officer). In February 2005 she was made the school's Chief Executive Officer.

Andrew Starr, Chief Academic Officer. Andrew Starr currently serves as the Institution's Chief Academic Officer. Prior to his recent appointment, he represented the

staff on the Board of Trustees and worked as the Teacher Support Team Coordinator and a 1st and 2nd grade teacher. He has worked on several curriculum committees during his 8 years of service to the school.

Nancy I. Krug, Operations Manager. Nancy Krug currently serves as the Operations Manager for the school. Before coming to the Institution in 2003 she held various clerical positions for the Buffalo Public Schools during her 6 years of employment there and served as a supervisor for Mercy Hospital for nearly 20 years.

Nylsa Pineiro, Before and After School Coordinator. Nylsa Pineiro currently serves as the Before- and After-School Coordinator. She was hired at the school in 2005 to oversee the 21st Century Community Learning Center grant and has had vast experience overseeing grants for the Buffalo Public Schools over the last 18 years.

Lisa Kirisits, Contract Chief Financial Officer. The Institution has engaged Kirisits & Associates to provide general accounting and bookkeeping services for the school. Lisa compiles the monthly balance sheet and related statements for the Treasurer and the Finance Committee. While not a formal employee of the Institution, she is contracted to perform several duties typically associated with a chief financial officer or controller. Ms. Kirisits works with several local charter schools.

The Institution employs 31 teachers, for a student-to-teacher ratio of 13:1: two level 1 teachers, two level 1 teacher assistants, four level 2 teachers, one level 2 teacher assistant, four level 3 teachers, one level 3 teacher assistant, four level 4 teachers, one level 5 social studies teacher, one level 5 science teacher, one level 5 math teacher, one level 5 English teacher, one level 5 teacher assistant, one reading intervention specialist, one full time ESL teacher, one part-time ESL teacher, four special education teachers, one computer teacher, one technology teacher, one art teacher, one music teacher, one Spanish teacher, one physical education teacher and one part time gifted and talented teacher.

For the 2010-2011 school year, 100% of classes at the Institution are being taught by highly qualified teachers. While charters are allowed to have 30% or 5 teachers (whichever is less) who are not highly qualified, ECS is well above that mark.

Enrollment and Waiting List

The Institution commenced operation in Fall 2003, at a full enrollment level of 405 students. The Institution had 310 students on its waitlist for grades K-8 for the 2010-11 school year at the beginning of the year. The Institution's enrollment is limited by the State Education Department to 405 students in grades K-8, and it has always operated at that level.

During the years 2004-2008 the Institution attempted to offer a high school program at the request of its parents. This endeavor was discontinued after the schools first renewal as the implementation of the high school program was not seen as successful as the lower school and it was agreed that the Institution would continue to focus its resources on the lower school program.

Enrollment and wait list history is as follows:

<u>School Year</u>	<u>Enrollment</u>	<u>Wait List</u>
2003-04	405	NA
2004-05	455	NA
2005-06	505	222
2006-07	555	256
2007-08	605	249
2008-09	405	123
2009-10	405	219
2010-11	405	310

Teacher turnover is very insignificant. It is generally less than 10% annually with not more than 2 or 3 teachers leaving. The Institution does not currently have a collective bargaining agreement. Two staff members are elected to represent the employees on the school's Board of Trustees.

Student Demographic Information (Fall of each Year)

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
African American	85.3%	81.3%	79.2%	78.6%	74.3%	60.5%
American Indian or Pacific Islander	0%	0.4%	0.7%	0%	0%	0.3%
Hispanic or Latino	9.5%	10.9%	13.7%	18.6%	24.2%	33.6%
White	4.2%	7.4%	4.6%	2.8%	1.5%	4.3%
Asian	1%	0%	1.8%	0%	0%	1.3%
Special Education	20.0%	16.2%	42.2%	17.2%	17.9%	15%
Low Income	91.6%	81.1%	83.4%	84.5%	88.7%	88.7%
LEP	0%	0%	2%	3%	8%	12%
Students Eligible for Free/Reduced Lunch	88%	88%	83%	86%	95%	95%

Policies

The Institution has a dress code. All students are expected to dress appropriately for a K-8 educational environment. Clothing that is vulgar, depicts discriminatory, or obscene words or images, or that promotes weapons, drugs, alcohol, tobacco, drug paraphernalia, violence or gang symbols is prohibited. Any clothing or accessories that interferes with or disrupts the educational environment is unacceptable. All K-8 students will wear the uniform approved by the Institution. Only school issued items (fleece) may be worn over the uniform. Students must wear closed toed shoes or sneakers, tied at all

times. The heels on shoes may not exceed two inches. Sandals and shoes without backs are not allowed. Any student not wearing their uniform may be provided a uniform outfit or sent home that day. Students who repeatedly do not comply with the Institution's Uniform and Dress Code Policy will face disciplinary measures. Parents of students requiring accommodation for religious beliefs, disability, or other just cause must contact the Chief Executive Officer.

The Institution has a discipline policy. They believe that in order to make learning possible, a student must feel safe and the school climate must be conducive to study. The Institution uses the Academic and Behavioral Competencies (ABC) program adopted from the University of Buffalo. This program emphasizes positive reinforcement for appropriate behavior and works to change inappropriate behaviors. In addition, conflict resolution skills are built using the Western New York Peace Center's program.

The Institution has a homework policy. The objective of homework is to reinforce the lessons taught in the classroom, stimulate further interest in the topics taught, and develop independent study skills. Homework provides for practice of skills and application of principles based upon work begun in the classroom. It may enrich school experiences and promote a permanent interest in learning. A secondary goal of homework is to stimulate individual initiative, personal responsibility and self-direction.

Level 1(KDG)	not regularly assigned
Level 2(Gr. 1&2)	20 minutes each night
Level 3(Gr. 3&4)	30 minutes each night
Level 4&5(Gr. 5-8)	45 minutes each night

All children are expected to read or be read to for at least 20 minutes daily outside of school.

Attendance Policy:

Excused: An absence, tardiness or early departure may be excused if due to personal illness, illness or death in the family, impassable roads due to inclement weather, religious observance and education, quarantine, required court appearances, incarceration, approved field trip, "Student to Work" Day, suspension (up to 3 days), attendance at health clinics, approved college visits, approved cooperative work programs, military obligations or other such reasons as may be approved by the Board of Trustees.

Unexcused: Any absence that is not described in the previous (Excused) paragraph. [e.g., family vacation, babysitting, no transportation, lack of proper clothing, oversleeping.]

Illness / Excuses / Tardiness (late): When a child is absent or tardy, it is required for them to return with a written excuse. Excuses should include the date of absence or

tardiness, reasons for the absence or tardiness, and be signed by a parent or legal guardian. Absences with no written excuse will be considered unexcused.

Strategies Used to Meet Attendance Policy:

- Create and maintain a positive school building culture by fostering positive physical and psychological environment where the presence of strong adult role models encourages respectful and nurturing interactions between adults and students. This positive school culture is aimed at encouraging a high level of student bonding to the school, which in turn should lead to increased attendance.
- Develop a Comprehensive Student Attendance Policy based upon the recommendations of the multifaceted School Policy Development Team that includes representation from the Board of Education, administrators, teachers, students, parents/persons in parental relation and the community.
- Maintain accurate record keeping via a Register of Attendance to record attendance, absence, tardiness or early departure of each student. Utilize data analysis systems for tracking individual student attendance and individual and group trends in student attendance problems. Develop early intervention strategies to improve school attendance for all students.

	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
Annual Attendance Rate	94%	95%	94%	94%	94%	94%	94%
Student Suspensions	74	106	120	128	123	95	125
Annual Retention Rate	NA	NA	19%	23%	35%*	21%	22%

* includes the loss of students as a result of the high school closing

Budgeting Process

The Consulting Accountant shall develop, in conjunction with CEO and Board Finance Committee, the Institution's annual operating and capital budgets. Budgets will be based on the school's history, specifications and expectations. Budgeted operating expense categories shall include the cost of personnel, instruction, administration, facilities, operations and other spending categories of the Institution. Detailed expenses, such as supplies, repairs and maintenance, travel, contracted services, utilities, rent, and other expenses will be budgeted according to the above spending categories. Budgeted capital expenditures shall include items such as land, property, leasehold improvements, furniture and equipment, books, and vehicles.

The Board of Trustees will approve the annual operating and capital budgets of the Institution by May 1 of the year immediately preceding fiscal year. The CEO may approve budget amendments/transfers amounting to \$10,000 or less after the Board has approved the budget. The Board of Trustees' approval is required for proposed budget

amendments and line transfers in excess of \$10,000 or 20% from one budget line to another. All approved budget transfers must be supported by a completed and signed Reclassification of Budgeted Funds Form.

The Finance Committee will review periodic comparisons of year-to-date actual vs. budget status reports prepared by the Operations Manager and will present the report to the full Board at its next regularly scheduled Board meeting. These budget variance status reports will include all authorized budget transfers, including any transfers of \$10,000 or less approved by the CEO, in a column identified as "Transfers and Adjustments." Budget transfers/adjustments should be made throughout the fiscal year as needed. A final budget adjustment may be approved by the Board of Trustees upon completion of the previous year-end closing to make any final changes/transfers that arise from the year-end adjusting entries.

Description of Project Facility

The Institution currently occupies an approximate 85,556 sq ft facility at 275 Oak Street in Buffalo, NY. The space provides 40 rooms used for instructional space, a cafeteria and office space. The property is located on a 3.923 acre parcel. There is also a 10,715 sq ft detached building on the parcel which is currently leased to New York State. The Institution currently leases the following space in the building it currently occupies: 294 sq ft of office space to Chameleon Community Schools; 1,821 sq ft consisting of 2 classrooms and an office to Lil' Workers Child Development Center; and 2,660 sq ft of office space to Junior Achievement of Western New York.

In addition to the purchase of the building, the project includes the construction of a gymnasium that is 9,968 sq ft and will be attached to the building the Institution currently occupies.

Summary Financial Information

The following tables have been compiled from the Institution's independently audited financial statements for fiscal years ending June 30,

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Assets					
Current Assets					
Cash	\$55,342	\$389,248	\$576,487	\$522,699	\$846,615
Receivables	423,001	328,427	417,972	512,603	334,910
Prepaid Expenses	21,072	32,304	43,894	48,824	76,258
Total Current Assets	<u>499,415</u>	<u>749,979</u>	<u>1,038,353</u>	<u>1,084,126</u>	<u>1,257,783</u>
Net P,P & E	1,057,234	1,335,695	1,274,599	1,210,314	1,153,758
Other	55,250	55,250	52,250	52,250	52,250
	<u>\$1,611,899</u>	<u>\$2,140,924</u>	<u>\$2,365,202</u>	<u>\$2,346,690</u>	<u>\$2,463,791</u>
Liabilities & Net Assets					
Liabilities					
Accounts payable	90,000	103,910	125,028	154,055	193,225
Accrued expenses	404,252	550,982	609,717	436,290	476,524
Long-term debt	452,025	212,244	10,982	-	-
Other	-	135,085	142,360	132,488	-
Total Liabilities	<u>946,277</u>	<u>1,002,221</u>	<u>888,087</u>	<u>722,833</u>	<u>669,749</u>
Net Assets					
Unrestricted	665,622	1,138,703	1,477,115	1,623,857	1,792,186
Temporarily Restricted	-	-	-	-	1,856
Total Net Assets	<u>665,622</u>	<u>1,138,703</u>	<u>1,477,115</u>	<u>1,623,857</u>	<u>1,794,042</u>
	<u>\$1,611,899</u>	<u>\$2,140,924</u>	<u>\$2,365,202</u>	<u>\$2,346,690</u>	<u>\$2,463,791</u>
Unrestricted Revenue					
Public School Districts					
Resident student enrollment	\$4,392,462	\$5,207,575	\$5,586,938	\$4,194,774	\$4,094,257
Students with disabilities	416,710	374,688	389,932	213,960	271,253
Other	35,147	111,420	58,916	66,825	117,560
Grant Income	747,622	1,173,001	944,078	787,685	728,704
Other	55,098	49,675	128,529	76,930	278,315
Total unrestricted revenue	<u>5,647,039</u>	<u>6,916,359</u>	<u>7,108,393</u>	<u>5,340,174</u>	<u>5,490,089</u>
Unrestricted Expenses					
Program Services					
Regular education	4,584,249	5,375,756	5,766,098	4,381,765	3,925,598
Special education	356,719	404,628	381,650	245,070	317,612
Other	-	-	-	-	247,118
Management and general	535,760	662,894	622,233	566,597	674,982
Total unrestricted expenses	<u>5,476,728</u>	<u>6,443,278</u>	<u>6,769,981</u>	<u>5,193,432</u>	<u>5,165,310</u>
Increase in unrestricted net assets	170,311	473,081	338,412	146,742	324,779
Other changes in net assets	-	-	-	-	1,856
Increase in net assets	<u>170,311</u>	<u>473,081</u>	<u>338,412</u>	<u>146,742</u>	<u>326,635</u>
Net Assets - beginning of year	495,311	665,622	1,138,703	1,477,115	1,623,857
Prior period adjustment	-	-	-	-	(156,450)
Net Assets - end of year	<u>\$665,622</u>	<u>\$1,138,703</u>	<u>\$1,477,115</u>	<u>\$1,623,857</u>	<u>\$1,794,042</u>

APPENDIX C
PROPOSED FORM OF OPINION OF BOND COUNSEL

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[PROPOSED FORM OF OPINION OF BOND COUNSEL]

Upon delivery of the Series 2011 Bonds, Hiscock & Barclay, LLP, Bond Counsel to the Issuer, proposes to issue its legal opinion in substantially the following form:

February __, 2011

Buffalo and Erie County Industrial Land Development Corporation
143 Genesee Street
Buffalo, New York 14203

Re: Buffalo and Erie County Industrial Land Development Corporation
\$7,125,000 Tax-Exempt Revenue Bonds
(Enterprise Charter School Project), Series 2011A

Buffalo and Erie County Industrial Land Development Corporation
\$220,000 Taxable Revenue Bonds
(Enterprise Charter School Project), Series 2011B

Ladies and Gentlemen:

We have acted as Bond Counsel to the Buffalo and Erie County Industrial Land Development Corporation (the "*Issuer*") in connection with the issuance of its Tax-Exempt Revenue Bonds (Enterprise Charter School Project), Series 2011A in the aggregate principal amount of \$7,125,000 (the "*Tax-Exempt Bonds*") and its Taxable Revenue Bonds (Enterprise Charter School Project), Series 2011B in the aggregate principal amount of \$220,000 (the "*Taxable Bonds*") and together with the Tax-Exempt Bonds, the "*Series 2011 Bonds*").

The Series 2011 Bonds are authorized to be issued pursuant to (i) Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "*State*"), as amended, and Resolution Nos. 218 and 295 of 2009 and No. 5-3 of 2010 of the Erie County Legislature, each as amended to date (collectively, the "*Act*"); (ii) a resolution adopted by the Issuer on October 18, 2010, as amended by a resolution adopted by the Issuer on February 14, 2011 (as amended, the "*Resolution*"); and (iii) a certain indenture of trust dated as of February 1, 2011 (the "*Indenture*"), by and between the Issuer and Manufacturers and Traders Trust Company, as trustee (the "*Trustee*"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Indenture.

The Series 2011 Bonds are being issued in connection with a loan made by the Issuer to Enterprise Charter School (the "*Institution*"), a charter school organized and existing under and

by virtue of the laws of the State, for the purpose of financing all or a portion of the costs of: (A) the acquisition by the Institution an approximately 3.923 acre parcel of land (the "Land") improved by two (2) buildings totaling approximately 96,271 square feet and related parking lot and other improvements (collectively the "Existing Buildings") located at 275 Oak Street in the City of Buffalo, Erie County, New York, (B) the acquisition and construction on the Land by the Institution of an approximately 10,000 square feet addition and related infrastructure improvements (the "Addition") consisting of an approximately 8,555 square foot school gymnasium and an approximately 1,445 square feet corridor and related improvements in the gymnasium to connect the gymnasium to the Existing Buildings and resurfacing the parking areas and driveway areas, (C) the renovation of the Existing Buildings, including, without limitation, upgrading bathrooms, replacing floor covering and installing updated electronic cable (collectively the Existing Buildings and Addition, the "Improvements"), and (D) the acquisition and installation in and around the Improvements of certain items of furniture, furnishings, equipment, machinery and other tangible personal property (collectively, the "Equipment" and, collectively with the Land and the Improvements, the "Project Facility").

The Series 2011 Bonds are dated the date hereof, are issued as fully registered bonds without coupons and mature and bear interest as set forth therein. The Series 2011 Bonds are subject to redemption prior to maturity in the manner and upon the terms and conditions set forth therein and in the Indenture. The principal and redemption price, if any, of and interest on the Series 2011 Bonds are payable from loan payments to be made by the Institution under the Loan Agreement dated as of February 1, 2011 (the "Loan Agreement"), by and between the Issuer and the Institution, payments made by the Institution pursuant to a Guaranty dated as of February 1, 2011 (the "Guaranty") in favor of the Trustee and other monies and funds pledged therefor under the Indenture.

The obligations of the Institution under the Loan Agreement are secured by a Mortgage and Security Agreement dated as of February 1, 2011 (the "Mortgage and Security Agreement"), from the Institution in favor of the Issuer covering the Project Facility. The Issuer assigned the Mortgage and Security Agreement to the Trustee pursuant to an Assignment of Mortgage dated as of February 1, 2011 (the "Assignment of Mortgage").

We have examined specimen Series 2011 Bonds and executed counterparts of the Indenture, the Loan Agreement, the Assignment of Mortgage and a certain tax compliance agreement dated the date hereof relating to the Tax-Exempt Bonds (the "Tax Compliance Agreement") executed by the Institution and the Issuer.

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 identified in the Closing Memorandum with respect to issuance of the Series 2011 Bonds) as we have deemed necessary or appropriate for the purposes of the opinion expressed below. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies and have assumed the accuracy and truthfulness of the factual information, expectations, conclusions, representations, warranties, covenants and opinions of the Issuer, the Trustee, the Institution and its counsel and representatives as set forth in the various documents executed and delivered by them or any of them and identified in the Closing Memorandum for the Series 2011 Bonds.

We have reviewed an opinion of even date herewith of Harter, Secrest & Emery, LLP, counsel to the Institution, upon which we are relying as to the status of the Institution as a 501(c)(3) Organization (as defined in the Tax Compliance Agreement) and the due authorization, validity and enforceability with respect to the Institution of the Loan Agreement, the Guaranty, the Pledge and Assignment, the Mortgage and Security Agreement, the Tax Compliance Agreement and the other Institution Documents. No opinion as to such matters is expressed herein.

The Internal Revenue Code of 1986, as amended (the “Code”), imposes various requirements which must be met upon and subsequent to the issuance and delivery of the Tax-Exempt Bonds in order that interest on the Tax-Exempt Bonds will be and remain excludable from gross income for federal income tax purposes. Included among these requirements are restrictions on the investment and use of proceeds of the Tax-Exempt Bonds and the rebate of certain earnings in respect of such investments to the United States. Failure to comply with the requirements of the Code may cause interest on the Tax-Exempt Bonds to be includable in gross income for purposes of federal income tax, possibly from the date of issuance of the Tax-Exempt Bonds. The Issuer and the Institution have covenanted to comply with certain procedures, and they have made certain representations and certifications designed to assure satisfaction of the requirements of the Code. Our opinion in paragraph (vii) hereinbelow assumes compliance with such covenants and the accuracy, in all material respects, of such representations and certifications. We express no opinion with respect to the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds in the event that any such representations and certifications are materially inaccurate or that there occurs a failure to comply with such covenants. We also express no opinion regarding other federal income tax consequences arising with respect to the Series 2011 Bonds.

Based upon the foregoing, it is our opinion that:

(i) The Issuer is a duly created and validly existing not-for-profit corporation constituting a local development corporation under the laws of the State.

(ii) The Issuer has the right and power under the Act (a) to issue, execute, sell and deliver the Series 2011 Bonds for the purpose of making a loan to finance all or a portion of the costs of acquiring, renovating, constructing and equipping the Project Facility, funding a debt service reserve fund, and paying certain costs incurred in connection with the issuance of the Series 2011 Bonds; (b) to enter into the Indenture, the Loan Agreement, the Pledge and Assignment dated as of February 1, 2011 from the Issuer to the Trustee (the “*Pledge and Assignment*”), the Assignment of Mortgage and the Tax Compliance Agreement; and (c) to assign its right to receive loan payments and its other rights under the Loan Agreement to the Trustee pursuant to the Indenture and the Pledge and Assignment.

(iii) The Resolution has been duly and lawfully adopted by the Issuer and is in full force and effect.

(iv) The Indenture, the Loan Agreement, the Pledge and Assignment, the Assignment of Mortgage and the Tax Compliance Agreement have been duly authorized and lawfully executed and delivered by the Issuer and (assuming the authorization, execution and delivery by the other respective parties thereto) are valid and legally binding obligations of the Issuer enforceable against it in accordance with their respective terms.

(v) The Series 2011 Bonds have been duly authorized, executed, delivered and issued for value by the Issuer in conformity with all applicable laws and the provisions of the Indenture and the Resolution and constitute the valid and legally binding special, limited obligation of the Issuer enforceable against it in accordance with their terms. The Series 2011 Bonds are payable solely from payments to be made by the Institution pursuant to the Loan Agreement, payments made by the Institution pursuant to the Guaranty, and other monies and funds pledged therefor under the Indenture. The Indenture creates a valid assignment to the Trustee of the Trust Estate (as such term is defined in the Indenture) and the Issuer's rights under the Loan Agreement, except as set forth therein, and subject only to the provisions of the Indenture permitting the use and payment of the Trust Estate for or to the purposes and on the terms and conditions set forth in the Indenture.

(vi) The Series 2011 Bonds do not constitute a debt of the State or of any political subdivision thereof, including, without limitation, Erie County, New York, and neither the State nor any political subdivision thereof, including, without limitation, Erie County, New York, will be liable thereon.

(vii) Under existing law, interest on the Tax-Exempt Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code and is not treated as an item of tax preference for purposes of the alternative minimum tax imposed upon individuals and corporations pursuant to the provisions of the Code, provided, however, that such interest is taken into account in determining adjusted current earnings of certain corporations (as defined for federal income tax purposes) for purposes of computing the alternative minimum tax imposed on such corporations. With respect to the Tax-Exempt Bonds maturing December 1, 2040 (the "Discount Bonds") having original issue discount ("OID"), OID that has accrued and is properly allocable to the owners of Discount Bonds under Section 1288 of the Code is excludable from gross income for federal income tax purposes to the same extent as other interest on the Tax-Exempt Bonds.

(viii) The interest on the Tax-Exempt Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof. The interest on the Taxable Bonds is not exempt from personal income taxes imposed by the State of New York or any political subdivision thereof.

In rendering our opinion, we wish to advise you that:

(a) The enforceability against the Issuer of the Series 2011 Bonds, the Indenture, the Loan Agreement, the Pledge and Assignment, the Assignment of Mortgage and the Tax Compliance Agreement may be limited by any applicable bankruptcy, insolvency or other similar law or enactment now existing or hereafter enacted by the State or the Federal government affecting the enforcement of creditors' rights generally.

(b) Equitable remedies with respect to any of the documents described in paragraph (a) above (and with respect to any other documents) lie in the discretion of a court and may not be available.

(c) We express no opinion as to the title to the Project Facility, or the sufficiency (insofar as it relates to the title to the Project Facility) of the description of the Project Facility in the Loan Agreement or the Mortgage and Security Agreement or the existence of any liens,

security interest or encumbrances on or affecting the Project Facility. We also express no opinion as to perfection of any interests in the Project Facility.

(d) Certain requirements and procedures contained or referred to in the Indenture and certain other documents delivered in connection with the issuance of the Series 2011 Bonds may be changed, and certain actions may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice, or with the approving opinion of Bond Counsel. We express no opinion as to any Series 2011 Bond or the interest thereon if any such change occurs or action is taken upon the advice or approval of bond counsel other than Hiscock & Barclay, LLP.

(e) We have not been requested to examine and have not examined any documents or information relating to the Issuer or the Institution other than the documents identified in the Closing Memorandum hereinabove referred to, and no opinion is expressed as to any financial information, or the adequacy thereof, which has been or may be supplied to the Trustee, the initial purchaser of the Series 2011 Bonds or any other person.

(f) This opinion is given as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

(g) This opinion is rendered to the addressee named above, and may not be relied upon by any other person without our prior, express written consent.

We have examined the executed Series 2011 Bonds numbered RA-1, RA-2 and RB-1 in fully registered form and, in our opinion, the form of said bonds and their execution are regular and proper.

Very truly yours,

HISCOCK & BARCLAY, LLP

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APPENDIX D
CERTAIN DEFINITIONS AND DOCUMENT SUMMARIES

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CERTAIN DEFINITIONS

In addition to the other terms defined in the Official Statement, when used in the summaries of certain provisions of the Indenture, the Loan Agreement, the Mortgage and Security Agreement and the Custody Agreement, the following terms have the meanings ascribed to them below.

“Act” means Section 1411 of the Not-for Profit Corporation Law of the State of New York and Resolution Nos. 218 and 295 of 2009 and No. 5-3 of 2010 of the Erie County Legislature, each as amended to date.

“Addition” has the meaning given to such term in Schedule B to the Loan Agreement.

“Additional Bonds” means any “Additional Bonds” authorized to be issued pursuant to the Indenture.

“Affiliate” means, with respect to any specified entity, any other entity directly or indirectly controlling or controlled by or under direct or indirect common control with any specified entity and “control” when used with respect to such specified entity, means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Agency Obligations” means bonds, debentures, notes or other evidences of indebtedness issued by the Federal Home Loan Bank System, Federal Home Loan Mortgage Corporation (including participation certificates), Federal National Mortgage Association, Resolution Funding Corporation or Federal Farm Credit System.

“Aid Account” means the custody account so designated which is established with the Custodian under the Custody Agreement.

“Architect” means Adelmann Palmisano Architects, PLLC.

“Architect’s Agreement” means the Standard Form of Agreement between Owner and Architect (Document B151), dated as of January 24, 2011, between the Institution and the Architect, as the same may be amended, modified or supplemented from time to time.

“Assignment” means the Pledge and Assignment, dated as of February 1, 2011, between the Issuer and the Trustee, with an acknowledgment by the Institution, as the same may be amended, modified or supplemented from time to time.

“Assignment of Construction Documents” means the Assignment of Construction Documents dated as of February 1, 2011, by the Institution to the Trustee, with consents of Architect and Contractor, as the same may be amended, modified or supplemented from time to time.

“Assignment of Mortgage” means the Assignment of Mortgage dated as of February 1, 2011 by the Issuer to the Trustee.

“Authorized Denominations” means \$5,000 or any integral multiple of \$5,000 in excess thereof.

“Authorized Newspaper” means (i) a newspaper printed in the English language and customarily published at least one time each week and generally circulated in the City of Buffalo, New York, and (ii) a newspaper printed in the English language and customarily devoted to financial news and customarily published each Business Day and generally circulated in New York, New York. Publication in an Authorized Newspaper means publication in newspapers described in both (i) and (ii) above. When successive publications in an Authorized Newspaper are required, they may be made in the same or different Authorized Newspapers.

“Authorized Signatory” means (i) in the case of the Issuer, the Chair, the Vice Chair, the Chief Executive Officer, the Chief Operating Officer, the Assistant Treasurer, the Treasurer and/or the Chief Financial Officer, or other officer designated by the Chair, a certified copy of which has been delivered to the Trustee, to perform such act or execute such documents, (ii) in the case of the Institution or any other Person (other than the Issuer and the Trustee),

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the person or persons authorized by a written action, authorization or resolution, a certified copy of which has been delivered to the Trustee, of the directors of the Institution or of the controlling principals of such other Person, to perform any act or execute any document, and (iii) in the case of the Trustee, any officer in the Corporate Trust Department of the Trustee familiar with corporate trust matters authorized to perform any act or sign any document by or pursuant to the by-laws or any resolution of the governing body of the Trustee.

“Bankruptcy Code” means the United States Bankruptcy Code, as amended from time to time.

“Beneficial Owner” means any person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds, including persons holding Bonds through nominees or depositories.

“Bi-Monthly Payment Date” means the first day of March and every two months thereafter or such other dates as Per Pupil Aid shall be payable to the Institution by the School Districts pursuant to Section 2856(1) of the Education Law of the State, as amended from time to time.

“Board of Regents” means the Board of Regents of the University of the State of New York and any successor thereto.

“Bond” or “Bonds” means the Series 2011 Bonds and any Additional Bonds.

“Bond Counsel” means such attorney or firm of attorneys experienced in matters relating to municipal bond law and the tax exemption of interest on bonds of states and their political subdivisions, selected by the Institution and satisfactory to the Issuer.

“Bond Documents” means the Bonds, the Assignment, the Loan Agreement, the Bond Purchase Agreement, the Indenture, the Mortgage and Security Agreement, the Assignment of Mortgage, the Guaranty, the Assignment of Construction Documents, the Building Loan Agreement, the Custody Agreement, the Environmental Compliance and Indemnification Agreement, the Tax Compliance Agreement and any other document now or hereafter executed to evidence or secure the Bonds.

“Bond Fund” means the fund so designated which is established pursuant to the Indenture.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated February 9, 2011 between the Issuer and the Underwriter and consented to by the Institution.

“Bond Register” means the register of Bonds kept by the Trustee pursuant to the Indenture.

“Bond Resolution” means the resolution adopted by the Issuer on October 18, 2010, as amended by the resolution adopted by the Issuer on February 14, 2011, authorizing the issuance, execution, sale and delivery of the Series 2011 Bonds and the execution and delivery of the Issuer Documents, as such resolution may be amended or supplemented from time to time.

“Building Loan Agreement” means the Building Loan Agreement dated as of February 1, 2011, between the Institution and the Trustee, as the same may be amended, modified or supplemented from time to time.

“Building Loan Proceeds” means the portion of the proceeds of the Series 2011 Bonds to be applied to Costs of constructing, renovating and equipping the Project Facility in accordance with the Building Loan Agreement, the Indenture and the Loan Agreement.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banks in New York, New York, or in the jurisdiction in which the Trust Office is located are authorized by law to close, or (iii) a day on which the New York Stock Exchange is closed.

“Certificate” means a certificate or report, in form and substance satisfactory to the Issuer and the Trustee, executed: (i) in the case of an Issuer Certificate, by an Authorized Signatory of the Issuer; (ii) in the case of an Institution Certificate, by an Authorized Signatory of the Institution; and (iii) in the case of a Certificate of any other Person, by

such Person, if an individual, and otherwise by an officer, member, partner or other authorized representative of such Person; provided that in no event shall any individual be permitted to execute any Certificate in more than one capacity.

“Charter” means the Provisional Charter, and any amendments thereto, granted March 25, 2003, by the Board of Regents incorporating the Institution and the agreement by and between the Board of Regents and the Institution last executed January 12, 2010, as amended and renewed from time to time.

“Charter Schools Act” means Article 56 of the Education Law of the State, as amended, and any regulations now or at any time promulgated thereunder.

“City” means the City of Buffalo, New York.

“City School District” means the City of Buffalo, New York School District and any successor thereto.

“Closing” or “Closing Date” means the date of sale and delivery of the Series 2011 Bonds.

“Closing Statement” means the closing statement delivered at the time of settlement of any Bonds, signed by an Authorized Signatory of the Institution, specifying the deposits to be made with the proceeds of such Bonds and the payments to be made with such proceeds, including the Persons to which each payment is to be made and the amount of each such payment.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations now or at any time after the Closing Date promulgated thereunder.

“Completion Certificate” means one or more Certificates delivered by the Institution pursuant to Section 6.3 of the Indenture.

“Completion Date” means the date on which the Completion Certificate with respect to the Project Facility is delivered to the Trustee pursuant to Section 6.3 of the Indenture.

“Consultant” means an Independent Person qualified to report on questions relating to the financial condition of charter schools offering grades K-8th, selected by the Institution and acceptable to a Majority of Owners.

“Contract Documents” means the Architect’s Agreement and Contractor’s Contract for the construction, renovation and equipping of the Project Facility, notice to bidders, information for bidders, form of bid, general conditions, supplemental general conditions, general requirements, supplemental general requirements, bonds, plans and specifications, addenda, change orders, and any other documents entered into or prepared by or on behalf of the Institution relating to the design, construction, renovation or equipping of the Project Facility, and any amendments to the foregoing.

“Contractor” means Telco Construction, Inc.

“Contractor’s Contract” means the Standard Form of Agreement between Owner and Contractor (Document A133), including General Conditions of the Contract for Construction, dated February 11, 2011, between the Institution and the Contractor, as the same may be amended, modified or supplemented from time to time.

“Cost” or “Costs” means all those costs and items of expense relating to (i) the cost of preparing the plans and specifications (including any preliminary study or planning of the Project Facility or any aspect thereof) for the Project Facility; (ii) costs of acquiring the Project Facility; (iii) all costs of constructing, renovating and equipping the Project Facility (including architectural, engineering and supervisory services with respect to the Project Facility); (iv) all fees, taxes, charges and other expenses for recording or filing, as the case may be, the Bond Documents, any other agreement contemplated thereby and any financing statements that the Issuer, the Custodian and the Trustee may deem desirable in order to perfect or protect the Issuer’s or the Institution’s respective interest in the Project Facility, the Gross Revenues and any security interests contemplated by the Bond Documents; (v) all fees and expenses in connection with any actions or proceedings that the Issuer or the Trustee may deem desirable in

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order to perfect or protect the Issuer's, the Trustee's or the Institution's respective interest in the Project Facility; (vi) eligible working capital costs; (vii) 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 Bonds and the Bond Documents and all other documents in connection herewith or therewith, with the acquisition of a leasehold or fee simple interest in the Project Facility and with any other transaction contemplated by the Loan Agreement or the other Bond Documents; (viii) the administrative fee, if any, of the Issuer, the Custodian and the Trustee; (ix) all appraisal and survey costs; (x) eligible or approved soft costs contemplated by the Bond Documents and all other documents in connection therewith; and (xi) reimbursement to the Institution for any of the above-enumerated costs and expenses.

"Custodian" means Manufacturers and Traders Trust Company, a corporation under the banking laws of the State, and its permitted successors or assigns.

"Custody Agreement" means the Custody Agreement, dated as of February 1, 2011, among the Institution, the Custodian and the Trustee, as the same may be amended, modified or supplemented from time to time.

"Custody Agreement Notice" means the notice given from time to time from the Trustee to the Custodian pursuant to Section 4.1 of the Custody Agreement.

"Debt Service" means (i) interest accruing on Indebtedness during the applicable period, except to the extent such interest is treated as a capital expense or is payable from the proceeds of such Indebtedness, (ii) amounts required to be paid during the period with respect to the principal or sinking fund requirements on such Indebtedness and (iii) all lease rental payments during the period on Indebtedness which evidence the acquisition of capital assets which are required to be capitalized under generally accepted accounting principle.

"Debt Service Coverage Ratio" means as of any date, the ratio of Income Available for Debt Service to Debt Service.

"Debt Service Reserve Fund" means the fund so designated which is established pursuant to the Indenture.

"Default" means any default under any of the Bond Documents or any event or condition which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under any of the Bond Documents.

"Determination of Taxability" means a determination that the interest income on any of the Tax-Exempt Bonds does not qualify as interest excluded from gross income of the recipient thereof for the purpose of federal income taxation ("exempt interest") under Section 103 of the Code, which determination shall be deemed to have been made upon the first to occur of any of the following: (i) the date on which the Trustee is notified that an Opinion of Bond Counsel is unable to be delivered to the effect that the interest on the Tax-Exempt Bonds qualifies as such exempt interest, or (ii) the date on which any change in law or regulation becomes effective or on which the Internal Revenue Service issues any public or private ruling, technical advice memorandum or any other written communication or on which there shall occur a ruling or decision of a court of competent jurisdiction with or to the effect that, in the opinion of such Bond Counsel, the interest income on any of the Tax-Exempt Bonds does not qualify as such exempt interest, or (iii) the date on which the Institution will receive notice from the Trustee in writing that the Trustee has been notified by the Internal Revenue Service, or has been advised by the Issuer, the Institution or any Holder or former Holder that the Internal Revenue Service has issued a notice of deficiency or similar notice which asserts that the interest on any of the Tax-Exempt Bonds does not qualify as such exempt interest.

"DTC" means The Depository Trust Company, a limited purpose trust company organized under the New York Banking Law, or any other depository selected as set forth in the Indenture.

"Education Law" means Chapter 16 of the Consolidated Laws of the State, as amended, and any regulations promulgated thereunder.

“Environmental Compliance and Indemnification Agreement” means the Environmental Compliance and Indemnification Agreement, dated as of February 1, 2011 from the Institution to the Trustee and the Issuer, as amended, modified or supplemented from time to time.

“Equipment” has the meaning given to such term in Schedule B to the Loan Agreement.

“Event of Bankruptcy” means the Institution will have applied for or consented to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; admitted in writing the inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been the subject of an order for relief under the Bankruptcy Code, or been adjudicated a bankrupt, or filed a petition or an answer seeking reorganization, liquidation or any arrangement with creditors or taken advantage of any insolvency law, or submitted an answer admitting the material allegations of a petition in bankruptcy, reorganization, liquidation or insolvency proceeding; or an order, judgment or decree shall have been entered, without the application, approval or consent of the Institution by any court of competent jurisdiction approving a petition seeking reorganization of the Institution or appointing a receiver, trustee or liquidator of a substantial part of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days; or the Institution shall have filed a voluntary petition in bankruptcy or failed to remove an involuntary petition in bankruptcy filed against it within sixty (60) days of the filing thereof.

“Event of Default” has the meaning given to such term in each respective Bond Document.

“Existing Buildings” has the meaning given to such term in Schedule B to the Loan Agreement.

“Extraordinary Redemption” means the redemption of the Bonds pursuant to the Indenture.

“Financing Documents” means the Bond Documents, Issuer Documents and Institution Documents.

“Fiscal Year” means (i) the period of twelve months beginning July 1 of each year, or (ii) such other consecutive 12-month period selected by the Institution as its fiscal year for accounting purposes after not less than 30 days prior written notice to the Issuer, the Trustee and each Bondholder informing them of the contemplated change.

“Government Obligations” means direct noncallable obligations of, or noncallable obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Gross Revenues” means, for any period of time for which calculated, the total of all receipts, operating revenues and gains derived by the Institution during such period, determined in accordance with generally accepted accounting principles, including, but not limited to, Per Pupil Aid and other aid received by the Institution pursuant to federal or State law, requirements or grant or other programs, and also including interest earnings on all funds and accounts (except the Rebate Fund) held by the Trustee under the Indenture and the Custodian under the Custody Agreement. Gross Revenues shall not, however, include any gifts, grants, bequests, donations and contributions before or after the Closing Date made, designated or restricted at the time of making thereof by the donor or maker as being for certain specified purposes inconsistent with the application thereof to the payments due under the Loan Agreement or not subject to pledge, and any income derived therefrom to the extent required by such designation or restriction.

“Guaranty” means the Guaranty dated as of February 1, 2011 from the Institution to the Trustee, as the same may be amended, modified or supplemented from time to time.

“Improvements” means the Existing Buildings and the Addition.

“Income Available for Debt Service” means with respect to the Institution for any Fiscal Year, and on a consolidated basis, the excess of (i) the Gross Revenues of the Institution over (ii) its Operating Expenses, plus depreciation, amortization and interest expense and excluding any extraordinary gains or losses after funding required reserves, changes in valuation of interest rate swaps and unrealized gains or losses.

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"Indebtedness" means with respect to the Institution (i) all indebtedness, whether or not represented by bonds, debentures, notes or other securities, for the repayment of money borrowed, (ii) all deferred indebtedness for the payment of the purchase price of property or assets purchased, including, without limitation, capitalized leases, (iii) all guaranties, endorsements, assumptions and other contingent obligations in respect of, or to purchase or otherwise acquire, indebtedness of others and (iv) 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 Indebtedness at any time there shall be excluded any operating leases and any particular item of Indebtedness if before the maturity thereof there shall have been deposited with the lender, creditor, trustee or other proper depository the necessary funds (or evidences of such Indebtedness) for the payment, redemption or satisfaction of such item of Indebtedness (and such funds or evidences of such Indebtedness shall thereafter be excluded from any computation of the assets of the Institution).

"Indemnified Parties" has the meaning given to such term in Section 29 of the Loan Agreement.

"Indenture" means the Indenture of Trust, dated as of January 1, 2011, between the Issuer and Trustee and consented to by the Institution, as the same may be amended, modified or supplemented from time to time in accordance with its terms.

"Independent" means with respect to any counsel, accountant and Consultant, a Person who is not a member of the governing body of the Institution or its Affiliates, or an officer or employee of the Institution or its Affiliates, and which is not a partnership, limited liability company, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the governing body of the Institution or its Affiliates, or an officer or employee of the Institution or its Affiliates; provided, however, that the fact that such Person is retained regularly by or transacts business with the Institution will not make such Person an employee within the meaning of this definition.

"Institution" means Enterprise Charter School, a charter school organized and existing under and by virtue of the laws of the State pursuant to the Charter granted by the Board of Regents.

"Institution Documents" means the Bond Purchase Agreement, the Loan Agreement, the Mortgage and Security Agreement, the Building Loan Agreement, the Guaranty, the Architect's Agreement, the Contractor's Contract, the Assignment, the Assignment of Construction Documents, the Continuing Disclosure Agreement, the Custody Agreement, the Tax Compliance Agreement, the Environmental Compliance and Indemnification Agreement and any other document or certificate to which the Institution is a party.

"Insurance and Condemnation Fund" means the fund so designated which is established pursuant to the Indenture.

"Institution Certificate" means a Certificate executed and delivered by an Authorized Signatory of the Institution.

"Interest Account" means the account so designated within the Bond Fund which is established pursuant to the Indenture for each series of Bonds.

"Interest Payment Date" means with respect to the Series 2011 Bonds June 1 and December 1 of each calendar year commencing June 1, 2011.

"Interested Bondholder" means the registered holder of \$1,000,000 or more in aggregate principal amount of the Bonds and any other Bondholder who shall have filed a written request with the Trustee to receive copies of reports under the Indenture.

"Investment Securities" means and includes any of the following securities, if and to the extent the same are permitted under applicable law:

- (A) Government Obligations;
- (B) Agency Obligations;

(C) Negotiable or non-negotiable certificates of deposit, time deposits, or other similar banking arrangements, issued by any nationally or state-chartered bank (including the Trustee) or trust company, savings bank or any savings and loan association, domiciled in the State, if either

(i) the long-term obligations of such bank, trust company, savings bank or savings and loan association are rated in one of the two highest rating categories by the Rating Agency, or

(ii) the deposits are continuously secured as to principal, but only to the extent not insured by the Federal Deposit Insurance Corporation, or similar corporation chartered by the United States of America:

(a) by lodging with a bank or trust company, as collateral security, obligations described in paragraph (C)(i) or (ii) above or, with the approval of the Trustee, other marketable securities eligible as security for the deposit of trust funds under applicable regulations of the Comptroller of the Currency of the United States of America or applicable state law or regulations, having a market value (exclusive of accrued interest) not less than the amount of such deposit, or

(b) if the furnishing of security as provided in clause (a) of this paragraph is not permitted by applicable law, in such manner as may then be required or permitted by applicable state or federal laws and regulations regarding the security for the deposit of trust funds;

(D) Money market mutual funds invested solely in obligations listed in paragraphs (A) or (B) above and/or rated AAAM or AAAM-G (or the equivalent rating) by the Rating Agency; and

(E) Banker's acceptances guaranteed by any bank having a combined capital, surplus and undivided profits of not less than \$100,000,000.

“Issuer” means (i) Buffalo and Erie County Industrial Land Development Corporation and its successors and assigns, and (ii) any local governmental body or local development corporation resulting from or surviving any consolidation or merger to which the Issuer or its successors may be a party.

“Issuer Documents” means the Bonds, the Indenture, the Loan Agreement, the Assignment of Mortgage, the Assignment, the Bond Purchase Agreement, the Tax Compliance Agreement and any other document or certificate to which the Issuer is a party, executed and delivered in connection with the issuance of the Series 2011 Bonds.

“Land” means the real property described in Exhibit A to the Mortgage and Security Agreement.

“Legal Requirements” means all federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Institution, any occupant, user or operator of the Project Facility or any portion thereof (including, without limitation, those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, operation of a charter school, equal opportunity, minimum wages, and employment practices).

“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” includes 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 that 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 Loan Agreement, dated as of February 1, 2011, by and between the Issuer and the Institution, as the same may be amended, modified or supplemented from time to time.

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“Loan Payments” means any payments payable by the Institution pursuant to Section 7 of the Loan Agreement.

“Long-Term Indebtedness” means any Indebtedness of the Institution other than Short Term Indebtedness.

“Majority of Owners” means the Owners of more than 50% of the principal amount of all Outstanding Bonds (determined in accordance with the Indenture) or, if one or more series of Bonds is specified, the Outstanding Bonds of the specified series.

“Maturity Date” on a series of Bonds is set forth in the form of such series of Bonds.

“Mortgage and Security Agreement” means the Mortgage and Security Agreement dated as of February 1, 2011, from the Issuer to the Institution, as the same may be amended, modified or supplemented from time to time.

“Mortgaged Property” means the real and personal property described in the Mortgage and Security Agreement and subject to the Lien created thereby.

“Mortgagee Title Insurance Policy” means the title insurance commitment in favor of the Trustee dated January 10, 2011, issued by Stewart Title Insurance Company and redated the Closing Date covering the real property constituting the Mortgaged Property.

“Net Proceeds” means any insurance proceeds or condemnation award paid with respect to the Project Facility, remaining after payment therefrom of all expenses incurred in the collection thereof.

“Official Statement” means the Official Statement dated February 9, 2011, distributed by the Underwriter in connection with the offering of the Bonds.

“Operating Expenses” means for any Fiscal Year, on a consolidated basis the total operating expenses of the Institution.

“Opinion of Bond Counsel” means an Opinion of Counsel given by Bond Counsel.

“Opinion of Counsel” means a written opinion of counsel who is acceptable to the Issuer and to the Trustee. In rendering any such written opinion, counsel may rely upon certificates from appropriate individuals with respect to relevant factual matters, provided that nothing has come to their attention which would lead them to believe that any of the representations contained in any such certificate are inaccurate in any respect.

“Optional Redemption” means the redemption of the Bonds pursuant to the Indenture.

“Outstanding” means all Bonds which have been authenticated and delivered by the Trustee under the Indenture, except the following:

- (i) Bonds canceled or delivered to the Trustee for cancellation.
- (ii) Bonds that have become due (at maturity or on redemption, acceleration or otherwise) and for the payment, including interest accrued to the due date, of which sufficient money is held by the Trustee.
- (iii) Bonds deemed paid pursuant to the Indenture.
- (iv) Bonds in lieu of which other Bonds have been authenticated under the section of the Indenture relating to registration and exchange of Bonds or the section of the Indenture relating to mutilated, lost, stolen, destroyed or undelivered Bonds.

“Owner,” “Holder,” and “Bondholder” each mean the registered owner of any Bond as shown in the Bond Register maintained by the Trustee pursuant to the Indenture and for purposes of delivery of reports, statements and information by the Institution or the Trustee to Holders pursuant to the Indenture or Loan Agreement.

"Paying Agent" means any paying agent for the Bonds (including the Trustee) acting as such and any successor or additional paying agent for the Bonds appointed pursuant to the Indenture.

"Permitted Encumbrances" means when used in connection with the Project any of the following:

- (i) Liens of taxes and assessments which are not delinquent;
- (ii) Liens of taxes and assessments which are delinquent but the validity of which is being contested in good faith in accordance with the Loan Agreement;
- (iii) Minor defects and irregularities in the title to such property which do not in the aggregate materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held;
- (iv) Easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held;
- (v) The Mortgage and Security Agreement and the Security Documents;
- (vi) Any instrument recorded pursuant to Section 21 of the Loan Agreement; and
- (vii) All exceptions listed on the Mortgagee Title Insurance Policy;
- (viii) Security interests securing any and all Long-Term Indebtedness (as defined in the Loan Agreement) expressly permitted under the Loan Agreement; and
- (ix) Such other encumbrances, defects, and irregularities to which the prior written consent of the Issuer and the Trustee has been obtained.

"Per Pupil Aid" means the amounts payable by the School Districts to the Institution on Bi-Monthly Payment Dates pursuant to Section 2856(1) of the Charter Schools Act.

"Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization, a governmental body, any other political subdivision, municipality or authority or any group entity.

"Preliminary Official Statement" means the Preliminary Official Statement, dated January 26, 2011, distributed by the Underwriter in connection with the offering of the Bonds.

"Prime Rate" means that interest rate established from time to time by Manufacturers and Traders Trust Company as the prime rate, whether or not such rate is publicly announced. The Prime Rate may not be the lowest rate charged by Manufacturers and Traders Trust Company for commercial or other extensions of credit.

"Principal Account" means the account so designated within the Bond Fund which is established pursuant to the Indenture for each series of Bonds.

"Principal Payment Date" means, with respect to the 2011 Bonds, December 1 of each calendar year, commencing December 1, 2011.

"Project" or "Project Facility" means the Land, the Improvements and the Equipment, all or any portion of the Costs of which are paid or payable from the proceeds of the Bonds or from other moneys deposited in the Project Fund, Repair and Replacement Fund or Insurance and Condemnation Fund.

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"Project Fund" means the fund so designated which is to be established pursuant to the Indenture.

"Property" means the Project Facility and any cash and Investment Securities and all other property of the Institution, whether real or personal, tangible or intangible.

"Qualified Costs" means all Costs of the Project Facility allocable to the acquisition, construction, reconstruction, equipping and renovation of the Project Facility (A) which are either incurred by the Institution after the date set forth in the Loan Agreement or are "preliminary expenditures" other than land acquisition as defined in the Code; and (B) allocable to a capital account for federal income tax purposes (or which would be so allocated either with a proper election to capitalize such expense or but for a proper election of the Institution to deduct such expense) or payable on account of other expenses directly related to the capital expenditures for the Project Facility such as initial operating expenses; but "Qualified Costs" shall not include:

- (i) any costs of issuing the Bonds except as permitted by the Tax Compliance Agreement, and
- (ii) if any portion of the Project Facility is acquired from or constructed by any Affiliate of the Institution, any amounts payable to such Affiliate in excess of the actual out-of-pocket costs incurred by such Affiliate, and
- (iii) interest on the Bonds allocable to the Project Facility after the date the Project Facility is placed in service.

"Rating Agency" shall mean (a) with respect to any series of Bonds, Fitch Rating Service and its successors and assigns; (b) with respect to a series of Additional Bonds, any other nationally recognized statistical rating organization (as such term is used in Rule 15c3-1 of the Securities and Exchange Commission) specified in the Supplemental Indenture pursuant to which such series is issued; and (c) with respect to any Series of Bonds, any other nationally recognized statistical rating organization that, at the Institution's request, has a rating in effect on such series of Bonds on such date.

"Rebate Fund" means that fund so designated which is established pursuant to the Indenture.

"Record Date" for a series of Bonds is defined in the form of such series of Bonds.

"Redemption Fund" means the fund so designated which is established pursuant to the Indenture.

"Registrar" means the Trustee as bond registrar with respect to the Bonds and its successors and assigns in such capacity.

"Regulatory Body" means any federal, state or local government, department, agency or instrumentality (other than the Issuer) and other public or private body, including accrediting organizations, having regulatory jurisdiction and authority over the Project Facility or the Institution or its facilities or operations.

"Repair and Replacement Fund" means the fund so designated which is established pursuant to the Indenture.

"Repair and Replacement Fund Requirement" means an amount equal to \$200,000.

"Representation Letter" means the Blanket Issuer Letter of Representation from the Issuer to DTC.

"Requisition" means a requisition in the form attached as Exhibit C to the Indenture delivered to the Trustee pursuant to Section 6.2 of the Indenture.

"Reserve Fund Requirement" means an amount equal to \$635,500.

"Responsible Officer" means any authorized officer or assistant officer of the Trustee, at the Trustee's Trust Office, assigned by the Trustee to administer its duties under the Indenture.

“Rules” means the final Treasury Regulations relating to rebate published in the Federal Register on June 18, 1993 (T.D. 8476) and any other rules which may be promulgated thereafter by the Treasury Department or Internal Revenue Service under Section 103 or Sections 141 through 150 of the Code and applicable to any Bonds.

“Scheduled Completion Date” means June 30, 2012.

“School District” means any school district in which pupils enrolled in the Institution reside.

“Security Documents” means the Guaranty, the Assignment of Construction Documents and the Mortgage and Security Agreement.

“Series 2011 Bonds” means collectively the Series 2011A Bonds and the Series 2011B Bonds.

“Series 2011A Bonds” means the Issuer’s Tax-Exempt Revenue Bonds (Enterprise Charter School Project) Series 2011A in the aggregate principal amount of \$7,125,000 authorized to be issued pursuant to the Indenture.

“Series 2011B Bonds” means the Issuer’s Taxable Revenue Bonds (Enterprise Charter School Project) Series 2011B in the aggregate principal amount of \$220,000 authorized to be issued pursuant to the Indenture.

“Short Term Indebtedness” means any Indebtedness incurred, assumed or guaranteed by the Institution maturing not more than 365 days after it is incurred.

“Sinking Fund Redemption” means the mandatory sinking fund redemption of the Bonds on the dates and in the amounts set forth in the Indenture.

“Special Record Date” has the meaning given to such term in the Indenture.

“State” means the State of New York.

“Supplemental Indenture” means any indenture amending or supplementing the Indenture which may be entered into in accordance with the provisions of the Indenture.

“Tax Compliance Agreement” means that certain Tax Compliance Agreement dated the date of delivery of the Tax-Exempt Bonds between the Issuer and the Institution, as amended, modified or supplemented from time to time.

“Tax-Exempt Bonds” means the Series 2011A Bonds and any Additional Bonds, the interest on which is excludable from gross income for purposes of federal income taxation.

“Trustee” means (i) Manufacturers and Traders Trust Company, a corporation organized and existing under the banking laws of the State, or (ii) any successor trustee.

“Trust Estate” has the meaning given such term in the granting clauses of the Indenture.

“Trust Office” means the office of the Trustee located at One M&T Plaza, 7th Floor, Buffalo, New York 14203, Attention: Corporate Trust Department, and such other offices as the Trustee may designate from time to time.

“Unassigned Rights” means

- (i) the right of the Issuer in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Issuer under the Loan Agreement;
- (ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under the Loan Agreement;

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- (iii) the right of the Issuer to enforce in its own behalf the obligation of the Institution to complete the Project;
- (iv) the right of the Issuer to enforce or otherwise exercise in its own behalf all agreements of the Institution with respect to ensuring that the Project shall always constitute a qualified "project" as defined in and as contemplated by the Act;
- (v) the right of the Issuer to require any indemnity from any Person;
- (vi) the right of the Issuer in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2, 3, 4, 5, 6, 7(a)(i), (vi), (vii), and (viii), 7(c), 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27, 29, 30, 36, 37, 39, 40, 41 and 44 of the Loan Agreement; and
- (vii) the right of the Issuer in its own behalf to declare an Event of Default under Section 30 of the Loan Agreement or with respect to any of the Issuer's Unassigned Rights.

Notwithstanding the preceding sentence, to the extent the obligations of the Institution under the Sections of the Loan Agreement listed above do not relate to the payment of moneys to the Issuer for its own account or to the members, officers, agents and employees of the Issuer for their own account, such obligations, upon assignment of the Loan Agreement by the Issuer to the Trustee pursuant to the Assignment, shall be deemed to and shall constitute obligations of the Institution to the Issuer and the Trustee, jointly and severally, and either the Issuer or the Trustee may commence an action to enforce the Institution's obligations under the Loan Agreement.

"Unavoidable Delays" means the period of time during which the Institution is prevented or delayed in any performance of the construction, renovation or equipping of the Project Facility or fulfilling any obligation under the Building Loan Agreement or Section 4 of the Loan Agreement, other than payment of amounts due thereunder or under any other Bond Document, due to the occurrence of events beyond the Institution's reasonable control, such as fire, catastrophe, strikes or labor trouble, civil commotion, acts of God, the public enemy, governmental prohibitions or regulations or the inability to obtain materials by reason thereof.

"Underwriter" means M&T Securities, Inc.

SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

The following is a summary of certain provisions of the Loan Agreement pertaining to the Series 2011 Bonds and the Project. This summary does not purport to be complete and reference is made to the Loan Agreement for full and complete statements of its provisions.

Renovation, Construction and Equipping of the Project

(a) The Institution agrees that, whether or not there are sufficient moneys available to it under the provisions of the Indenture and under the Loan Agreement, the Institution will complete the acquisition of the Project Facility and design, construction, renovation and equipping of the Project Facility, substantially in accordance with the Contract Documents. Subject to the conditions of the Loan Agreement and the Tax Compliance Agreement, the Issuer will, to the extent of moneys available in the Construction Fund, cause the Institution to be reimbursed for, or pay, any costs and expenses incurred by the Institution which constitute Qualified Costs.

(b) (1) To the extent that moneys are available therefor, moneys in the Project Fund shall be disbursed from the applicable accounts thereof as the construction, renovation and equipping of the Project Facility progresses, in accordance with the terms of the Indenture and the Building Loan Agreement.

(2) Except as otherwise disclosed and agreed to by the Issuer in writing, delivery of a Requisition by the Institution will constitute a representation by the Institution that it has complied with all provisions of the Loan Agreement, the Indenture, the Building Loan Agreement and the Tax Compliance Agreement, including, but not limited to those related to the use of the Project and certain non tax-exempt purposes.

(c) The Institution will receive the disbursements of moneys in the Project Fund, and will hold the right to receive the same, as a trust fund for the purpose of paying the Costs of the Project for which each disbursement was made, and will apply the same first to such payment before using any part thereof for any other purposes.

(d) The Institution shall permit the Issuer, the Trustee and their authorized representatives, upon reasonable prior notice and during the Institution's normal business hours, to enter upon the Institution's property to inspect the Project Facility and all materials, fixtures and articles used or to be used in construction, renovation and equipping of the Project Facility, and to examine all Contract Documents. The Institution shall furnish to the Trustee and upon request, the Issuer and their authorized representatives, when requested, copies of such Contract Documents. The Institution agrees to retain all documents pertaining to expenditures for items which constitute Costs for at least seven (7) years after the later of the date of completion of acquisition, construction, renovation and equipping of the Project Facility to which such documents relate. All such documents shall be made available to the Issuer and their authorized representatives for inspection upon reasonable prior notice.

(e) The Institution acknowledges and agrees that disbursements from the Project Fund are to be made by the Trustee and shall be made in accordance with the Indenture and the Building Loan Agreement only upon receipt by the Trustee of the documents required by the Indenture to be executed and delivered in connection with such disbursements.

(f) The construction, renovation and equipping of the Project Facility shall be deemed to be complete upon delivery to the Issuer and the Trustee of a certificate signed by an Authorized Signatory of the Institution which certificate shall be delivered as soon as practicable after the completion of the Project Facility. Any such certificate shall comply with the requirements of Section 6.3 of the Indenture. The moneys, if any, remaining in the Project Fund after the Project Facility has been deemed to be complete shall be paid as provided in Section 6.4 of the Indenture.

(Section 4)

Legal Requirements

The Contract Documents shall conform to all Legal Requirements in effect on their respective dates of execution. The Institution shall comply with (i) all Legal Requirements which, if not complied with, could adversely affect the Institution, its operation or financial condition or title to its properties in any material respect, and (ii) any requirement of an insurance company writing insurance thereon irrespective of the nature of the work

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

(Section 6)

Financial Obligations

(a) Except to the extent that moneys are available therefor under the Indenture or under the Loan Agreement, including moneys in the Bond Fund, and interest accrued but unpaid on investments held in the Bond Fund, the Institution hereby unconditionally agrees to pay or cause to be paid, so long as Bonds are Outstanding, to the Issuer, or upon the order of the Issuer, from its general funds or any other moneys legally available to it:

(i) On or before the date of delivery of the Bonds, the Issuer Fee agreed to by the Issuer and the Institution in connection with issuance of the Bonds;

(ii) On or before the date of delivery of Bonds, such amount, if any, as is required, in addition to the proceeds of such Bonds available therefor, to pay the costs of issuance of the Bonds and other costs in connection with the issuance of the Bonds;

(iii) On the tenth (10th) day of each January, March, May, July, September, and November, commencing March 10, 2011, one sixth (1/6) of the interest coming due on all Bonds, on the immediately succeeding Interest Payment Date for such Bonds, provided, however, that the Institution will pay on March 10, 2011 and May 10, 2011 one-half (1/2) of the interest coming due on the Bonds, on the first Interest Payment Date;

(iv) On the tenth (10th) day of each January, March, May, July, September and November, commencing March 10, 2011, one sixth (1/6) of the principal coming due on all Bonds, on the immediately succeeding Principal Payment Date for such Bonds, provided that the Institution will pay in calendar year 2011 on the 10th day of March, May, July, September and November, one-fifth (1/5) of the principal coming due on the Bonds on the first Principal Payment Date;

(v) At least forty-five (45) days prior to any date on which the redemption price of Bonds previously called for redemption is to be paid, the amount required to pay the redemption price of such Bonds;

(vi) In the event of the payment of any amounts becoming due and payable from the Debt Service Reserve Fund, the Institution will be obligated to pay or cause to be paid to the Trustee for the account of the Issuer additional Loan Payments in such sum as shall be required to restore the Debt Service Reserve Fund to the Reserve Fund Requirement as provided in the Indenture;

(vii) Promptly after notice from the Issuer, but in any event not later than five (5) days after such notice is given, the amount set forth in such notice as payable to the Issuer (A) for the Issuer Fee then unpaid, (B) to reimburse the Issuer for any expenses or liabilities incurred by the Issuer pursuant to Section 24, 26 or 29 of the Loan Agreement, (C) to reimburse the Issuer for any external costs or expenses incurred by it attributable to the issuance of the Bonds or the financing, acquisition or construction of the Project, (D) for the costs and expenses incurred by the Issuer to compel full and punctual performance by the Institution of all the provisions hereof or of the Mortgage and Security Agreement or of the Indenture in accordance with the terms thereof, and (E) for the fees and expenses of the Trustee, the Custodian and any Paying Agent in connection with performance of their respective duties under the Indenture;

(viii) Promptly upon demand by the Issuer (a copy of which shall be furnished to the Trustee), all amounts required to be paid by the Institution as a result of an acceleration pursuant to Section 30 of the Loan Agreement;

(ix) Promptly upon demand by the Issuer, the difference between the amount on deposit in the Rebate Fund available to be rebated in connection with the Tax-Exempt Bonds or otherwise available therefor under the Indenture and the amount required to be rebated to the Department of the Treasury of the United States of America in accordance with the Code in connection with the Tax-Exempt Bonds;

(x) To the extent not otherwise set forth in this Section 7(a), including, without limitation, in the event of any insufficiency, any amounts necessary to pay the principal or redemption price, if any, and interest on, the Bonds, on the dates, in the amounts, at the times and in the manner provided in or pursuant to the Indenture, whether at maturity, upon acceleration, redemption, or otherwise; and

(xi) Make all payments required under the Custody Agreement as and when the same become due; and

(xii) On or before the last Business Day of each March, June, September and December, commencing March 31, 2011, an amount equal to \$12,500 or such lesser amount, if any, as shall be required to restore the Repair and Replacement Fund to the Repair and Replacement Fund Requirement as provided in the Indenture.

The Institution, under the provisions of Section 7 of the Loan Agreement, agrees to make or cause to be made the above-mentioned payments and without any further notice in lawful money of the United States of America. In the event the Institution will fail to timely make any payment required in Section 7 of the Loan Agreement, the Institution will pay the same together with interest on such payment at the Prime Rate, 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.

The Issuer directs the Institution, and the Institution agrees, to make the payments required by Section 7(a) of the Loan Agreement as follows: (i) the payments required by paragraphs (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(viii), (a)(x) and (a)(xii) directly to the Trustee for deposit and application in accordance with the Indenture and by paragraph (a)(xi) directly to the Custodian for deposit and application in accordance with the Custody Agreement; (ii) the payments required by paragraph (a)(ii) directly to the Trustee for deposit in the Project Fund or other fund established under the Indenture, as directed by the Issuer; (iii) the payments required by paragraphs (a)(i) and (a)(vii) directly to the Issuer; and (iv) the payment required by clause (a)(ix) to the Department of Treasury of the United States of America.

(b) The Institution shall direct certain School Districts named in the Custody Agreement to pay to the Custodian all bi-monthly installments of Per Pupil Aid payable to the Institution for deposit in accordance with the Custody Agreement. In the event that the Institution will receive any other installments of Per Pupil Aid directly from any School District which has been directed under the Custody Agreement to make payments directly to the Custodian, the Institution agrees that it shall immediately pay the full amount of such sums to the Custodian.

(c) All moneys paid by the Institution to the Trustee pursuant to the Loan Agreement or otherwise held by the Trustee shall be applied in accordance with Section 7.4(b) of the Indenture in reduction of the Institution's Indebtedness to the Issuer hereunder with respect to interest and, then, with respect to the principal amount of such Indebtedness and any other amounts payable under the Bonds, provided that if an Event of Default shall have occurred and be continuing, all such moneys shall be applied in accordance with Section 11.11 of the Indenture. Except as otherwise provided in the Indenture, the Trustee shall hold such moneys in trust in accordance

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with the applicable provisions of the Indenture for the sole and exclusive benefit of the Holders of Bonds, regardless of the actual due date or applicable payment date of any payment to the Holders of Bonds.

(d) The Institution shall have the option to prepay Loan Payments with respect to the Bonds, in whole or in part, at the times and in the manner provided herein as and to the extent provided in the Indenture for redemption of the Bonds. Provided no Event of Default shall have occurred and be subsisting, at any time and from time to time, the Institution may prepay Loan Payments to the Trustee, in addition to basic Loan Payments payable pursuant to Section 7 of the Loan Agreement, for the purpose of calling the Bonds for Optional Redemption in accordance with the applicable provisions of the Indenture and the Bonds at the redemption price stated in the Indenture. Pending application for those purposes, any moneys so delivered shall be held by the Trustee in the Redemption Fund and delivery of those moneys shall not operate to abate or postpone any Loan Payments and other amounts payable under the Loan Agreement. If, as provided in the Bonds and the Indenture, the Bonds become subject to mandatory redemption or extraordinary redemption, the Institution will pay and deliver to the Trustee, upon the date requested by the Trustee, Loan Payments in immediately available funds and in an amount sufficient to pay in full the Bonds in accordance with the mandatory redemption or extraordinary redemption provisions relating thereto set forth in the Bonds and the Indenture.

(e) The obligations of the Institution to make payments or cause the same to be made under the Loan Agreement shall be absolute and unconditional and the amount, manner and time of making such payments shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening or non-happening of any event, irrespective of any defense or any right of set-off, recoupment or counterclaim which the Institution may otherwise have against the Issuer, the Trustee or any Holder of Bonds for any cause whatsoever including, without limiting the generality of the foregoing, failure of the Institution to complete the Project or the completion thereof with defects, failure of the Institution to occupy or use the Project, any declaration or finding that the Bonds are or the Indenture is invalid or unenforceable or any other failure or default by the Issuer or the Trustee; *provided, however*, that nothing in the Loan Agreement shall be construed to release the Issuer from the performance of any agreements on its part therein contained or any of its other duties or obligations, and in the event the Issuer shall fail to perform any such agreement, duty or obligation, the Institution may institute, subject to Section 9 of the Loan Agreement, such action as it may deem necessary to compel performance or recover damages for non-performance. Notwithstanding the foregoing, the Issuer shall have no obligation to perform its obligations under the Loan Agreement to cause advances to be made to reimburse the Institution for, or to pay, the Costs beyond the extent of moneys in the Project Fund available therefor.

The Loan Agreement and the obligations of the Institution to make payments under the Loan Agreement are general obligations of the Institution.

(Section 7)

Rate Covenant and Liquidity Covenant

(a) *Rate Covenant.* The Institution covenants (the "Rate Covenant") that it shall maintain a Debt Service Coverage Ratio equal to or greater than 1.10:1.00 at the end of each Fiscal Year commencing with the Fiscal Year ending June 30, 2011.

(i) Testing Compliance. Compliance with the Rate Covenant shall be tested annually on the basis of the Institution's audited financial statements required pursuant to Section 27 of the Loan Agreement, for the preceding Fiscal Year, concurrent with the delivery of such audited financial statements.

(b) *Liquidity Covenant.* The Institution covenants (the "Liquidity Covenant") that it will maintain as of the end of each Fiscal Year commencing on the Fiscal Year ending June 30, 2011, a ratio of aggregate unrestricted cash plus unrestricted marketable securities of the Institution to total Operating Expenses of the Institution for such Fiscal Year, excluding depreciation, as shown on the statement of operations of the Institution for such Fiscal Year equal to or greater than 7% .

(i) Testing Compliance. Compliance with the Liquidity Covenant will be tested annually on the basis of the Institution's audited financial statements required pursuant to Section 27 of the Loan Agreement, for the preceding Fiscal Year, concurrent with the delivery of such audited financial statements.

(c) *Failure to Satisfy Rate Covenant or Liquidity Covenant.* If as of the last day of any Fiscal Year, the Institution fails to maintain the Debt Service Coverage Ratio or maintain the Liquidity Covenant, the Institution will promptly employ a Consultant to make recommendations no later than sixty (60) days following the date of engagement of such Consultant as to the methods of operation of the Institution which will result in satisfying the Debt Service Coverage Ratio and Liquidity Covenant. Copies of the recommendations of the Consultant shall be filed with the Issuer, the Trustee and a Majority of Owners no later than sixty (60) days following the date of engagement of such Consultant. The Institution shall, to the extent feasible, promptly upon its receipt of such recommendations and subject to the approval of such recommendations by a Majority of Owners and the Trustee, and further subject to applicable requirements or restrictions imposed by law or regulation, revise its methods of operation or collections and shall take such other action as shall be in conformity with such recommendations. If the Institution complies in all material respects with the reasonable recommendations of the Consultant in respect to said methods of operation and the Debt Service Coverage Ratio is not less than 1.00:1.00 at the end of the then most recent Fiscal Year, the Institution will be deemed to have complied with the Rate Covenant and Liquidity Covenant notwithstanding that the Debt Service Coverage Ratio and ratio with respect to the Liquidity Covenant shall be less than the amount required; provided that it shall be an Event of Default under the Loan Agreement if any such failure shall continue for two consecutive Fiscal Years. Notwithstanding compliance by the Institution with the recommendations of the Consultant, if the Debt Service Coverage Ratio is less than 1.00:1.00 at the end of the then most recent Fiscal Year, the Trustee shall, if requested by a Majority of Owners at any time during the immediately following Fiscal Year (and any Fiscal Year thereafter while such failure to satisfy the Debt Service Coverage Ratio shall be continuing), declare an Event of Default. Nothing in this paragraph (c) shall be construed as in any way excusing the Institution from taking any action or performing any duty required under the Loan Agreement or be construed as constituting a waiver of any other Event of Default.

(Section 8)

Additional Indebtedness

The Institution covenants that it will not incur, assume or guarantee ("incur"), any Indebtedness (secured or unsecured) except as provided below.

(a) **Short-Term Indebtedness.** The Institution may incur such Short-Term Indebtedness for working capital purposes as in its judgment is deemed expedient, provided that (i) in no event shall the Institution incur Short-Term Indebtedness which (a) is secured by a Lien on the Mortgaged Property, Gross Revenues or Per Pupil Aid or (b) in the aggregate is in excess of the greater of (1) 10% of the Gross Revenues for the Fiscal Year prior to the Fiscal Year in which such Short-Term Indebtedness is to be incurred or (2) \$500,000, and (ii) for a period of fourteen (14) consecutive days during any three hundred and sixty-five (365) consecutive day period on a rolling basis, Institution will pay down in full all of such then outstanding Short-Term Indebtedness, which time period may be extended or waived in writing by the Trustee in the event Institution provides documentation reasonably satisfactory to the Trustee of a delay in the receipt by Institution of Per Pupil Aid.

(b) Long-Term Indebtedness.

(i) The Institution may incur Long-Term Indebtedness at any time and from time to time, provided the following conditions are met:

(A) The proceeds of such Long-Term Indebtedness will be used to finance (1) the improvement of the Project Facility or additions thereto; (2) the acquisition or installation of equipment or other personal property therein; (3) the acquisition, construction or renovation of an additional school facility of the Institution; or (4) the acquisition or installation of equipment or other personal property therein;

(B) The Debt Service Coverage Ratio of the Institution for the Fiscal Year prior to the Fiscal Year in which such Long-Term Indebtedness is to be incurred is equal to or greater than 1.10:1.00;

(C) The Institution shall have furnished to the Trustee either:

(i) an Institution Certificate to the effect that the Income Available for Debt Service of the Institution in the most recent Fiscal Year preceding the date on which the proposed Long-Term Indebtedness is to be incurred was more than 115% of the maximum annual Debt Service (including such requirements for the proposed Long-Term Indebtedness but excluding such requirements for any then outstanding Long-Term Indebtedness to be refinanced by the proposed Long-Term Indebtedness) for any Fiscal Year beginning

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after the Fiscal Year in which the proposed Long-Term Indebtedness is to be incurred, but before the final stated maturity of principal of all then Outstanding Bonds; or

(ii) a written report of a Consultant to the effect that the estimated Income Available for Debt Service of the Institution for each of the two (2) consecutive Fiscal Years beginning after the Fiscal Year in which the proposed Long-Term Indebtedness is to be incurred, will not be less than 125% of the maximum Debt Service (including such requirements for the proposed Long-Term Indebtedness but excluding such requirements for any then outstanding Long-Term Indebtedness to be refinanced by the proposed Long-Term Indebtedness) for any Fiscal Year beginning after the Fiscal Year in which the proposed Long-Term Indebtedness is to be incurred, but before the final stated maturity of principal of all then Outstanding Bonds.

(D) The Mortgage and Security Agreement shall be in effect and no "Event of Default" shall have occurred or be continuing under the Mortgage and Security Agreement, the Indenture, the Custody Agreement or the Loan Agreement.

(E) (i) Such Long-Term Indebtedness is either (1) not secured by a Lien on the Project Facility, Gross Revenues or Per Pupil Aid, or (2) (a) if secured by a Lien on the Project Facility, Gross Revenues or Per Pupil Aid, such Lien is subordinate to the Lien of the Trustee on Gross Revenues (including Per Pupil Aid, if applicable) under the Loan Agreement and on the Project Facility under the Mortgage and Security Agreement, or (b) if secured by a Lien on the Project Facility, Gross Revenues (including Per Pupil Aid, if applicable) or Per Pupil Aid, the Lien securing such Long-Term Indebtedness is on a parity with the Lien of the Trustee and the Trustee has entered into an intercreditor agreement with the provider of such Long-Term Indebtedness as provided in Section 46 of the Loan Agreement.

(ii) Before the Institution will incur or otherwise become liable in respect of any Long-Term Indebtedness, the Institution will furnish to the Trustee (A) an Institution Certificate which shall state the general purpose for which such Long-Term Indebtedness is to be incurred and the principal amount of Long-Term Indebtedness to be incurred, the maturity date or dates thereof and the interest rate or rates with respect thereto and that the proceeds of such Long-Term Indebtedness, together with any additional funds supplied or to be supplied from any source will be sufficient to complete the project for which such Indebtedness will be incurred and to pay the costs thereof; and (B) written evidence from each Rating Agency then rating the Bonds or the Institution that the Long-Term Indebtedness to be incurred will not result in a withdrawal or downgrade, to a level below investment grade, of the rating then assigned to the Bonds or the Institution.

(iii) No Long-Term Indebtedness to refund all or any portion of the Outstanding Bonds shall be incurred by the Institution unless such refunding shall be in accordance with the applicable provisions of Section 10.1 of the Indenture, and in addition to the items described in subparagraph (ii) above, there shall be filed with the Trustee (A) unless the Outstanding Bonds are immediately refunded with the proceeds of such Long-Term Indebtedness, a report of an Independent accountant to the effect that the proceeds of the Long-Term Indebtedness, together with any other funds deposited with the Trustee for such purpose, will be sufficient to pay the principal of and the redemption premium, if any, on the Outstanding Bonds to be refunded and the interest which will become due and payable thereon on and prior to the redemption date or stated maturity thereof, or that the principal of and interest on Government Obligations purchased from such proceeds or from other funds provided by the Institution and deposited in trust with the Trustee, which Government Obligations do not permit redemption thereof at the option of the issuer thereof, when due and payable (or redeemable at the option of the holder thereof) will provide, together with any other moneys which shall have been deposited irrevocably with the Trustee for such purposes, sufficient moneys to pay such principal, redemption premium, if any, and interest; and (B) an Opinion of Bond Counsel to the effect that the incurring of such Long-Term Indebtedness and the refunding of Bonds with the proceeds thereof will not adversely affect the exemption from federal income tax of the interest on any of the Tax-Exempt Bonds and the applicable bonds have been defeased within the meaning of Article 10 of the Indenture.

(c) Notwithstanding anything in Sections 8A(a) or 8A(b) above to the contrary, the Institution may from time to time incur additional Short-Term Indebtedness or Long-Term Indebtedness in an amount, which in the aggregate, does not result in annual Debt Service for all Indebtedness which exceeds the greater of (i) 2% of Gross Revenues for the Fiscal Year immediately prior to the Fiscal Year in which all such additional Short-Term Indebtedness and Long-Term Indebtedness is to be incurred or (ii) \$50,000.

(Section 8A)

No Liability

(a) All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Loan Agreement, the Bonds, the other Issuer Documents and the other documents and instruments connected therewith shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent or employee of the Issuer in his or her individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in the Loan Agreement, the Issuer Documents and the Bonds or otherwise based upon or in respect to the Issuer Documents and the Bonds or any documents supplemental thereto, or for any of the Bonds or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent or employee, as such, of the Issuer, or any successor to the Issuer, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, or any Person executing the Loan Agreement, the other Issuer Documents and the Bonds either directly or through the Issuer or any successor to the Issuer, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, it being expressly understood that the Issuer Documents and the Bonds shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute special limited obligations of the Issuer, payable solely from the revenues pledged under the Loan Agreement, and that no such personal liability whatsoever shall attach to, or is or shall be incurred by, Issuer or any such member, director, officer, agent or employee of the Issuer or of any such successor to the Issuer, the State of New York, or any municipality or political subdivision of the State of New York, including, without limitation, Erie County, New York, or any Person executing the Bonds because of the creation of the indebtedness authorized thereby, or under or by reason of the obligations, covenants or agreements contained in the Issuer Documents or in any of the Bonds or implied therefrom, and that any and all such personal liability of, and any and all such rights and claims against, the Issuer and every such member, director, officer, agent or employee because of the indebtedness authorized by the Loan Agreement, or under or by reason of the obligations, covenants or agreements contained in the Issuer Documents or in any of the Bonds or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of and as a consideration for the execution of the Issuer Documents and the issuance of the Bonds. The limitations on the obligations of the Issuer contained in this Section by virtue of any lack of assurance required by Section 9(b) shall not be deemed to prevent the occurrence and full force and effect of any Event of Default pursuant to Section 30 of the Loan Agreement.

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

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

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

(Section 9)

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Security Interest in Gross Revenues

Subject to any restrictions set forth in the Charter Schools Act from time to time (but only to the extent applicable) with respect to the pledge or assignment of the portion of Gross Revenues constituting Per Pupil Aid, as security for the payment of all liabilities and the performance of all obligations of the Institution pursuant to the Loan Agreement, the Institution grants a security interest in, all right, title and interest of the Institution in the Project Facility and in all additions and accessions thereto subject to Permitted Encumbrances and continuously pledges and grants a security interest in, and assigns to the Issuer the Gross Revenues, together with the Institution's right to receive and collect the Gross Revenues and proceeds of the Gross Revenues.

The Institution represents and warrants that no part of the Gross Revenues or any Per Pupil Aid or any right to receive or collect the same or the proceeds thereof is subject to any Lien other than the Lien created above and that the Gross Revenues assigned pursuant to the Loan Agreement are legally available to provide security for the Institution's performance under the Loan Agreement (subject to any restrictions set forth in the Charter Schools Act with respect to Per Pupil Aid). The Institution agrees that, except in connection with (a) the issuance of Additional Bonds pursuant to the Indenture and (b) as permitted under Section 8(A) above with respect to subordinate or parity Liens securing Long-Term Indebtedness, it will not create or permit the creation of any Lien in or other commitment of or with respect to the Gross Revenues or Per Pupil Aid.

(Section 10)

Collection of Gross Revenues

(a) In the event that, pursuant to Section 30(b)(iv) hereof, the Issuer notifies the Institution that account debtors are to make payments directly to the Issuer or to the Trustee, such payments shall be made directly to the Issuer or the Trustee notwithstanding anything contained in this subdivision, but the Institution will continue to deliver or cause to be delivered to the Trustee or to the extent required under the Custody Agreement, the Custodian for deposit in accordance with Section 7.4 of the Indenture any payments received by the Institution with respect to the Gross Revenues.

(b) Notwithstanding anything to the contrary in paragraph (a) of this Section, in the event that, on or prior to the date on which a payment is to be made pursuant to Section 7(a) hereof on account of the principal, or interest or premium, if any, on Outstanding Bonds, the Institution has made such payment from its general funds or from any other money legally available to it for such purpose, the Institution will not be required solely by virtue of paragraph (a) of this Section, to deliver Gross Revenues to the Trustee except as otherwise required by the Custody Agreement.

(c) Any Gross Revenues collected by the Institution that are not required to be paid to the Trustee pursuant to this Section 11 or Section 30(b)(iv) hereof or to the Custodian pursuant to the Custody Agreement shall be free and clear of the security interest granted hereby and may be disposed of by the Institution for any of its corporate purposes, *provided that* no Event of Default (as defined in Section 30 hereof) nor any event which but for the passage of time or the receipt of notice or both would be an Event of Default has occurred and is continuing.

(Section 11)

Warranty of Title; Utilities and Access

The Institution warrants and represents to the Issuer that (i) it has good and marketable fee title to the Land and Improvements, free and clear of Liens and encumbrances, except Permitted Encumbrances, so as to permit it to have quiet enjoyment and use thereof for purposes hereof and the Institution's programs and (ii) the Institution has such rights of way, easements or other rights in land as may be reasonably necessary for ingress and egress to and from the Project and the Mortgaged Property for proper operation and utilization of the Project and the Mortgaged Property and for utilities required to serve such Project and such Mortgaged Property, together with such rights of way, easements or other rights in, to and over land as may be necessary for construction, renovation, equipping, use and operation by the Institution of the Project and the Mortgaged Property.

The Institution warrants, represents and covenants that (i) title to the Project, the Gross Revenues, Per Pupil Aid and the Mortgaged Property shall be kept free from any encumbrances, Liens or commitments of any kind, other than Liens created or permitted by the Loan Agreement (including Permitted Encumbrances), (ii) the Project and the Mortgaged Property is and will be serviced by all necessary utilities (including, to the extent applicable,

without limitation, electricity, gas, water, sewer, steam, heating, air-conditioning and ventilation), and (iii) to the extent applicable, has and will have its own separate and independent means of access, apart from any other property owned by the Institution or others; *provided, however*, that such access may be through common roads or walks owned by the Institution used also for other parcels owned by the Institution.

(Section 13)

Consent to Pledge and Assignment

The Institution consents to and authorizes the assignment, transfer or pledge by the Issuer to the Trustee of certain of the Issuer's rights to receive any or all of the payments required to be made pursuant to Section 7(a) of the Loan Agreement, any or all Liens granted by the Institution under the Loan Agreement, including, without limitation, the Lien on the Gross Revenues given by the Institution pursuant to Section 10 of the Loan Agreement, the Mortgage and Security Agreement, any security interest in the fixtures located on the Mortgaged Property and all funds and accounts established by the Indenture (other than the Rebate Fund) and pledged under the Indenture, in each case to secure any payment or the performance of any obligation of the Institution under the Loan Agreement or arising out of the transactions contemplated by the Loan Agreement whether or not the right to enforce such payment or performance shall be specifically assigned by the Issuer to the Trustee. The Institution further agrees that the Issuer may pledge and assign to the Trustee any and all of the Issuer's rights and remedies under the Loan Agreement. Upon any pledge and assignment by the Issuer to the Trustee authorized by this Section 14, the Trustee shall be fully vested with all of the rights of the Issuer so assigned and pledged and may thereafter exercise or enforce, by any remedy provided therefor by the Loan Agreement or by law, any of such rights directly in its own name. Any such pledge and assignment shall be limited to securing the Institution's obligation to make all payments required by the Loan Agreement and to performing all other obligations required to be performed by the Institution under the Loan Agreement. Any realization upon any pledge made or security interest granted by the Loan Agreement shall not, by operation of law or otherwise, result in cancellation or termination hereof or the obligations of the Institution under the Loan Agreement.

(Section 14)

Additional Representations and Warranties

The Institution warrants and represents that (i) it has the requisite power and authority (A) to authorize, execute and deliver, and to perform its obligations under the Loan Agreement, the Mortgage and Security Agreement and the other Institution Documents, (B) to incur the Indebtedness contemplated thereby and (C) to make the pledge of and grant the Lien on the Gross Revenues given by Section 10 of the Loan Agreement and to mortgage the Mortgaged Property; (ii) each of the Loan Agreement, the Mortgage and Security Agreement and the other Institution Documents constitutes the valid and binding obligation of the Institution enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting or relating to the rights of creditors generally and general principles of equity; and (iii) the execution and delivery of, consummation of the transaction contemplated by and performance of the Institution's obligations under the Loan Agreement, the Mortgage and Security Agreement and the other Institution Documents, including, but not limited to, the pledge of and Lien on the Gross Revenues made or granted pursuant to Section 10 of the Loan Agreement and the mortgaging of the Mortgaged Property, do not violate, conflict with or constitute a default under the charter or by-laws of the Institution or, in any material respect, any indenture, mortgage, trust, or other commitment or agreement to which the Institution is a party or by which it or any of its properties are bound, or any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Regulatory Body or court having jurisdiction over the Institution or any of its properties.

The Institution warrants, represents and covenants (i) that the Gross Revenues are and will be free and clear of any pledge, lien, charge, security interest or encumbrance thereon or with respect thereto, prior to, or of equal rank with, the pledge thereof made pursuant to the Loan Agreement, except as permitted under Section 8A of the Loan Agreement, and (ii) that all corporate action on the part of the Institution to authorize the pledge thereof and the granting of a Lien thereon has been duly and validly taken. The Institution further covenants that it will at all times, to the extent permitted by law, defend, preserve and protect such pledge and Lien and all of the rights of the Issuer and the Holders of Bonds thereunder against all claims and demands of all persons whomsoever.

(Section 15)

Appendix D

Tax-Exempt Status of Institution

The Institution shall represent that: (i) it is a charter school duly organized and existing under and by virtue of its Charter approved by the Board of Regents and is an organization described in Section 501(c)(3) of the Code, or corresponding provisions of prior law, and is not a "private foundation," as such term is defined under Section 509(a) of the Code; (ii) it has received a letter or other notification from the Internal Revenue Service to that effect; (iii) such letter or other notification has not been modified, limited or revoked; (iv) it is in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification; (v) the facts and circumstances which form the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist; and (vi) it is exempt from federal income taxes under Section 501 (a) of the Code, except for payment of unrelated business income tax. The Institution agrees that: (a) it will not perform any act or enter into any agreement which shall adversely affect such federal income tax status and shall conduct its operations in the manner which will conform to the standards necessary to qualify the Institution as an educational organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law; and (b) it shall not perform any act, enter into any agreement or use or permit the Project to be used in a manner, or for any trade or business unrelated to the educational purposes of the Institution, which could adversely affect the exclusion of interest on the Bonds from federal gross income pursuant to Section 103 of the Code.

(Section 16)

Maintenance of Corporate Existence

The Institution covenants that it will (i) maintain its corporate existence, (ii) continue to operate as a charter school and organization described in Section 501(c)(3) of the Code, (iii) obtain, maintain and keep in full force and effect such approvals, permits or other consents of a Regulatory Body or such other consents, licenses, permits and accreditation as may be necessary for it to continue to so operate, and (iv) except as expressly permitted hereby, not dissolve or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another person or permit one or more persons to consolidate with or merge into it. The Institution, with the prior written consent of the Issuer (which consent shall not be unreasonably withheld) and the Trustee, may (A) sell or otherwise transfer all or substantially all of its assets to, or consolidate with or merge into, another organization or corporation which qualifies as an organization described in Section 501(c)(3) of the Code, or any successor provision of federal income tax law, (B) permit one or more corporations or any other organization to consolidate with or merge into it, or (C) acquire all or substantially all of the assets of one or more corporations or other organizations. Notwithstanding the foregoing provisions of this Section, no disposition, transfer, consolidation or merger otherwise permitted by this Section shall be permitted unless (1) the same would not in the Opinion of Bond Counsel adversely affect the exclusion of interest on any Tax-Exempt Bond from gross income for purposes of federal income taxation, (2) the Institution will not as a result thereof be in default under the Loan Agreement, (3) the surviving, resulting or transferee corporation, as the case may be, is incorporated under the laws of the State and is qualified as an organization described in Section 501(c)(3) of the Code or any successor provision of federal income tax law, and (4) the surviving, resulting or transferee corporation of the Institution assumes in writing all of the obligations of the Institution under the Loan Agreement, under the Mortgage and Security Agreement and other Bond Documents, and furnishes to the Issuer, (x) a certificate to the effect that upon such sale, transfer, consolidation, merger or acquisition such corporation will be in compliance with each of the provisions of the Loan Agreement, and will meet the requirements of the Act, and (y) such other certificates and documents as the Issuer may reasonably require to establish compliance with this Section.

(Section 18)

Use and Possession of the Project

Subject to the rights, duties and remedies of the Issuer under the Loan Agreement and except as otherwise set forth in this Section, the Institution has sole and exclusive control and possession of and responsibility for (i) the Project and the Mortgaged Property, (ii) the operation of the Project and the Mortgaged Property and supervision of the activities conducted therein or in connection with any part thereof and (iii) the maintenance, repair and replacement of the Project and the Mortgaged Property; provided, however, that, except as otherwise limited by the Loan Agreement, the foregoing shall not prohibit use of the Project or the Mortgaged Property by persons other than the Institution or its students, staff or employees in furtherance of the Institution's charitable purposes. The Institution may lease to, or permit the occupancy of a portion of the Project Facility by, organizations described in Section 501(c)(3) of the Code or a State or local governmental unit, provided such lease, occupancy or use will not

adversely affect the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income taxation purposes as evidenced by an Opinion of Bond Counsel delivered to the Issuer and the Trustee.

(Section 20)

Restrictions on Religious Use

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

(Section 21)

Sale of the Project or Mortgaged Property

The Institution covenants that it will not transfer, sell or convey the Project or the Mortgaged Property or any part thereof or interest therein, including development rights, without the prior approval of the Trustee and the Issuer, *provided that* the Issuer shall not approve such transfer, sale or conveyance unless (a) in the Opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any Tax-Exempt Bond from gross income for federal income tax purposes, and (b) the Institution pays to the Trustee either for deposit into the Bond Fund, or to purchase defeasance securities in accordance with Section 10.1 of the Indenture, an amount equal to the greater of:

- (i) the amount, if any, which is sufficient to redeem or provide for payment in accordance with Section 10.1 of the Indenture of any Outstanding Tax-Exempt Bonds required to be redeemed or deemed paid in order to preserve the exclusion of interest on Tax-Exempt Bonds from gross income for federal income tax purposes; and
- (ii) the lesser of (A) the net proceeds of such transfer, sale or conveyance or (B) a percentage of the Outstanding Tax-Exempt Bonds determined by dividing (1) the principal amount of Tax-Exempt Bonds issued to finance the portion of such Project being transferred, sold or conveyed (which principal amount shall be reasonably determined by the Issuer) by (2) the aggregate principal amount of Tax-Exempt Bonds issued.

(Section 22)

Maintenance, Repair and Replacement

The Institution agrees that, throughout the term of the Loan Agreement, it will, at its own expense, hold, operate and maintain the Project and the Mortgaged Property in a careful, prudent and economical manner, and keep

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the same, with the appurtenances and every part and parcel thereof, in good repair, working order and safe condition and shall from time to time make all necessary and proper repairs, replacements and renewals so that at all times the operation thereof may be properly and advantageously conducted. The Institution shall give the Issuer not less than fifteen (15) days prior written notice of its intention to make a change or alteration that materially alters the scope or nature of the Project or the Mortgaged Property or a portion thereof. The Institution shall have the right to remove or replace any type of fixtures, furnishings and equipment in the Project or the Mortgaged Property which may have been financed by the proceeds of the sale of Bonds, *provided* the Institution substitutes for any such removed or replaced fixtures, furnishings and equipment, additional fixtures, furnishings and equipment having equal or greater value and utility than the fixtures, furnishings and equipment so removed or replaced and such substituted items remain subject to the first priority perfected lien of the Mortgage and Security Agreement.

The Institution further agrees that it will pay at its own expense all extraordinary costs of maintaining, repairing and replacing the Project and the Mortgaged Property except insofar as funds are made available therefor from proceeds of insurance, condemnation or eminent domain awards.

(Section 23)

Covenant as to Insurance

(a) At all times throughout the term of the Loan Agreement, including, without limitation, during any period of construction, renovation or reconstruction of the Project, the Institution will maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and, except as otherwise specified below, for such amounts as are customarily insured against by other enterprises of like size and type as that of the Institution, including, without limitation:

(i) (A) during any period of construction, reconstruction, renovation or improvement of the Project, Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form," including coverage therein for "completion and/or premises occupancy," and coverage for property damage insurance, and (B) All Risk Hazard Insurance with respect to the Project, all of which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, fixtures and other property constituting a part of the Project against loss or damage to the Project by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) with policy limits equal at least to the lesser of (x) the value of the Project and all improvements thereon or thereto (exclusive of the fair market value of the land), or (y) the aggregate Outstanding principal amount of the Bonds, and at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Institution or the Issuer from becoming a co-insurer of any loss under the insurance policies;

(ii) public liability insurance in accordance with customary insurance practices for similar operations with respect to the Project and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence, which insurance (A) will also provide coverage of the Institution's obligations of indemnity under Section 29 of the Loan Agreement; (B) may, with the consent of the Trustee, be effected under overall blanket or excess coverage policies of the Institution or any Affiliate thereof, *provided, however*, that at least \$1,000,000 is effected by a comprehensive liability insurance policy; and (C) shall not contain any provisions for a deductible amount in excess of \$1,000 or for risk retention in any amount in excess of \$1,000 by the Institution;

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

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

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

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

(i) designate (except in the case of workers' compensation insurance) the Institution, the Trustee and the Issuer as additional insureds as their respective interests may appear, *provided, however*, that the insurance policies set forth in paragraph (a)(i) of this Section shall name only the Issuer and the Trustee in the mortgage loss payable clause;

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

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

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

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

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

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

(d) Concurrently with the original issuance of the Bonds, the Institution will deliver or cause to be delivered to the Issuer and the Trustee certificates of insurance, and upon the written request of the Issuer or the Trustee, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section. At least thirty (30) days prior to the expiration of any such policy, the Institution will furnish the Issuer and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by the Loan Agreement.

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

(f) **THE ISSUER DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED IN THE LOAN AGREEMENT, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE INSTITUTION.**

(Section 24)

Real Estate Taxes and Impositions

The Institution to the extent not otherwise exempt, shall pay when due at its own expense, and hold the Issuer harmless from, all Real Estate Taxes and Impositions which may be levied or assessed upon the Project or any part thereof, and upon all ordinary costs of operating, maintaining, repairing and replacing such Project and its equipment. The Institution shall file exemption certificates as required by law. The Institution agrees to exhibit to the Trustee and an Authorized Signatory of the Issuer within ten (10) days after written demand by the Issuer, certificates or receipts issued by the appropriate authority showing full payment of all Real Estate Taxes and Impositions; *provided, however*, that the good faith contest of such Real Estate Taxes and Impositions shall be deemed to be complete compliance with the requirements of this Section if the Institution sets aside such reserves as

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may be required by good accounting practice. Notwithstanding the foregoing, the Issuer, in each case in its sole discretion, after notice in writing to the Institution, may pay any such Real Estate Taxes and Impositions if, in the reasonable judgment of the Issuer, the Project or any part thereof would be in substantial danger by reason of the Institution's failure to pay such Real Estate Taxes and Impositions of being sold, attached, forfeited, foreclosed, transferred, conveyed, assigned or otherwise subjected to any proceeding, equitable remedy, Lien, charge, fee or penalty that would impair (i) the interests or security of the Issuer under the Loan Agreement or under the Indenture; (ii) the ability of the Issuer to enforce its rights thereunder; (iii) the ability of the Issuer to fulfill the terms of any covenants or perform any of its obligations under the Loan Agreement or under the Indenture; (iv) the ability of the Institution to fulfill the terms of any covenants or perform any of its obligations under the Loan Agreement; or (v) the interests or security of the Trustee under the Mortgage and Security Agreement or its ability to enforce its rights thereunder. The Institution agrees to reimburse the Trustee or the Issuer for any such payment, with interest thereon from the date payment was made by the Issuer at a rate equal to the highest rate of interest payable on any investment held for the Bond Fund on the date such payment was made by the Trustee or the Issuer.

(Section 26)

Reporting Requirements; Access to Records

(a) *Reporting Requirements.* The Institution will furnish or cause to be furnished to the Issuer, the Trustee and such other persons as the Issuer or the Trustee may reasonably designate:

(i) annually, within one hundred twenty (120) days after the end of the Institution's Fiscal Year, (A) a copy of the annual audited financial statements of the Institution for such Fiscal Year, including therein without limitation, a balance sheet as of the end of such Fiscal Year, a statement of changes in net assets and a statement of activities for such Fiscal Year or such other financial statements then required in accordance with generally accepted accounting principles applicable to the Institution, audited by a firm of Independent public accountants of recognized standing as may be reasonably acceptable to the Trustee, simultaneously with the delivery of the annual audited financial statements, an Institution Certificate signed by an Authorized Signatory who is the principal financial or accounting officer of the Institution (i) presenting the calculation of Debt Service Coverage Ratio and the Liquidity Covenant, and (ii) stating whether there exists on the date of such certificate any Event of Default under the Loan Agreement or event which with notice or lapse of time or both would constitute an Event of Default under the Loan Agreement and, if any Event of Default or such event then exists, setting forth the details thereof and the action that the Institution is taking or proposes to take with respect thereto;

(ii) within forty-five (45) days after the end of each fiscal quarter, unaudited trial balance statements of the Institution for such fiscal quarter and cumulative for all fiscal quarters in such Fiscal Year to date;

(iii) no later than seven (7) days after submission to a School District, the pupil count number furnished by the Institution to the respective School District as the basis for calculation and receipt of the Per Pupil Aid and other amounts payable thereby to the Institution;

(iv) within seven (7) days after submission of the pupil count to the School Districts, current enrollment data;

(v) within seven (7) days of any change thereto, the amount of Per Pupil Aid allocated per pupil to the Institution;

(vi) within seven (7) days of any change or discontinuance thereto, notice of (A) any change in the direction given by the Institution to the School Districts under the Custody Agreement to make payments of bi-monthly installments of Per Pupil Aid directly to the Custodian for deposit as directed by the Trustee under the Custody Agreement, or (B) the discontinuance of payment by any School District then directed by the Institution to make payment to the Custodian;

(vii) immediately after receipt thereof, copies of any contract or Charter revocation proceeding notices received by the Institution from the Board of Regents or any other Regulatory Body;

(viii) copies of any detailed audit reports, management letters or recommendations submitted to the Institution by Independent accountants in connection with its accounts or books or any audit; and

(ix) such other information respecting the business, property or the condition or operations, financial or otherwise, of the Institution as the Issuer may from time to time reasonably request (other than information the Institution keeps confidential to the maximum extent permitted by law).

(b) *Access to Records.* At any and all reasonable times and from time to time, permit the Issuer and the Trustee, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account (other than those books and records that by law must be treated as confidential) of, and visit the properties of the Institution and to discuss the affairs, finances and accounts of the Institution with any of their respective officers.

(Section 27)

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

- (i) the transactions provided for in the Bond Documents;
- (ii) the execution and delivery or amendment of any document entered into in connection with the transactions provided for in the Bond Documents, including any certifications or representations made by any person other than the party seeking indemnification;
- (iii) the approval of the financing for the Project;
- (iv) any and all claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents or any other documents relating to the Project or the Bonds or in connection with any other matters relating to the Bonds or the Project, including, but not limited to, any federal or state tax audit, or any questions or other matters arising under such documents;
- (v) the Trustee's acceptance or administration of the trusts created by the Indenture or the exercise of its powers or duties under the Indenture, the Loan Agreement, the Tax Compliance Agreement or any other agreements to which it is a party or otherwise in connection with the transactions provided for in the Bond Documents;
- (vi) any and all claims arising in connection with (A) the issuance or sale of any Bonds or any certifications or representations made by any person other than the party seeking indemnification, including, but not limited to, any (1) statement or information made by the Institution with respect to the Institution or the Project in any offering document or materials regarding the Bonds, the Project or the Institution or in the Tax Compliance Agreement or in any other certificate executed by the Institution which, at the time made, is misleading, untrue or incorrect in any material respect; (2) untrue statement or alleged untrue statement of a material fact relating to the Institution or the Project contained in any offering material relating to the offering and sale of the Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to the Institution or the Project required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading; and (3) failure to properly register or otherwise qualify the offering and sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be offered or sold; and (B) the carrying out by the Institution of any of the transactions provided for in the Bond Documents;
- (vii) the Institution's failure to comply with any requirement of any Bond Document applicable to the Institution;
- (viii) any act or omission of the Institution or any of its agents, servants, employees or licensees in connection with the Loan Agreement or the Project, including violation of any law, ordinance, court order or regulation affecting the Project or any part of it or the ownership, occupancy or use of it;
- (ix) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Project or arising out of any action or inaction of the Institution, whether or not related to the Project, or resulting from or in

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any way connected with the acquisition, construction, reconstruction, renovation, equipping or management of the Project, the issuance of the Bonds or otherwise in connection with transactions provided for in the Bond Documents or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating to the Project or the Bonds;

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

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

(b) This indemnification shall extend to and include, without limitation, all reasonable costs, reasonable attorneys' fees (whether incurred in a third party action or an action to enforce the Loan Agreement), expenses or liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (i) in the case of the foregoing indemnification of the Trustee or any of its Indemnified Parties, and to the extent such damages are caused solely by the gross negligence or willful misconduct of such Person, and (ii) in the case of the foregoing indemnification of the Issuer or any of its Indemnified Parties, to the extent such damages are caused by the gross negligence or willful misconduct of such Person.

(c) An Indemnified Party shall promptly notify the Institution in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Institution pursuant to this Section. Such notice shall be given in sufficient time to allow the Institution to defend or participate in such claims or action, but the failure to give such notice in sufficient time shall not constitute a defense under the Loan Agreement nor in any way impair the obligations of the Institution under this Section.

(d) The provisions of this Section and the indemnification provided in the Loan Agreement shall survive repayment of the Bonds. Notwithstanding anything to the contrary in the Loan Agreement, the covenants of the Institution contained in this Section shall continue in full force and effect after the expiration or earlier termination of the Loan Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought, and (ii) payment in full or the satisfaction of such claim or cause of action and all expenses and charges incurred by the Indemnified Party relating to the enforcement of this Section and the provisions herein specified. For purposes of this Section, the Institution will not be deemed to constitute an employee, agent or servant of the Issuer or a person under the Issuer's control or supervision.

(e) In the event of any claim against the Issuer or its members, directors, officers, agents or employees by any employee or contractor of the Institution or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Institution 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.

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

(g) To effectuate the purposes of this Section, the Institution will provide for and insure, in the liability policies required in Section 24 of the Loan Agreement, not only its own liability in respect of the matters therein mentioned, but also the liability pursuant to this Section. Should an insurance carrier provide for the defense of the Issuer in connection with any claim subject to indemnity under this Section, the Institution will cause such insurance carrier (and the attorneys retained by such insurance carrier) to promptly provide the Issuer with such information regarding the status of such claims as the Issuer may from time to time reasonably request, to immediately advise the Issuer of any monetary verdict against it, and in no event shall the Institution permit a judgment to be entered against the Issuer arising out of such claim without thirty (30) days' prior written notice to the Issuer. Should the Institution provide the defense of any such claim directly, the attorneys selected by the Institution will be subject to the prior approval of the Issuer, in its sole discretion, and the Institution will cause such attorneys to promptly provide the Issuer with such information regarding the status of such claims as the Issuer may from time to time reasonably request, to immediately advise the Issuer of any monetary verdict against it, and in no

event shall the Institution permit a judgment to be entered against the Issuer arising out of such claim without thirty (30) days' prior written notice to the Issuer.

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

(Section 29)

Defaults and Remedies

(a) As used herein the term "*Event of Default*" shall mean:

(i) the Institution will default in the timely payment of any amount payable pursuant to Section 7 of the Loan Agreement as and when due, or, after thirty (30) days written notice, fails to make the payment of any other amounts required to be delivered or paid by or on behalf of the Institution in accordance with the Loan Agreement; or

(ii) If any failure to perform or observe any other covenant or agreement in the Loan Agreement occurs and such failure continues for thirty (30) days after written notice thereof shall have been given to the Institution by the Issuer or the Trustee, *provided, however*, that if such performance requires work to be done, actions to be taken or conditions to be remedied which by their nature cannot be reasonably done, taken or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred or exist if, and so long as, the Issuer or the Institution will commence such performance within such thirty (30) day period, and shall diligently and continuously prosecute the same to completion within ninety (90) days after the initial notice and the Institution will deliver a report to the Trustee and the Issuer at least once every thirty (30) days setting forth the status of its attempt to cure such default; or

(iii) the occurrence of an Event of Default under any of the Bonds, the Indenture, the Tax Compliance Agreement, the Custody Agreement or any other Institution Document; or

(iv) the Institution will be generally not paying its debts as they become due; or

(v) an Event of Bankruptcy shall have occurred; or

(vi) a final judgment for the payment of money which (A) in itself, exceeds \$200,000 or if combined with the aggregate amount of all outstanding final judgments for money exceeds \$200,000, and (B) is not covered by insurance or reserves set aside by the Institution, which in the judgment of the Issuer will adversely affect the rights of the Holders of the Bonds shall be rendered against the Institution and at any time after forty-five (45) days from the entry thereof, (C) such judgment shall not have been discharged or paid, or (D) the Institution will not have taken and be diligently prosecuting an appeal therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, and shall not have caused, within forty-five (45) days, the execution of or levy under such judgment, order, decree or process or the enforcement thereof to have been stayed pending determination of such appeal;

(vii) breach or default in any payment due under any Indebtedness of the Institution or in the performance of any other obligations thereunder which breach or default results in the acceleration of such Indebtedness.

(b) Upon the occurrence of an Event of Default, the Issuer may take any one or more of the following actions:

(i) declare all sums payable by the Institution under the Loan Agreement immediately due and payable;

(ii) withhold any or all further performance under the Loan Agreement;

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(iii) maintain an action against the Institution of the Loan Agreement to recover any sums payable by the Institution or to require its compliance with the terms hereof or of the Mortgage and Security Agreement or the other Institution Documents;

(iv) realize upon any pledge of or security interest in the Gross Revenues and the rights to receive the same, all to the extent provided in Sections 10 and 11 of the Loan Agreement, by any one or more of the following actions: (A) enter the Institution and examine and make copies of the financial books and records of the Institution relating to the Gross Revenues and, to the extent of the assigned Gross Revenues, take possession of all checks or other orders for payment of money and moneys in the possession of the Institution representing Gross Revenues or proceeds thereof; (B) notify any account debtors obligated on any Gross Revenues to make payment directly to the Issuer or to the Trustee, as the Issuer may direct, and of the amount to be so paid; *provided, however*, that (1) the Issuer may, in its discretion, immediately collect the entire amount of interest or principal coming due on Outstanding Bonds on the next Interest Payment Date therefor, and may continue to do so commencing on each such interest payment date to the extent of amounts due on Outstanding Bonds on the next Interest Payment Date therefor, with respect to the Gross Revenues, until such amounts are fully collected, (2) written notice with a true and accurate copy of such notification shall be mailed to the Institution five (5) days prior to mailing or otherwise making such notification to account debtors, and (3) until the Institution will receive such notice it shall have full authority and responsibility to enforce and collect Gross Revenues owing from its account debtors; (C) following the above mentioned notification to account debtors, collect, compromise, settle, compound or extend amounts payable as Gross Revenues which are in the form of accounts receivable or contract rights from the Institution's account debtors by suit or other means and give a full acquittance therefor and receipt therefor in the name of the Institution whether or not the full amount of any such account receivable or contract right owing shall be paid to the Issuer; (D) require the Institution to deposit all moneys, checks or other orders for the payment of money which represent Gross Revenues in an amount equal to the Gross Revenues assigned under the Loan Agreement within five (5) business days after receipt of written notice of such requirement, and thereafter as received, into a fund or account to be established for such purpose by the Issuer; *provided, however*, that (1) the moneys in such fund or account shall be applied by the Issuer to the payment of any of the obligations of the Institution under the Loan Agreement, including the fees and expenses of the Issuer, (2) the Issuer in its sole discretion may authorize the Institution to make withdrawals from such fund or account for its corporate purposes, and (3) the requirement to make such deposits shall cease and the balance of such fund or account shall be paid to the Institution when all Events of Default hereunder by the Institution have been cured or waived; (E) forbid the Institution to extend, compromise, compound or settle any accounts receivable or contract rights which represent any unpaid assigned Gross Revenues, or release, wholly or partly, any person liable for the payment thereof (except upon receipt of the full amount due) or allow any credit or discount thereon; or (F) endorse in the name of the Institution any checks or other orders for the payment of money representing any unpaid assigned Gross Revenues or the proceeds thereof;

(v) to the extent permitted by law and with the consent or at the direction of the Trustee: (A) enter upon the Project Facility and complete the construction, renovation and equipping of the Project Facility in accordance with the Contract Documents with such changes therein as the Issuer may deem appropriate and employ watchmen to protect the Project Facility, all at the risk, cost and expense of the Institution, consent to such entry being hereby given by the Institution, (B) at any time discontinue any work commenced in respect of the construction, renovation and equipping of the Project Facility or change any course of action undertaken by the Institution and not be bound by any limitations or requirements of time whether set forth in the Loan Agreement or otherwise, (C) assume any construction contract made by the Institution in any way relating to the construction, renovation and equipping of the Project Facility and take over and use all or any part of the labor, materials, supplies and equipment contracted for by the Institution, whether or not previously incorporated into the construction, renovation and equipping of such Project Facility, and (D) in connection with the construction, renovation and equipping of the Project Facility undertaken by the Issuer pursuant to the provisions of this subparagraph (v), (1) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in connection with the construction, renovation and equipping of the Project Facility, (2) pay, settle or compromise all bills or claims which may become liens against the Project or against any moneys of the Issuer applicable to the construction, renovation and equipping of the Project Facility, or which have been or may be incurred in any manner in connection with completing the construction, renovation and equipping of the Project Facility for the discharge of liens, encumbrances or defects in the title to the Project or against any moneys of the Issuer applicable to the construction, renovation and equipping of the Project Facility, and (3) take or refrain from taking such action hereunder as the Issuer may from time to time determine. The Institution shall be liable to the Issuer for all sums paid or incurred for construction, renovation and equipping of the Project Facility whether the

same shall be paid or incurred pursuant to the provisions of this subparagraph (v) and all payments made or liabilities incurred by the Issuer under the Loan Agreement of any kind whatsoever shall be paid by the Institution to the Issuer upon demand. The Institution hereby irrevocably constitutes and appoints each of the Issuer and the Trustee its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Institution for the purpose of exercising the rights granted to the Issuer by this subparagraph (v) during the term of the Loan Agreement; and

(vi) take any action necessary to enable the Issuer to realize on its Liens under the Loan Agreement or under the Mortgage and Security Agreement or by law, and any other action or proceeding permitted by the terms hereof or by law.

All rights and remedies herein given or granted to the Issuer are cumulative, non-exclusive and in addition to any and all rights and remedies that the Issuer may have or may be given by reason of any law, statute, ordinance or otherwise, and no failure to exercise or delay in exercising any remedy shall effect a waiver of the Issuer's right to exercise such remedy thereafter.

At any time before the entry of a final judgment or decree in any suit, action or proceeding instituted on account of any Event of Default or before the completion of the enforcement of any other remedies under the Loan Agreement, the Issuer may annul any declaration made pursuant to paragraph (b) of this Section and its consequences if such Event of Default shall be cured. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereto.

(Section 30)

Compliance with Indenture

The Institution approves of and agrees to the provisions of the Indenture. The Institution agrees to do all things within its power in order to enable the Issuer to comply with all requirements and to fulfill all covenants of the Indenture which require the Institution to comply with requests or obligations so that the Issuer will not be in default in the performance of any covenant, condition, agreement or provision of the Indenture.

(Section 31)

Investment of Moneys

Neither the Issuer nor the Trustee shall have any liability arising out of or in connection with the making of any investment authorized by the provisions of Article 8 of the Indenture in the manner provided therein, or for any loss, direct or indirect, resulting from any such investment.

(Section 32)

Arbitrage; Tax Exemption

Each of the Institution and the Issuer covenants that it shall take no action, nor shall it approve the Trustee's taking any action or making any investment or use of the proceeds of the Bonds, which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code, and any proposed or final regulations thereunder as are applicable to the Bonds at the time of such action, investment or use. The Institution (or any related person, as defined in Section 147(a)(2) of the Code) shall not, pursuant to an arrangement, formal or informal, purchase the Bonds in an amount related to the amount of any obligation to be acquired from the Institution by the Issuer.

The Institution covenants that it will not take any action or fail to take any action which would cause any representation or warranty of the Institution contained in the Tax Compliance Agreement then to be untrue and shall comply with all covenants and agreements of the Institution contained in the Tax Compliance Agreement, in each case to the extent required by and otherwise in compliance with such Tax Compliance Agreement.

(Section 34)

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Amendments to Loan Agreement

The Loan Agreement may be amended only in accordance with Article 14 of the Indenture and each amendment shall be made by an instrument in writing signed by the Institution and the Issuer, an executed counterpart of which shall be filed with the Trustee.

(Section 40)

Termination

The Loan Agreement shall remain in full force and effect until no Bonds are Outstanding and until all other payments, expenses and fees payable hereunder by the Institution will have been made or provision made for the payment thereof; *provided, however*, that the liabilities and the obligations of the Institution under Section 7(a) of the Loan Agreement and to provide reimbursement for or indemnification against reasonable expenses, costs or liabilities made or incurred pursuant to Sections 24, 26 and 29 of the Loan Agreement shall nevertheless survive any such termination. Upon such termination, the Issuer shall promptly deliver such documents as may be reasonably requested by the Institution to evidence such termination and the discharge of the Institution's duties under the Loan Agreement and the release or surrender of any security interests granted by the Institution to the Issuer.

(Section 41)

Intercreditor Agreement

Notwithstanding anything to the contrary in the Loan Agreement, the Custody Agreement or the Indenture, the Trustee shall execute and deliver an intercreditor agreement and amendment to the Custody Agreement as may be requested by the Institution or the provider of any Long-Term Indebtedness permitted under Section 8A of the Loan Agreement and secured by a parity Lien on the Project Facility or Gross Revenues and the Trustee consents to the filing of a UCC-3 financing statement to evidence such parity Lien, provided that any such agreement shall incorporate by reference Article 12 of the Indenture.

(Section 46)

SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

The following is a brief summary of certain provisions of the Indenture. The Bonds will be issued under and secured by the Indenture. Certain provisions of the Indenture are also described in the Official Statement under the captions "The Series 2011 Bonds" and "Security for the Series 2011 Bonds." This summary does not purport to be complete. Reference is made to the Indenture for the full and complete description of the terms thereof.

Pledge of Trust Estate

Under the Indenture, the Issuer agrees to assign and grant a security interest in the following (the "Trust Estate") to the Trustee, and its successors in trust and assigns forever: all right, title and interest of the Issuer in and to the Loan Agreement (except for the Unassigned Rights expressly retained by the Issuer), the present and continuing right to make claim for, collect, receive and receipt for any of the Gross Revenues and other sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable thereunder or under the Indenture (except for amounts payable to the Issuer with respect to the Unassigned Rights and moneys and securities in the Rebate Fund), the exclusive right to bring actions and proceedings thereunder or for the enforcement thereof (except as otherwise specifically provided with respect to Rebate Fund and Unassigned Rights), the right to grant consents and waivers, and to enter into amendments and to do any and all things which the Issuer is or may become entitled to do thereunder; all right, title and interest of the Issuer in and to all money and securities from time to time held by the Trustee under the terms of the Indenture or credited to any fund or account established under the Indenture (other than any moneys or securities in the Rebate Fund); any and all other Property rights and interests of every kind and nature from time to time by delivery or by writing of any kind granted, bargained, sold, alienated, demised, released, conveyed, assigned, transferred, mortgaged or pledged to the Trustee, or otherwise subjected hereto, as and for additional security with the Indenture, by the Institution or any other person on its behalf or with its written consent or by the Issuer or any other person on its behalf or with its written consent, and the Trustee is authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture; and any and all proceeds (including real property but excluding proceeds derived from the Unassigned Rights) acquired by the Issuer or the Trustee as a result of its exercise of any remedies under the Bond Documents or the Loan Agreement; subject, however, to Permitted Encumbrances and excepting therefrom the Unassigned Rights.

(Granting Clauses)

Payment of the Bonds

The Bonds are special and limited obligations of the Issuer. The Bonds are payable solely from the Loan Payments (except for revenues derived by the Issuer with respect to the Unassigned Rights) and other revenues and funds pledged under the Indenture (other than the Rebate Fund). The Bonds are secured under the Indenture and by (i) an assignment to the Trustee of the Loan Agreement (excluding Unassigned Rights) and the Mortgage and Security Agreement, (ii) the other Bond Documents, and (iii) all amounts (other than amounts derived from the Unassigned Rights) payable by the Institution. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Bond Documents and in the other documents and instruments connected therewith shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent or employee of the Issuer in his individual capacity. The covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Indenture shall not constitute or give rise to an obligation of the State or any municipality or political subdivision thereof (including Erie County) and neither the State nor any municipality or political subdivision thereof (including Erie County) shall be liable thereon.

(Section 9.1)

Additional Bonds

The Issuer may issue Additional Bonds under the Indenture from time to time on parity with the Outstanding Bonds. Any such Additional Bonds shall be authorized and described in a Supplemental Indenture executed by the Issuer and the Trustee and which, when so issued, authorized and described, shall be secured by the Indenture and the Trust Estate on parity with the Bonds then Outstanding under the Indenture, *provided that* no such

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Additional Bonds shall be issued under the Indenture or secured by the Trust Estate on parity with the Outstanding Bonds unless the following conditions are met:

(a) Such Additional Bonds are issued to finance improvements or additions to the Project Facility, the acquisition or installation of equipment, or the acquisition, construction, reconstruction or equipping of additional school facilities of the Institution; and

(b) The Loan Agreement and the Bond Documents shall be in effect and no "event of default," as such term is defined in the Loan Agreement and the Bond Documents, shall exist thereunder; and

(c) Such Additional Bonds shall constitute permitted Long-Term Indebtedness under Section 8A of the Loan Agreement; and

(d) The interest on the Additional Bonds to be issued as Tax-Exempt Bonds and the then Outstanding Tax-Exempt Bonds shall not be includable in gross income of the recipient for federal income tax purposes under the Code, and the Trustee shall have been furnished an Opinion of Bond Counsel to such effect; and

(e) There shall have been furnished to the Trustee a supplement to the Loan Agreement providing for additional Loan Payments sufficient to pay the principal of and interest on the Additional Bonds when due and supplements to the Bond Documents providing for the security of the Additional Bonds on parity with the Outstanding Bonds; and

(f) There shall have been furnished to the Trustee an Institution Certificate to the effect that the proceeds of the Additional Bonds, together with any additional funds supplied or to be supplied from any source, will be sufficient to complete the project for which such Additional Bonds are issued and pay the cost thereof; and

(g) There shall have been deposited with the Trustee for deposit to the Debt Service Reserve Fund an amount sufficient to cause the amount in deposit therein to equal the Reserve Fund Requirement taking into account such Additional Bonds; and

(h) There shall be given to the Trustee an Institution Certificate, Opinion of Counsel to the Institution and such other evidence of compliance with Section 8A of the Loan Agreement and other certificates, affidavits, documents or opinions as the Trustee may reasonably request; and

(i) The Institution shall pay or cause to be paid all costs and expenses of the Issuer, the Holders of the Bonds and the Trustee with respect to the issuance of Additional Bonds.

(Section 2.9)

Payment of Bonds Called for Redemption

If (a) notice of redemption has been duly mailed or duly waived by the Holders of all Bonds called for redemption who have not received such notice, or (b) conditional notice of redemption has been so mailed or waived and the redemption moneys have been duly deposited with the Trustee, then in either case the Bonds called for redemption shall be payable on the redemption date at the applicable redemption price plus accrued interest, if any, to the redemption date. Upon surrender to the Trustee, Bonds called for redemption shall be paid as provided in the Indenture at the redemption price stated in the Bond, plus interest accrued to the redemption date, *provided, however*, the payment of the redemption price of and interest on Bonds being redeemed in part upon Sinking Fund Redemption shall be by check or by wire transfer as provided in the form of the Bonds.

(Section 3.4)

Bonds Redeemed in Part

Upon surrender of a Bond redeemed in part, the Trustee will authenticate for the Owner a new Bond or Bonds equal in principal amount to the unredeemed portion of the Bond surrendered, *provided, however*, the new Bond or Bonds shall each be in an Authorized Denomination.

(Section 3.5)

Pro Rata Redemptions; Bonds Held by DTC

In the event that DTC, or its designee, is the Holder of any series of Bonds, and such series of Bonds are subject to pro rata redemption among the Holders, including DTC, DTC may select the Bonds to be redeemed from its participants in any manner chosen by DTC, including selection by lot. For so long as the Bonds, or any of them, are held by DTC or any other similar depository for holding Bonds, the Trustee shall have no liability with respect to any "pro rata" redemption required by the Indenture if, after instructing such depository regarding the pro rata redemptions required by the Indenture, such depository fails to properly effect such instructions.

(Section 3.6)

Establishment of Project Fund

The Trustee shall establish a Project Fund for the payment of Costs for which any Bonds are issued under the Indenture and within the Project Fund a Series 2011A Subaccount, into which the proceeds from the sale of the Series 2011A Bonds shall be deposited; and a Series 2011B Subaccount, into which the proceeds from the sale of the Series 2011B Bonds shall be deposited. The Project Fund shall consist of the amounts deposited therein pursuant to the Indenture and the Closing Statement. The amounts in the Project Fund shall be held for the security of the applicable series of Outstanding Bonds.

(Section 6.1)

Payments from Project Fund

(a) Payment for Costs from the Project Fund established under the Indenture shall be made only upon receipt of the following:

(i) (A) the Closing Statement executed and delivered as hereinafter provided on the Closing Date, but only to the extent that (i) such amounts are properly chargeable against the Project Fund and the Institution shall certify such proper chargeability to the Trustee and (ii) proceeds of the Series 2011A Bonds shall be applied only to Qualified Costs or as otherwise permitted under the Tax Compliance Agreement; or

(B) requisition in the form of Exhibit C attached to the Indenture, executed and delivered as provided hereinafter and in the Loan Agreement, authorizing such payment; and

(ii) in the case of payments authorized under the Indenture for the purpose of discharging any Indebtedness of the Institution, any evidence satisfactory to the Trustee of the discharge of the Indebtedness and the release of all security therefor.

(b) On or after the date of delivery of the Bonds and the deposit of the designated portion of the proceeds thereof into the Project Fund, the Trustee shall pay the Costs and such costs of issuance as are authorized by a Closing Statement delivered at Closing or as authorized by a Requisition in the form of Exhibit C to the Indenture, numbered consecutively upwards from 1, signed by an Authorized Signatory of the Institution and, with respect to construction-related expenses, approved in writing by the Architect, and which shall:

(i) identify the Project and shall state (A) the name and address of the Person to whom the payment is to be made; (B) the amount to be paid; (C) the obligation on account of which the payment is to be made, showing the total obligation, any amount previously paid, the unpaid balance, and the amount of any retainage; (D) that the obligation was properly incurred and is a proper charge against the Project Fund; (E) that the amount requisitioned is due and unpaid and does not exceed the obligation on account of which such payment is to be made; (F) that with respect to items covered in the Requisition, there are no vendors', mechanics' or other liens, bailment leases or conditional sale contracts which should be satisfied or discharged before the payments as requisitioned therein are made, or which will not be discharged before the payments requisitioned therein are made, or which will not be discharged by such payment unless covered by the endorsement described in subparagraph (iii) below; (G) that the amount remaining in the Project Fund after the payment of the Requisition together with equity of the Institution will be sufficient to pay all remaining Costs; (H) that the work can be completed by the Scheduled Completion Date; and (I) that the work performed or materials supplied is satisfactory to the Institution;

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(ii) an endorsement to the Mortgagee Title Insurance Policy showing no new matters of record through the date of the Requisition;

(iii) prior to the first payment by the Trustee of a Requisition for proceeds in the Project Fund following the Closing Date, a Certificate of the Architect that the amount on deposit in the Project Fund is sufficient to complete construction, renovation and equipping of the Project Facility; and

(iv) a building permit from the City of Buffalo for the Addition.

(c) Any Requisition may authorize the making of payments to or on behalf of the Institution for advances made in respect of Costs or work done in respect of the Project Facility, but only to the extent that such amounts are properly chargeable against the Project Fund in accordance with the Indenture and the Tax Compliance Agreement. In any such case, the Requisition shall relate (i) in the case of payments for work done, to the work so performed, and (ii) in the case of reimbursements for advances made, to the underlying obligation for which the Institution is being reimbursed.

(d) Anything in this Section to the contrary notwithstanding, the Trustee, at the request of the Institution or the Issuer, shall make transfers from the Project Fund to the Rebate Fund as provided in Section 7.9 of the Indenture.

(e) Upon written request to the Trustee, the Trustee will provide to the Issuer a record of the Requisitions and disbursements from the Project Fund.

(Section 6.2)

Procedure Upon Completion of Project Facility

Upon completion of construction and renovation of the Project Facility, pursuant to the Loan Agreement and receipt of the certificate of occupancy related thereto, the Institution shall furnish the Trustee with a Completion Certificate executed by an Authorized Signatory of the Institution and the Architect, which with respect to the Institution may be given in reliance upon appropriate certifications of the Architect, certifying (i) that all required insurance has been obtained; (ii) that all construction and renovation of the Project Facility, has been substantially completed in accordance with the Contract Documents; (iii) that all Costs have been paid (other than the retainage) or stating the amounts to be reserved for the payment of any unpaid Costs and certifying that such amounts reserved are more than sufficient; (iv) that at least ninety-five percent (95%) of the net proceeds of the Series 2011A Bonds applied to payment of Costs have been applied to pay Qualified Costs as provided in the Tax Compliance Agreement; (v) the construction and renovation of the Project Facility has been completed in a good and workmanlike manner in accordance with the Loan Agreement and in such a manner as to conform with all applicable zoning, planning and building regulations of the Regulatory Bodies, as of the date of such Completion Certificate and that no claim has been made calling into question such compliance; and (vi) that all work requiring inspection by Regulatory Bodies shall have been duly inspected and approved by such Regulatory Bodies and the certificate of occupancy and all other applicable certificates, licenses and approvals necessary for the use and operation of the Project Facility have been issued and are in force and effect and copies are attached thereto, and there is no violation of any of the provisions thereof or of any Legal Requirements of which such party have notice or knowledge as of the date thereof. The Completion Certificate shall be accompanied by acknowledgments of payment and waivers of lien from all Persons supplying labor or materials for all lienable work done and materials delivered through the date of the Completion Certificate, if any, and bills of sale or equivalent documentation for any personal property installed in the Project Facility through the date of the Completion Certificate. The Architect shall not approve the Completion Certificate and the retainage Requisition, if any, until the Architect has completed a site inspection of the Project Facility which supports a conclusion that the construction and renovation of the Project Facility has been completed in accordance with the Contract Documents.

(Section 6.3)

Excess Project Funds

To the extent that any Bond proceeds remain unexpended in the Project Fund after receipt of Completion Certificate for the Addition, required in Section 6.3 of the Indenture, the Trustee shall (i) retain in the Project Fund such amount as the Institution shall specify in the Completion Certificate to be necessary to pay additional Costs not otherwise provided for; and (ii) transfer such excess funds in the Project Fund to the applicable subaccount of the Redemption Fund for application to the payment of the principal or redemption price of and interest on the Bonds as the same shall become due (such excess funds to be applied as a credit against the obligations of the Institution under Section 7 of the Loan Agreement).

(Section 6.4)

Treatment of Project Funds Upon Acceleration of Bonds or Event of Default

Upon the acceleration of the principal of all Bonds Outstanding pursuant to Section 11.2 of the Indenture, the Trustee shall immediately transfer all amounts in the Series 2011 Subaccounts of the Project Fund, over to the Bond Fund for payment of the Bonds in accordance with Section 11.11 of the Indenture. In addition, the Institution will have no right to obtain any disbursements from any account in the Project Fund if (A) an Event of Default, or (B) an event or condition which, with notice or passage of time or both, would constitute an Event of Default under the Indenture, has occurred and is continuing after any applicable notice and cure periods and/or permitted extensions. In the event the acceleration of the Bonds is annulled pursuant to Section 11.2(b) of the Indenture, the Trustee shall transfer back to each Project Fund account any amounts remaining from the moneys transferred from such Project Fund account upon such annulment.

(Section 6.5)

Establishment of Funds and Accounts within Funds; Disbursement of Bond Proceeds

(a) In addition to the Project Fund and the accounts established therein, there are established with the Trustee the following funds and accounts within funds, each of which shall be held by the Trustee, for the term of the Indenture, in accounts segregated from all other money of the Trustee:

- (1) a Bond Fund, and within such fund;
 - (i) an Interest Account and within the Interest Account, a separate subaccount for each series of Bonds; and
 - (ii) a Principal Account and within the Principal Account, a separate subaccount for each series of Bonds.
 - (2) a Repair and Replacement Fund;
 - (3) a Debt Service Reserve Fund and within such fund, a Series 2011A Account;
 - (4) an Insurance and Condemnation Fund;
 - (5) a Redemption Fund; and
 - (6) a Rebate Fund.
- (b) At the Closing, the Trustee shall deposit and apply the proceeds of the Series 2011A Bonds as follows:
- (1) deposit in the Debt Service Reserve Fund an amount equal to the Reserve Fund Requirement; and
 - (2) deposit in the Series 2011A subaccount of the Project Fund the amount set forth in the Closing Statement for application to costs of issuance of the Bonds as permitted under the Tax Compliance Agreement and set forth in the Closing Statement and to other Qualified Costs as provided in Article 6 of the Indenture.

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(c) At the Closing, the Trustee shall deposit the proceeds of the Series 2011B Bond in the Series 2011B subaccount of the Project Fund and apply the proceeds thereof costs of issuance and other Costs as set forth in the Closing Statement.

(d) At the Closing of the Bonds, the Institution shall pay or cause to be paid from other sources all costs of issuance of the Bonds which are not paid from proceeds of the Bonds.

(Section 7.1)

Application of Loan Payments

The Trustee shall deposit all Loan Payments immediately upon receipt thereof in the funds and accounts established under the Indenture as described in Sections 7.4, 7.5, 7.6, 7.9, 7.10 and 7.11 of the Indenture, except that income earned on the investment of the funds established under the Indenture relating to the Bonds shall be deposited as provided in Section 8.1 of the Indenture.

(Section 7.3)

Bond Fund

(a) The Trustee shall promptly deposit the following receipts into the applicable account or subaccount of the Bond Fund:

(i) Amounts remitted by the Custodian pursuant to the Custody Agreement for deposit therein.

(ii) Amounts paid by the Institution pursuant to Section 7(a) or 11 of the Loan Agreement for deposit therein.

(iii) Any amounts transferred from the Debt Service Reserve Fund with respect to the Series 2011A Bonds and any series of Additional Bonds.

(iv) Any amounts transferred from any Fund pursuant to Section 8.1(c) of the Indenture.

(b) The following disbursements shall be made from the Bond Fund:

(i) The Trustee shall use the money in the Interest Account of the Bond Fund to pay the interest becoming due on the related series of Bonds on each Interest Payment Date, and to transfer to the Redemption Fund an amount sufficient to pay accrued interest on such Bonds to be redeemed.

(ii) The Trustee shall use the money in the Principal Account of the Bond Fund to pay the principal of the related series of Bonds at maturity or at such earlier time as such series may have become due and payable.

(iii) The Trustee shall use the money on deposit in the Principal Account of the Bond Fund on each Sinking Fund Redemption date to effect the required Sinking Fund Redemption of the Bonds.

The amounts paid out pursuant to this Section shall be irrevocably pledged to and applied to such payments in the foregoing priority. In the event that an Event of Default shall have occurred and be continuing, the Trustee shall pay such amounts out of the Bond Fund in accordance with Section 11.11 of the Indenture.

(Section 7.4)

Repair and Replacement Fund

(a) The Trustee shall establish a Repair and Replacement Fund. Pursuant to Section 7(a) of the Loan Agreement, the Institution shall pay or cause to be paid to the Trustee for deposit into the Repair and Replacement Fund, an amount equal to \$12,500 on the last Business Day of March, June, September and December commencing March 31, 2011 or such lesser amount as shall be required to cause the amount on deposit in the Repair and Replacement Fund to equal the Repair and Replacement Fund Requirement.

(b) The Repair and Replacement Fund shall be used only to pay expenses which under generally accepted accounting principles constitute capital costs necessarily incurred for the maintenance and betterment of the Project Facility, including, but not limited to, buildings, structures and equipment, costs of architectural, engineering, legal and other professional services, and other costs reasonably necessary and incidental thereto.

Nothing in the Indenture shall relieve the Institution of the requirement to fulfill its obligation under the Loan Agreement to pay all capital and other costs relating to the maintenance and betterment of the Project, and if at any time amounts in the Repair and Replacement Fund are insufficient to pay the capital portion of such obligations in full, the Institution shall continue to be obligated to pay, and shall pay, any deficiency from any other funds legally available therefor. So long as no Event of Default has occurred and is continuing under the Indenture, the Trustee, at the direction of the Institution, shall withdraw from the Repair and Replacement Fund and pay to the Institution such amounts as an Authorized Signatory of the Institution may request in writing to the Trustee, setting forth the amount of the request, the purposes for which the money is to be expended and certifying that such expenditure is an authorized use of amounts credited to the Repair and Replacement Fund.

(c) If, following any withdrawal from the Repair and Replacement Fund pursuant to the subsection (b) above, the amount remaining on deposit therein shall be less than the Repair and Replacement Fund Requirement, then the Institution shall pay or cause to be paid to the Trustee for deposit into the Repair and Replacement Fund the amounts set forth in (a) above until the amount on deposit in the Repair and Replacement Fund shall equal the Repair and Replacement Fund Requirement.

(Section 7.5)

Debt Service Reserve Fund.

(a) The Trustee shall establish a Debt Service Reserve Fund and within the Debt Service Reserve Fund, a Series 2011A Account, which shall be funded at Closing in an amount equal to the Reserve Fund Requirement. The Trustee shall establish a separate account in the Debt Service Reserve Fund as required by the applicable Supplemental Indenture, for each series of Additional Bonds. The Trustee shall make additional deposits in connection with the issuance of Additional Bonds if and to the extent required under subsection (c) below and the applicable Supplemental Indenture. In addition, if any withdrawal is made under subsection (b)(i) below, then the Trustee shall cause the Custodian on behalf of the Institution to remit as provided in the Custody Agreement to the Trustee for deposit into the Debt Service Reserve Fund an amount sufficient to restore such withdrawal in not more than twelve (12) equal consecutive monthly installments, commencing on the first day of the month following such withdrawal. In the event that the Custodian shall fail to remit such amount, the Institution shall promptly pay to the Trustee any shortfall. If on any Interest Payment Date the value of the Debt Service Reserve Fund is less than the Reserve Fund Requirement after transfer by the Custodian of available funds from the Aid Account, the Institution shall pay to the Trustee, for deposit into the Debt Service Reserve Fund, the amount of such deficiency in six (6) equal bi-monthly installments, commencing on the first day of the month following such Interest Payment Date.

(b) Moneys on deposit in the Debt Service Reserve Fund shall be applied as follows (unless otherwise provided in the Indenture):

(i) On the date of each required payment in respect of the Series 2011A Bonds (and any series of Additional Bonds as set forth in the applicable Supplemental Indenture), moneys in the Debt Service Reserve Fund shall be applied to cure any deficiency in the applicable accounts of the Bond Fund. The Institution agrees that any transfer from the Debt Service Reserve Fund to the Bond Fund pursuant to this paragraph shall not be construed as preventing, waiving or curing any nonpayment of any payments required under Section 7 of the Loan Agreement until the amount of such deficiency has been restored, *provided that* if any such deficiency is being restored in accordance with (a) above, then the Trustee shall not exercise any other remedies with respect to such deficiency.

(ii) Subject to recalculation of the Reserve Fund Requirement as provided in subsection (c) below and the applicable Supplemental Indenture, at the time of valuation, any amount in the Debt Service Reserve Fund in excess of the Reserve Fund Requirement shall be transferred to the applicable accounts of the Bond Fund and, at the option of the Institution, credited to either principal payments or interest payments in respect of the Series 2011A Bonds or applicable series of Additional Bonds.

(iii) In each month during the twelve month period preceding the Maturity Date of the Series 2011A Bonds, so long as no Event of Default has occurred and is continuing, moneys held in the Debt Service Reserve Fund shall be credited against the payment of principal of and interest on the Series 2011A Bonds and shall be transferred to the Bond Fund for the payment of such principal and interest.

(c) The Reserve Fund Requirement shall be recalculated in connection with the issuance of any Additional Bonds.

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- (d) The Series 2011B Bonds are not secured by the Debt Service Reserve Fund.

(Section 7.6)

Procedure When Funds Sufficient to Pay All Bonds

If at any time the moneys held by the Trustee in the funds established under Article 7 of the Indenture, other than the Rebate Fund, are sufficient to pay the principal or redemption price of and interest on all Bonds then Outstanding, together with any amounts due the Trustee, the Custodian and any amounts due to the Owners of the Bonds and the Issuer under any Bond Document, the Trustee shall notify the Issuer and the Institution to that effect and thereafter, upon receipt of written instructions from the Institution, the Trustee shall apply the amounts in such funds to the payment of such principal (or redemption price) and interest in accordance with the Indenture, and to the payment of any other amounts due to the Owners of the Bonds, subject to the provisions of the Indenture, and to the payment of any amounts due to itself, the Custodian and the Issuer. Any excess shall then be paid over to the Institution.

(Section 7.7)

Monthly and Annual Reports by Trustee

(a) The Trustee shall, within fifteen (15) days after the end of each month, furnish to the Institution and upon request to the Issuer and each Interested Bondholder commencing in the month following the month in which the Bonds are delivered, and during each month thereafter, a report on the status of each of the funds and accounts within funds established under the Indenture that are held by the Trustee, showing at least the balance in each such fund or account as of the first day of the preceding month, the total of deposits to (including interest on investments) and the total of disbursements from each such fund or account during such preceding month, the dates of such deposits and disbursements during such preceding month, and the balance in each such fund or account on the last day of the preceding month.

(b) The Trustee shall also mail to each Interested Bondholder, upon request of each, by first class mail, within thirty (30) days after the end of each Fiscal Year, an annual report for such Fiscal Year of the status of each of the funds and accounts as of the first day of such Fiscal Year, the total of deposits to (including interest and investments) and the total of disbursements from each such fund or account during such Fiscal Year, the date of such deposits and disbursements during such Fiscal Year and the balance in each such fund or account as of the last day of such Fiscal Year. The Trustee shall also send such reports to any Bondholder on a more frequent basis (but not more frequently than monthly) upon the request of such Bondholder. Any postage resulting from the mailing of such reports shall be paid by the Institution.

(c) The Trustee shall give notice to each Interested Bondholder of (i) any withdrawal from the Debt Service Reserve Fund or any decline in value of investments in such Fund resulting in the amount therein being less than the Reserve Fund Requirement, and (ii) any withdrawal from the Repair and Replacement Fund or the Insurance and Condemnation Fund.

(d) The Trustee shall give notice to the Issuer and all Holders at such time as the requirements for discharge of the Indenture set forth in Article 10 of the Indenture have been satisfied in full.

(Section 7.8)

Creation of Rebate Fund

(a) There is created and established with the Trustee a fund to be known as the Rebate Fund which shall be used for the deposit of the Rebate Amount (as defined in the Tax Compliance Agreement) and shall not be subject to the Lien of the Indenture.

(b) The Institution shall determine the Rebate Amount or cause the same to be determined in the manner provided in Section 148(f) of the Code and the Rules and shall provide the Trustee and the Issuer with a written copy of each such determination when made; this covenant shall survive the defeasance of any Tax-Exempt Bonds pursuant to the Indenture.

(c) The Trustee shall retain records of each of the determinations submitted to it pursuant to subsection (b) above until a date six (6) years after the retirement of the last Tax-Exempt Bond. The Trustee shall make such records available for review by the Issuer and the Institution upon reasonable notice.

(d) In accordance with the Tax Compliance Agreement, the Institution shall make payments to the Trustee for deposit in the Rebate Fund in such amounts and at such times as are required so that the Trustee will have sufficient amounts in the Rebate Fund to pay the Rebate Amount to the United States when required by the Code and the Rules.

(e) The Rebate Amount shall be paid to the United States by the Trustee on behalf of the Issuer at the written direction of the Institution. Each payment of an installment of the Rebate Amount shall be paid at the time and in the manner as directed by the Institution. The Institution shall furnish the Trustee with all other information and forms necessary to cause the Rebate Amount to be properly and timely paid to the United States in accordance with the Code and the Rules.

(f) In the event that the amount in the Rebate Fund shall be insufficient to make the necessary payment to the United States of the Rebate Amount when required by the Code and the Rules and the Institution has insufficient moneys to make such payment as required in subsection (a) above, the Trustee, at the written request of the Issuer or the Institution, shall timely transfer to the Rebate Fund the necessary amount first from the Insurance and Condemnation Fund or the Repair and Replacement Fund, and second from any account within the Project Fund.

(g) The duty of the Trustee to make payments to the United States pursuant to this Section and the Code and any regulations promulgated thereunder shall be expressly limited to funds available in the Rebate Fund at the times such payments are required to be made (including all investment earnings on funds theretofore deposited by the Trustee in the Rebate Fund) and any other funds actually provided to the Trustee by the Institution or the Issuer for such payments. The Trustee shall not be under any duty to pay any amounts in excess of the amount available in the Rebate Fund or actually provided to it by the Institution or the Issuer. The Issuer shall have no obligation to provide any funds to the Trustee for such payments or for deposit in the Rebate Fund.

(h) Any moneys held as a part of the Rebate Fund shall be invested or reinvested by the Trustee, as directed in writing by the Institution, in Government Obligations, subject to the restrictions set forth in the Rules. Any investment of funds in the Rebate Fund shall mature or be redeemable by the Trustee at such times as may be necessary to provide funds when, at the time of the investment, the Institution anticipates, as set forth in a written notice to the Trustee, the same will be needed to make payments from the Rebate Fund. The Trustee may at any time, to the extent required for payments from the Rebate Fund, sell any of such investments, and the proceeds of such sale, and of all payments at maturity and upon redemption of such investments, shall be held in the Rebate Fund. Interest and other income received or losses on moneys or securities in the Rebate Fund shall be credited or charged to the Rebate Fund and shall become a part thereof, to be disbursed as provided for in the Indenture.

(i) In the event that immediately following the calculation required by subsection (b) of this Section, but prior to any deposit made under subsection (d) of this Section, the amount on deposit in the Rebate Fund exceeds the Rebate Amount calculated in accordance with subsection (b) of this Section, upon written instructions from the Issuer or the Institution, the Trustee shall withdraw the excess from the Rebate Fund and credit such excess to the Interest Account of the Bond Fund to be credited against the payments next becoming due on the Bonds.

(j) After redemption or retirement of all the Tax-Exempt Bonds and after payment of any Rebate Amounts remaining to be paid or provision made therefor satisfactory to the Trustee, including accrued interest and payment of any applicable fees to the Trustee, any remaining funds in the Rebate Fund shall be withdrawn by the Trustee and remitted to the Institution.

(Section 7.9)

Insurance and Condemnation Fund

(a) The Trustee shall establish an Insurance and Condemnation Fund.

(b) The Institution shall pay to the Trustee for deposit in the Insurance and Condemnation Fund Net Proceeds of any insurance claim or condemnation when required pursuant to Section 25 of the Loan Agreement.

(c) So long as no Event of Default has occurred and is continuing under the Indenture, the Trustee, at the direction of the Institution, shall withdraw from the Insurance and Condemnation Fund and (i) pay to the Institution such amounts as an Authorized Signatory of the Institution may certify in writing to the Trustee to be necessary for the payment of the costs of reconstruction or replacement of any part of the Mortgaged Property in accordance with Section 25 of the Loan Agreement, or (ii) transfer to the Redemption Fund such amounts that are

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required by Section 25(b) of the Loan Agreement to be applied to redemption of the Tax-Exempt Bonds as provided in the Indenture.

(Section 7.10)

Redemption Fund

(a) Within the Trust Estate there is established a separate fund to be designated and referred to in the Indenture as the Redemption Fund. The Trustee shall administer the Redemption Fund as provided in this Section and Article 8.

(b) The Trustee shall deposit in the Redemption Fund as received, all moneys paid to it by or on behalf of the Institution pursuant to the Indenture (other than sinking fund installments which shall be deposited in the Principal Account of the Bond Fund) or transferred from the Project Fund or the Insurance and Condemnation Fund or deposited therein pursuant to Section 3(c) or 7(d) of the Loan Agreement. All of said money shall be set aside in the Redemption Fund for the purpose of redeeming the Bonds in advance of their maturity and shall be applied on the date of redemption to the payment of principal (or redemption price) and interest with respect to the Bonds to be redeemed.

(c) Moneys held in the Redemption Fund after the date on which such moneys are to be applied for the redemption of the Bonds, shall, upon redemption of all Outstanding Bonds, or upon expiration of the applicable time period specified in Section 10.3 of the Indenture, whichever occurs first, be paid to the Institution.

(Section 7.11)

Investment or Deposit of Funds

Moneys on deposit in the funds established pursuant to the Indenture shall be invested and reinvested by the Trustee, at the sole direction of the Institution. The Institution shall direct, and be solely responsible for assuring that, any moneys held in any funds are invested as follows:

(a) All investments shall constitute Investment Securities and shall mature, or be subject to repurchase, withdrawal without penalty or redemption at the option of the holder on or before the dates on which the amounts invested are reasonably expected to be needed for the purposes of the Indenture, provided that all moneys on deposit in the Project Fund shall be invested solely in Investment Securities which are not at risk for loss of principal and shall be invested with or under the "Control" (as such term is defined in Articles 8 and 9 of the UCC) of the Trustee and all moneys on deposit in the Rebate Fund shall be invested in Government Obligations in accordance with Section 7.9(h) of the Indenture.

(b) All investments shall be made at the direction of the Institution. No investments shall be made which would cause the Tax-Exempt Bonds to become "arbitrage bonds" within the meaning of Section 148(a) of the Code.

(c) The principal of the Investment Securities and the interest, income and gains received in respect of the investments of all funds hereunder (except the Rebate Fund and the Redemption Fund) in respect thereof shall be retained in or transferred to the Bond Fund and credited against subsequent deposit requirements as provided in Section 7 of the Loan Agreement and in Section 4.1 of the Custody Agreement.

(d) Whenever any other transfer or payment is required to be made from any particular fund established under the Indenture, such transfer or payment shall be made from such combination of maturing principal, redemption or repurchase prices, liquidation proceeds and withdrawals of principal as the Trustee deems appropriate for such purpose, after taking into account such factors as future transfers or payments from the fund in question, the reinvestment opportunities for maturing principal, the current yield on any Investment Securities to be redeemed, withdrawn or sold, and any penalties, gains or losses to be realized upon any such redemption, withdrawal or sale.

(e) Neither the Issuer nor the Trustee shall be accountable or liable for any loss suffered or any depreciation in the value of the Investment Securities or in connection with any investment made under the Indenture or for any losses incurred upon any authorized disposition thereof.

(Section 8.1)

Valuation of Funds

Fifteen (15) days prior to each Interest Payment Date for the Bonds, the Trustee shall compute the value of the assets of each fund or account established under the Indenture. In computing the assets of any fund or account, investments and the accrued interest paid on the purchase thereof shall be deemed a part of such fund or account. Investments of money in each such fund pursuant to the Indenture shall be valued at the purchase price or the current market value thereof, whichever is lower.

(Section 8.2)

Further Assurances

The Issuer covenants that, at the sole cost and expense of the Institution, it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such Supplemental Indentures, and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assignment and confirming unto the Trustee all and singular its interest in all Property purported to be made subject to the Lien of the Indenture by the Granting Clauses, and in the Trust Estate pledged to the payment of the principal of, and premium, if any, and interest on, the Bonds. Any and all interest in the Trust Estate or any other Property acquired which is of any kind or nature provided in the Indenture to be and become subject to the Lien of the Indenture, shall, without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the Lien of the Indenture as fully and completely as though specifically described in the Indenture, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Issuer under this Section. The Issuer covenants and agrees that, except as otherwise provided in the Indenture, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Trust Estate.

(Section 9.2)

Issuer Will Take No Action

The Issuer covenants that it will not take any action or fail to take any action that would adversely effect the exclusion from gross income of the interest on the Series 2011A Bonds and any Additional Bonds constituting Tax-Exempt Bonds.

(Section 9.3)

Financing Statements

The Institution shall cause financing statements relating to the Indenture, the Loan Agreement, the Assignment, the Mortgage and Security Agreement and the Assignment of Construction Documents to be filed in such manner and at such places as may be required by law fully to protect and perfect the security interest of the Trustee in and to the Trust Estate or any part thereof. The Issuer, as requested by the Trustee and at the expense of the Institution, shall execute or cause to be executed any and all further instruments as may be required by law or as shall reasonably be requested by the Trustee for such protection of the interests of the Trustee on behalf of the Owners, and the Institution shall furnish satisfactory evidence to the Trustee of filing and refiling of such instruments and of every additional instrument which shall be necessary to preserve the Lien of the Indenture upon the Trust Estate or any part thereof until the principal of and interest on the Bonds issued under the Indenture shall have been paid, *provided, however*, that the Institution shall be responsible for all such filings and refilings and the Issuer shall have no filing responsibilities whatsoever other than executing the documents that the Institution or Trustee requests. The Trustee shall execute or join in the execution of any such further or additional instrument and file or join in the filing thereof (all at the Institution's expense) at such time or times and in such place or places as it may be advised by an Opinion of Counsel may be necessary to preserve the Lien of the Indenture upon the Trust Estate or any part thereof until the aforesaid principal shall have been paid. Notwithstanding the foregoing, the Institution shall be responsible for the timely filing of all UCC continuation statements with respect to the security granted under the Indenture, the Loan Agreement, the Assignment, the Mortgage and Security Agreement and the Assignment of Construction Documents.

(Section 9.6)

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Priority of Lien of Indenture

The Issuer hereby covenants that the Indenture is and will be a first Lien upon the Trust Estate subject to Permitted Encumbrances and the Issuer agrees not to create or suffer to be created any Lien having priority or preference over the Lien of the Indenture upon the Trust Estate or any part thereof, except as otherwise specifically provided in the Indenture.

(Section 9.8)

Inspection of Project Books

The Issuer covenants and agrees that all books and documents in its possession relating to the Project shall during business hours upon prior written request be open to inspection by such accountants or agents or representatives as the Trustee may from time to time reasonably designate.

(Section 9.9)

No Modification of Security

The Issuer covenants that it will not, without the written consent of the Trustee, alter, modify or cancel, or agree to alter, modify or cancel, the Loan Agreement or any other Bond Document to which the Issuer is a party, or which has been assigned to the Issuer, and which relates to or affects the security for the Bonds, except as contemplated by the Indenture or pursuant to the terms of such document.

(Section 9.11)

Covenant Regarding Adjustment of Debts

In any case under Chapter 9 of Title 11 of the United States Code involving the Issuer as debtor, the Issuer, unless compelled by a court of competent jurisdiction, shall neither list the Loan Payments or any part thereof or the Project Facility or any part thereof as an asset or property of the Issuer nor list any amounts owed upon the Bonds Outstanding as a debt of or claim against the Issuer.

(Section 9.16)

Bonds Deemed Paid; Discharge of Indenture

Any series of Bonds will be deemed paid for all purposes of the Indenture when (a) payment of the principal of and interest and premium on the Bonds to the due date of such principal and interest (whether at maturity, upon redemption or otherwise) and all other amounts due and payable to the Holders pursuant to the terms of the Indenture, has been provided for by depositing with the Trustee (A) money sufficient to make such payment, and/or (B) noncallable Government Obligations maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient money to make such payment, and (b) all compensation and expenses of the Trustee pertaining to such series of Bonds in respect of which such deposit is made have been paid or provided for to the Trustee's satisfaction and all other obligations of the Institution under the Bond Documents have been fully performed. When a Bond is deemed paid, it will no longer be subject to redemption except as specifically provided pursuant to the Indenture, and will no longer be secured by or entitled to the benefits of the Indenture or be an obligation of the Issuer, except for: (x) payment from money or United States Government Obligations; (y) such Bond may be transferred, exchanged, registered, discharged from registration or replaced as provided in the Indenture; and (z) such Bond shall be entitled to the benefit of Sections 7.8 and 9.3 of the Indenture.

Notwithstanding the foregoing, no deposit under clause (a) of the first paragraph of Section 10.1 of the Indenture shall be deemed a payment of a series of Bonds until either: (a) the actual maturity of the Bonds; or (b)(i) the Trustee receives an Opinion of Bond Counsel to the effect that the defeasance of such series of Bonds shall not adversely affect the tax exempt status of the interest on the Tax-Exempt Bonds and that the applicable Bonds have been defeased within the meaning of Article 10 of the Indenture; (ii) notice of redemption of such series of Bonds is given in accordance with the Indenture or, if such series of Bonds is not to be redeemed or paid within the next sixty (60) days, the Issuer, at the request of the Authorized Signatory of the Institution, has given the Trustee, in form satisfactory to the Trustee, irrevocable instructions (A) to notify, as soon as practicable, the holders of such series of Bonds in accordance with the Indenture that the deposit required by clause (a) of the first paragraph of Section 10.1 of the Indenture has been made with the Trustee and that such series of Bonds is deemed to be paid under the Indenture and stating the maturity or redemption date upon which money is to be available for the payment of the

principal of such series of Bonds, and (B) if the series of Bonds is to be redeemed rather than paid, to give timely notice of the redemption date for such series of Bonds as provided in the Indenture; and (iii) the Trustee receives written evidence that the series of Bonds in question will, upon the deposit under clause (a) of the first paragraph of Section 10.1 of the Indenture, be rated in the highest rating category of each Rating Agency (without regard to gradation).

When all Outstanding Bonds are deemed paid under the foregoing provisions of Section 10.1 of the Indenture, and all payments and obligations under the Loan Agreement and the Bond Documents and all obligations under the Indenture are satisfied and provision is made to the satisfaction of the Trustee for its expenses, the Trustee will upon request acknowledge the discharge of the Lien of the Indenture, provided, however that (a) the obligations under the Indenture in respect of the transfer, exchange, registration, discharge from registration and replacement of Bonds and Sections 7.8 and 9.3 of the Indenture shall survive the discharge of the Lien of the Indenture and (b) the Trustee shall have received an Opinion of Bond Counsel to the effect that (i) all conditions precedent to the discharge of the Lien as provided in the Indenture have been satisfied; and (ii) the deposit of funds and proposed application thereof will not cause any Tax-Exempt Bonds, the interest therein is excluded from gross income for federal income tax purposes, to be treated as arbitrage bonds for the purposes of Section 148(a) of the Code or to be treated as bonds the interest of which is not excluded from gross federal income for tax purposes.

(Section 10.1)

Events of Default Defined

Each of the following shall be an "Event of Default" under the Indenture:

- (1) If any payment of interest, principal or redemption price of any Bond is not made when it becomes due; or
- (2) If any failure to perform or observe any other covenant or agreement in the Bonds or in the Indenture occurs and such failure continues for thirty (30) days after written notice thereof shall have been given to the Issuer and the Institution by the Trustee; provided, however, that if such performance requires work to be done, actions to be taken or conditions to be remedied which by their nature cannot be reasonably done, taken or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred or exist if, and so long as, the Issuer or the Institution shall commence such performance within such thirty (30) day period, and shall diligently and continuously prosecute the same to completion within ninety (90) days after the initial notice and the Issuer or the Institution shall deliver a report to the Trustee at least once every thirty (30) days setting forth the status of its attempt to cure such default; or
- (3) If any Event of Default occurs under the Loan Agreement or any other Bond Document; or
- (4) If an Event of Bankruptcy occurs; or
- (5) If the Issuer shall have applied for or consented to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets; admitted in writing the inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been the subject of an order for relief under the United States Bankruptcy Code, or been adjudicated a bankrupt, or filed a petition or an answer seeking reorganization, liquidation or any arrangement with creditors or taken advantage of any insolvency law, or submitted an answer admitting the material allegations of a petition in bankruptcy, reorganization, liquidation or insolvency proceedings; or an order, judgment or decree shall have been entered, without the application, approval or consent of the Issuer by any court of competent jurisdiction approving a petition seeking reorganization of the Issuer or appointing a receiver, trustee or liquidator of a substantial part of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days; or filed a voluntary petition in bankruptcy or failed to remove an involuntary petition in bankruptcy filed against it within sixty (60) days of the filing thereof.

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(Section 11.1)

Acceleration Upon Default

If any Event of Default occurs and is continuing, the Trustee may, and upon request of the Majority of Owners shall, by notice in writing to the Issuer, declare the principal of all Bonds then Outstanding to be immediately due and payable. Upon any such declaration the said principal, together with interest accrued thereon shall become due and payable immediately at the place of payment provided in such declaration, anything in the Indenture or in the Bonds to the contrary notwithstanding. Upon any declaration of acceleration under the Indenture, the Trustee shall immediately give notice thereof by mail to the Owners of the Bonds, to the Institution and the Issuer. Notwithstanding the foregoing, the Trustee shall declare the principal of the Bonds to be immediately due and payable if the Event of Default is the result of a failure to pay interest, principal or the redemption price of the Bonds.

If, after the principal of the Bonds has been so declared to be due and payable, all arrears of interest upon the Bonds are paid, any unpaid principal on the Bonds then due and payable absent acceleration is paid, and all other defaults under the Indenture are remedied and all the reasonable charges of the Trustee and the Owners including reasonable attorneys' fees incurred in connection with such defaults are paid, then, and in every such case, the Majority of Owners, by notice to the Issuer and to the Trustee, may annul such declaration and its consequences, and such annulment shall be binding upon the Trustee and upon all Owners of Bonds issued under the Indenture. No such annulment shall extend to or affect any subsequent default or impair any right or remedy consequent thereon.

(Section 11.2)

Legal Proceedings by Trustee

If any Event of Default has occurred and is continuing, the Trustee in its discretion may, and upon the written request of a Majority of Owners in aggregate principal amount of all Bonds then Outstanding and receipt of indemnity for costs and liabilities arising therefrom to its reasonable satisfaction, shall:

- (1) By mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners, including the right to enforce all rights and remedies under the Loan Agreement and to require the Issuer to carry out any other provisions of the Indenture for the benefit of the Owners;
- (2) Bring suit upon the Bonds;
- (3) By action or suit in equity require the Issuer or the Institution to account as if it were the trustee of an express trust for the Owners;
- (4) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Owners;
- (5) By mortgage foreclosure or other proceeding in law or equity, exercise all rights and remedies provided for in the Mortgage and Security Agreement or other Bond Documents;
- (6) Exercise any other rights of the Owners of the Bonds under law or at equity.

(Section 11.4)

Owners May Direct Proceedings

A Majority of Owners of all Bonds affected by the Event of Default shall have the right, after furnishing indemnity for costs and liabilities arising therefrom reasonably satisfactory to the Trustee, to direct the method and place of conducting all remedial proceedings by the Trustee under the Indenture or under any of the other Bond Documents, or for the appointment of a receiver under the Indenture; provided that, such direction shall not be in conflict with any rule of law or with the Indenture. Without limitation of the foregoing, any such remedial

proceeding may include forbearance or non-action on the part of the Trustee, the acceptance by the Trustee, as beneficiary under the Mortgage and Security Agreement, of a deed in lieu of foreclosure, the sale of the property covered by the Mortgage and Security Agreement free of the liens thereof for an amount less than the amounts due with respect to the Bonds, the waiver of claims or the granting of a covenant not to sue.

(Section 11.6)

Limitations on Actions by Owners

No Owner shall have any right to pursue any remedy under the Indenture, or for the appointment of a receiver thereunder, unless:

- (1) the Trustee shall have been given written notice of an Event of Default;
- (2) a Majority of Owners shall have requested the Trustee, in writing, to exercise the powers granted under the Indenture or to pursue such remedy in its or their name or names;
- (3) the Trustee shall have been offered indemnity reasonably satisfactory to it against costs, expenses and liabilities; and
- (4) the Trustee shall have failed to comply with such request within a reasonable time.

Notwithstanding the foregoing provisions of this Section or any other provision of the Indenture, the obligation of the Issuer shall be absolute and unconditional to pay under the Indenture, but solely from the Loan Payments (except revenues derived by the Issuer with respect to the Unassigned Rights) and other revenues and funds (other than the Rebate Fund) pledged under the Indenture, the principal or redemption price of, and interest on, the Bonds to the respective Owners thereof on the respective due dates thereof, and nothing in the Indenture shall affect or impair the right of action, which is absolute and unconditional, of such Owners to enforce such payment.

Notwithstanding the foregoing, or any other provision of the Indenture, a Majority of Owners shall have the right to take any and all actions to enforce the provisions of the Bond Documents, in their own name or, upon providing indemnity to the Trustee reasonably satisfactory to the Trustee for costs, expenses and liabilities arising therefrom, in the name of the Trustee. In the event that such Owners elect to take such action, they shall notify the Trustee in writing of their election and any costs incurred in connection with the taking of such action shall be treated as costs of the Trustee and shall be subject to the same repayment, lien and security rights provided under the Indenture for such costs of the Trustee.

(Section 11.7)

Application of Money in Event of Default

Following an acceleration by the Trustee pursuant to Section 11.2 of the Indenture (unless such acceleration has been annulled), any money received by the Trustee under Article 11 of the Indenture and all moneys on deposit in funds held by the Trustee (excluding the Rebate Fund and subject to the provisions thereof applicable to such funds) shall be applied in the following order:

- (1) To the payment of the reasonable costs and expenses of the Trustee, including, without limitation, counsel fees, any disbursements of the Trustee, and to the payment of the Trustee's reasonable compensation.
- (2) To the payment of any costs and expenses of the Issuer, including counsel fees, incurred in connection with the Event of Default.
- (3) To the payment of the costs and expenses of the operation, maintenance, repair and improvement of the Project Facility.

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(4) To make any payments necessary to implement the rights and remedies available to the Trustee under the Bond Documents or the Indenture, including expenses of maintaining and operating the Project Facility.

(5) To the payment of Bondholder's expenses, including counsel fees, incurred in connection with the Event of Default.

(6) To the payment of all interest then due on Outstanding Bonds or, if the amount available for the payment of interest is insufficient for such purpose, to the payment of interest ratably in accordance with the amount due in respect of each Bond.

(7) To the payment of principal or redemption price then owing on the Bonds, and in case such money shall be insufficient to pay the same in full, then to the payment of principal or redemption price ratably, without preference or priority of one over another.

(8) To the payment of any amounts due the Issuer or any other Person under the Loan Agreement or any other Bond Document.

The surplus, if any, shall be paid to the Institution or the person lawfully entitled to receive the same as a court of competent jurisdiction may direct.

(Section 11.11)

Duties of Trustee

The Trustee need perform only those duties that are specifically set forth in the Indenture and no others. In construing provisions of the Indenture relating to the Trustee's duties, "may" is permissive and does not imply a duty. Prior to the occurrence of an Event of Default of which the Trustee has actual notice, in the absence of bad faith on its part or actual knowledge to the contrary on the part of any Responsible Officer or written notice given to it to the contrary by the Institution, the Issuer or any Bondholder, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates, opinions, advice, requisitions and other documents furnished to the Trustee and conforming to the requirements of the Indenture. However, the Trustee shall examine the certificates and opinions to determine whether they conform to the requirements of the Indenture. The Trustee shall not be liable for any error or judgment made in good faith, unless it is proved that the Trustee was negligent in ascertaining the facts.

(Section 12.1)

Notice of Defaults

Except for (i) a default under Section 11.1(1) of the Indenture, or (ii) a default specified in Section 30(a)(i) of the Loan Agreement, or (iii) the failure of the Institution to file any financial statements, documents or certificates specifically required to be filed with the Trustee pursuant to the provisions of the Indenture, the Loan Agreement or any other Bond Document, or (iv) any other event of which the Responsible Officer has actual knowledge and which event, with the giving of notice or lapse of time or both, would constitute an Event of Default under the Indenture, or the Loan Agreement, the Trustee shall not be deemed to have notice of any default or event unless specifically notified in writing of such event by the Institution, the Issuer or any Owner. The Trustee shall immediately give notice to the Owners of the Bonds of the occurrence of any Event of Default or event of which it has, or is deemed to have, notice pursuant to the foregoing provisions.

(Section 12.5)

Eligibility of Trustee

Every successor or temporary successor Trustee appointed pursuant to the provisions of this Section 12.8 shall (1) be a trust company or bank organized under the laws of the United States of America or any state thereof, (2) be in good standing in the jurisdiction of its organization, (3) be duly authorized to exercise trust powers in the State, (4) be subject to examination by a federal or state Regulatory Body, and (5) maintain a reported capital and surplus of not less than \$100,000,000 or be a subsidiary of a bank holding company with reported capital and surplus of not less than \$100,000,000.

(Section 12.8)

Replacement of Trustee

The Trustee may resign by notifying the Issuer and the Institution in writing specifying the date on which such resignation is to take effect. A Majority of Owners may remove the Trustee, with or without cause, by notifying the Trustee, the Issuer and the Institution and may appoint a successor Trustee. The Issuer may, and at the request of the Institution will, remove the Trustee if (a) the Trustee fails to comply with Section 12.8 of the Indenture, (b) the Trustee is adjudged a bankrupt or an insolvent, (c) a receiver or other public officer takes charge of the Trustee of its property, or (d) the Trustee otherwise becomes incapable of acting; provided, however, that the Trustee shall not be removed unless and until a successor Trustee has been appointed by the Owners or the Institution or pursuant to court order.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Institution shall promptly appoint a temporary successor Trustee to serve subject to the appointment of a successor Trustee by a Majority of Owners. A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Immediately thereafter, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee, the resignation or removal of the retiring Trustee shall then (but only then) become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under the Indenture. If a successor Trustee does not take office within sixty (60) days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer, or a Majority of Owners may petition any court of competent jurisdiction for the appointment of a successor Trustee. The Trustee shall provide written notice of such event to the Issuer and the Institution. If the Trustee fails to comply with the Section 12.8 of the Indenture, a Majority of Owners may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(Section 12.9)

Amendments and Supplemental Indentures Without Consent of Owners

The Issuer and the Trustee may not amend or supplement the Indenture or the Bonds without the consent of the Majority of the Owners except (a) to cure any formal defect, omission, inconsistency or ambiguity, (b) to provide additional security for the Owners of the Bonds (without changing any existing priorities), (c) to preserve the tax exempt status of the interest on any Tax-Exempt Bonds under the federal or State tax laws, or (d) in connection with the issuance of Additional Bonds.

(Section 13.1)

Amendments and Supplemental Indentures With Consent of Owners

The Issuer or the Trustee may enter into an amendment or supplement to the Indenture or the Bonds upon prior notice to all Owners and with the consent of a Majority of Owners. However, no amendment or supplement may (a) extend the maturity of the principal of, or interest on, any Bond, (b) reduce the rate of interest, or waive interest or principal, on, any Bond, (c) affect a privilege or priority of any Bond or Bonds over any other Bond or Bonds, (d) reduce the percentage of the principal amount of the Bonds required for consent to such amendment or supplement, (e) impair the exemption from federal income taxation of interest on any Tax-Exempt Bond, (f) reduce the redemption price of such Bonds, (g) create a lien ranking prior to or on a parity with the lien of the Indenture on the property described in the Granting Clauses of the Indenture (other than as provided therein and in the Loan

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Agreement), or (h) deprive any Owner of the lien created by the Indenture on such property, unless the holders of all Bonds of the affected series consent thereto. In addition, if money or Government Obligations have been deposited or set aside with the Trustee pursuant to Section 10.1 of the Indenture for the payment of Bonds and those Bonds shall not have in fact been actually paid in full, no amendment to the provisions of Article 10 thereof shall be made without the consent of the Owner of each of those Bonds affected.

(Section 13.2)

No Amendment to Loan Agreement, Mortgage and Security Agreement, Etc. Without Consent of Owners

The Issuer and the Trustee may not amend or supplement the Loan Agreement, the Mortgage and Security Agreement or other Bond Documents (other than the Indenture) without the consent of a Majority of the Owners except (a) to cure any formal defect, omission, inconsistency or ambiguity, (b) to provide additional security for the Owners of the Bonds (without changing any existing priorities), (c) to preserve the tax exempt status of the interest on any Tax-Exempt Bonds under the federal or State tax laws, (d) in connection with the issuance of Additional Bonds, or (e) in connection with the grant of a Lien on the Project Facility or Gross Revenues permitted under Section 8A of the Indenture.

(Section 14.1)

Amendments With Consent of Owners

The Issuer may enter into, and the Trustee may consent to, an amendment or supplement of the Loan Agreement, the Mortgage and Security Agreement or other Bond Documents with prior notice to all Owners of the Bonds and with the consent of the Majority of Owners of the Bonds. Notwithstanding the foregoing, the consent of all Owners of the affected series of Bonds shall be required for any amendment or supplement to the Loan Agreement, the Mortgage and Security Agreement or the other Bond Documents (other than the Indenture) which create a Lien ranking prior to or on parity with the Lien of the Indenture on the property described in the Granting Clauses of the Indenture (other than as provided in the Indenture and in the Loan Agreement) or deprive any Owner of the Lien created by the Indenture on such property, unless the holders of all Bonds of the affected series consent thereto.

(Section 14.2)

Applicable Law

The Indenture will be governed by the laws of the State of New York without regard to conflicts of laws principles.

(Section 15)

No Pledge of Taxing Power; Limitation of Liability

Neither the State of New York or any political subdivision thereof shall be liable for the payment of the principal of or interest on any of the Bonds issued under the Indenture, or for the performance of any pledge, mortgage, obligation or agreement or indebtedness of the Issuer, and none of the Bonds of the Issuer issued thereunder shall be construed to constitute an indebtedness of said State or political subdivisions within the meaning of any constitutional or statutory provision whatsoever. The Indenture does not pledge the general credit nor the taxing power of the Erie County or of the State of New York. The Issuer has no taxing power. Notwithstanding anything to the contrary therein contained, the Issuer's liability under the Indenture and the Bonds shall be enforceable only out of the Trust Estate, and any other property mortgaged, pledged or assigned as security for the debt secured by the Indenture, and the Lien of any judgment against the Issuer shall be limited thereto. Nothing in the Indenture, however, shall limit the Trustee's rights against any Person (including without limitation the Institution) other than the Issuer.

(Section 15.10)

Consent of Institution

The Institution will approve, consent to and agree to be bound by all of the terms and provisions of the Indenture insofar as such terms or provisions, directly or indirectly, relate to, apply to, require or prohibit action by or deal with the Institution, or Property of the Institution, including, without limitation, the Project Facility, and including, but not limited to, all provisions for the deposit or payment of moneys to funds held by the Trustee under the Indenture. The Institution will agree, at its own expense, to do all things and take all actions as shall be necessary to enable the Issuer to perform its obligations under the Indenture. In the event the Institution fails to perform its obligations under the Indenture, the Trustee may seek the remedies against the Institution provided for in Section 30 of the Loan Agreement.

SUMMARY OF CERTAIN PROVISIONS OF THE MORTGAGE AND SECURITY AGREEMENT

The following is a brief summary of certain provisions of the Mortgage and Security Agreement. This summary does not purport to be complete and reference is made to the Mortgage and Security Agreement for the full and complete description of the terms thereof.

Granting Clauses

The Institution, in consideration of the issuance of the Series 2011 Bonds, the execution and delivery by the Issuer of the Loan Agreement and for other good and valuable consideration, receipt of which are acknowledged, and in order to secure (a) the Liabilities, and (b) amounts that the Issuer expends under the Mortgage in connection with (i) taxes, charges, or assessments that may be imposed upon the Mortgaged Property, (ii) premiums on insurance policies covering the Mortgaged Property, and (iii) expenses incurred in upholding the Lien of the Mortgage, including expenses of any litigation to prosecute or defend the rights and Lien created by the Mortgage or any other Bond Document (all of the above in (a) through (b) being collectively referred to herein as the "*Mortgage Indebtedness*"), and in order to secure the Mortgage Indebtedness, warrants, assigns, mortgages, hypothecates, pledges, grants a Lien on and security interest in, set over and confirm unto the Issuer, and its successors and assigns forever, all of the estate, right, title and interest of the Institution in, to and under any and all of the following described property (the "*Mortgaged Property*"), whether now owned or held or hereafter acquired:

(a) (i) the fee simple interest in the real property more particularly described on Exhibit A attached to the Mortgage, together with the appurtenances thereto and any portion of the land lying in the streets and roads in front of and adjoining said land and (ii) all buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed, reconstructed or placed, upon the Land or any part thereof, including all right, title and interest of the Institution in and to all building materials and fixtures of every kind and nature whatsoever on the Land or in any building now or hereafter standing on the Land or any part thereof, including, without limitation, the Project Facility (collectively, the "*Improvements*");

(b) the furniture, furnishings, equipment, machinery and other tangible personal property now or hereafter used in connection with the operation of the Project Facility and further together with all repairs, replacements, improvements, substitutions and renewals thereof and therefor, and all parts, accessories and additions incorporated therein or affixed thereon;

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

(d) all leases, subleases, licenses, contract rights, general intangibles and other agreements affecting the use, operation or occupancy of all or any portion of the Improvements or the Land now or hereafter entered into, and the right to receive and apply the rents, issues and profits of the Mortgaged Property or the other real property described above to the payment of the Mortgage Indebtedness, *provided, however*, that so long as there exists no Event of Default or event which with the passage of time or giving of notice would constitute an Event of Default, the Institution shall have a revocable license to collect and receive rents, issues and profits and to retain, use and enjoy such rents, issues and profits;

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

(f) all right, title and interest of the Institution in and to all contracts from time to time executed by the Institution or any manager or agent on its behalf relating to the ownership, construction, equipping, reconstruction, maintenance, repair, operation, occupancy, sale or financing of the Mortgaged Property, or any part thereof, and all agreements relating to the purchase or lease of any portion of the Mortgaged Property, together with the right to exercise such options:

(g) all consents, licenses, building permits, certificates of occupancy and other governmental approvals required from any Regulatory Body relating to construction, reconstruction, equipping, completion, occupancy, use or operation of the Mortgaged Property or any part thereof, and all drawings, plans, specifications, Contract Documents and similar or related items relating to the Mortgaged Property;

(h) all other proceeds of the conversion, whether voluntary or involuntary, of the Mortgaged Property or any other Property or rights encumbered or conveyed hereby into cash or liquidated claims, including, without limitation, all title insurance, hazard insurance (subject to paragraph e above), Condemnation and other awards;

(i) all Gross Revenues, subject to any restrictions in the Charter School's Act (but only to the extent applicable) with respect to the pledge and assignment of the portion of the Gross Revenues constituting Per Pupil Aid; and

(j) all extensions, additions, substitutions and accessions with respect to any of the foregoing.

(Section 2.01)

Security Agreement

The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of the Institution in the Mortgaged Property, including personal property used by the Institution in connection with the operation of the Mortgaged Property. The Mortgage shall also constitute a security agreement under the Uniform Commercial Code of the State of New York (the "State") so that the Issuer shall have and may enforce a security interest in any or all of the Mortgaged Property, in addition to (but not in limitation of) the Lien upon that portion of the Mortgaged Property constituting part of the realty imposed by the foregoing provisions hereof, such security interest to attach at the earliest moment permitted by law and also to include and attach to all additions and accessions thereto, all substitutions and replacements therefor, all proceeds thereof, including insurance and condemnation proceeds, and all contract rights, rental or lease payments and general intangibles of the Institution obtained in connection with or relating to the Mortgaged Property as well as any and all items of property in the foregoing classifications which are hereafter acquired.

(Section 2.02)

Performance of Covenants

The Institution hereby covenants that it will faithfully observe and perform, or cause to be observed and performed, at all times, any and all covenants, undertakings, stipulations and provisions on its part to be observed or performed contained in the Mortgage, the Loan Agreement and the other Bond Documents executed by it.

(Section 2.04)

Priority of Lien of Mortgage; Discharge of Liens and Encumbrances

(a) The Institution hereby represents and warrants that, except for Permitted Encumbrances, the Institution is lawfully seized of the estate conveyed hereby, has the right to grant and convey its Mortgaged Property, and will warrant and defend title to the Mortgaged Property against all claims and demands, excepting the Permitted Encumbrances.

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(b) The Institution shall not create or permit nor suffer to be permitted or created any Lien, except for the Lien of the Mortgage and the Permitted Encumbrances, upon the Mortgaged Property or any part thereof, without the prior written consent of the Issuer, which consent shall not be unreasonably withheld.

(c) Notwithstanding the provisions of Section 2.05(b), the Institution may in good faith contest any such Lien, *provided that* the Institution (1) first shall have notified the Issuer of such contest, (2) there is no default or Event of Default under any of the Bond Documents, (3) shall have set aside adequate reserves for the discharge of any such Lien and furnished evidence thereof reasonably satisfactory to the Issuer, and (4) demonstrates to the reasonable satisfaction of the Issuer that the failure to discharge any such Lien will not impair or adversely affect the Lien of the Mortgage or the Mortgaged Property or any part thereof or the Bond proceeds or any funds of the Issuer applicable to the acquisition, reconstruction, construction or equipping of the Mortgaged Property to loss or forfeiture.

(Section 2.05)

Payment of Principal and Interest on the Series 2011 Bonds; Payment of Amounts Due under the Loan Agreement and other Bond Documents

The Institution hereby covenants that it will promptly pay, or cause to be paid, payments pursuant to the Loan Agreement in an amount sufficient to pay the principal of, and premium, if any, and interest on, the Series 2011 Bonds at the place, on the dates and in the manner provided therein, and will promptly pay all other amounts due under the Loan Agreement and other Bond Documents. All covenants, conditions and agreements contained in the Bonds, the Loan Agreement, and the other Bond Documents are hereby made a part of the Mortgage to the same extent and with the same force as if fully set forth herein.

(Section 2.06)

Delegation to Issuer

The Institution irrevocably designates the Issuer as the Institution's agent and attorney-in-fact, in accordance with the Mortgage, and irrevocably authorizes the Issuer to perform or observe on the Institution's behalf any obligation that the Institution fails to perform hereunder or under any Bond Document. Such appointment of the Issuer as the Institution's attorney-in-fact is coupled with an interest and hence irrevocable. The Institution shall reimburse the Issuer for any advances or expenditures that the Issuer makes or incurs in performing any such obligation or exercising any such right of the Institution. In performing any such obligation or right, the Issuer may enter the Mortgaged Property. Nothing in this paragraph imposes any obligation or duty on the Issuer.

(Section 2.07)

Representations, Warranties and Covenants of the Institution

(a) The Institution is the fee owner of the Land. The Institution has good and marketable title to the Mortgaged Property free and clear of all Liens, subject only to Permitted Encumbrances. The Mortgage is and will remain a valid and enforceable Lien on the Mortgaged Property.

(b) The Institution is a charter school organized and existing under and by virtue of the Education Law of the State and has the power to enter into and perform the Mortgage and the other Bond Documents executed by the Institution and to mortgage and pledge the Mortgaged Property in the manner and to the extent herein set forth.

(c) The Mortgage and the other Bond Documents executed by the Institution constitute valid and enforceable obligations according to their respective terms.

(d) Neither the execution and delivery of the Mortgage or the other Bond Documents executed by the Institution, the consummation of the transactions contemplated by the Mortgage or thereby, nor the fulfillment of or compliance with the provisions of the Mortgage or thereof will violate any provision of the Institution's Charter, or conflict with or result in a material breach of or default under any of the terms, conditions or provisions of any order,

judgment, Legal Requirement, restriction, agreement or instrument to which the Institution is a party to or by which the Institution or any of its Property is or may be bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Institution under the terms of any such instrument or agreement.

(e) The execution and delivery of the Mortgage by the Institution does not constitute a "fraudulent conveyance" within the meaning of Title 11 of the United States Code as now constituted or under any other applicable statute, and no bankruptcy or insolvency proceedings are pending or contemplated by or against the Institution.

(f) The Mortgaged Property and the operation thereof currently complies and will continue to comply in all material respects with all Legal Requirements.

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

(h) The Institution has (or, prior to commencement of construction and reconstruction or operation thereof, will have) all necessary certificates, licenses, authorizations, registrations, permits and approvals necessary for the commencement of the construction, renovation, equipping and the operation of the Mortgaged Property, including, but not limited to, all required environmental permits, all of which are (or prior to commencement of construction or operation thereof will be) in full force and effect and are not (and will not be), to the knowledge of the Institution, subject to any revocation, amendment, release, suspension, forfeiture or the like; and the present and contemplated use and occupancy of the Mortgaged Property does not conflict with or violate any such certificate, license, authorization, registration, permit or approval.

(i) The representations and warranties of the Institution set forth in the Loan Agreement and any other Bond Document to which it is a party are true and correct, and such representations and warranties are incorporated herein by reference and made a part hereof.

(Section 3.01)

Maintenance of and Modifications to the Mortgaged Property by the Institution

The Institution shall, at all times during the term of the Mortgage, (A) keep the Mortgaged Property in good condition and repair and preserve the same against waste, loss, damage, ordinary wear and tear excepted; (B) make all necessary repairs and replacements to the Mortgaged Property or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (C) not remove or demolish any portion of the Mortgaged Property or alter in any material respect the character of any improvement without the prior written consent of the Issue, except as permitted in the Loan Agreement; (D) not permit the Mortgaged Property to become deserted or abandoned; and (E) operate the Mortgaged Property in a sound and economic manner.

(Section 4.01)

Events of Default Defined

The following shall each be an "Event of Default" under the Mortgage and the terms "Event of Default" or "default" shall mean, whenever they are used in or with respect to the Mortgage, any one or more of the following events:

(a) a default in the due and punctual payment of principal of, and premium, if any, and interest on, the Series 2011 Bonds or any amount required to be paid by the Institution under the Loan Agreement or the other Bond Documents; or

(b) failure of the Institution to observe or perform any of the other covenants or conditions of or by the Institution to be performed under the terms of the Mortgage, the Series 2011 Bonds, or any other Bond Document (i) except as otherwise provided in paragraph (a) above, concerning the payment of money for a period of

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thirty (30) days after written notice from the Issuer or the Trustee, as may be applicable, that the same is due and payable; or (ii) for a period of sixty (60) days after written notice from the Issuer or the Trustee, as may be applicable, to observe or perform any non-monetary covenant or condition contained in the Mortgage, the Series 2011 Bonds, or any other Bond Document; *provided that* if any such failure concerning a non-monetary covenant or condition is susceptible to cure and cannot reasonably be cured within said sixty (60) day period, then the Institution shall have an additional thirty (30) day period to cure such failure and no Event of Default shall be deemed to exist hereunder so long as the Institution commences such cure within the initial sixty (60) day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) day period from the date of the Issuer's notice; *provided further* that if a different notice or grace period is specified under any other subsection of this Article with respect to a particular breach, or if another subsection of this Article applies to a particular breach and does not expressly provide for a notice or grace period, the specific provision shall control; or

(c) the occurrence of an Event of Default under any of the Series 2011 Bonds, the Loan Agreement, or any other Bond Document; or

(d) if any warranty, representation, certification, financial statement or other information made or furnished to induce the Issuer to issue the Series 2011 Bonds, or made or furnished, at any time, in or pursuant to the terms of the Mortgage or otherwise by the Institution, shall prove to have been false or misleading in any material respect when made; or

(e) an Event of Bankruptcy shall have occurred; or

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

(g) the Mortgaged Property, or any part thereof, is in any manner, whether voluntarily or involuntarily, encumbered, assigned, leased, subleased, sold, transferred or conveyed, or the Institution threatens to encumber, assign, lease, sublease, sell, transfer or convey, the Mortgaged Property, or any part thereof, to any person, other than the Permitted Encumbrances; or

(h) the imposition of a Lien on the Mortgaged Property other than a Lien being contested as provided herein or a Permitted Encumbrance.

(Section 6.01)

Acceleration; Annulment of Acceleration

(a) Upon the occurrence of an Event of Default under the Mortgage, the Issuer may, by notice in writing delivered to the Institution, declare the whole of the Mortgage Indebtedness immediately due and payable, whereupon the same shall become and be immediately due and payable, anything in the Mortgage or any other Bond Document to the contrary notwithstanding. In such event, there shall be due and payable the total amount of the Mortgage Indebtedness plus all accrued but unpaid interest thereon and all interest which will accrue thereon to the date of payment, together with any premium payable thereon.

(b) At any time after the principal of the Series 2011 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 Mortgage, the Issuer may annul such declaration and its consequences. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

(Section 6.02)

Enforcement of Remedies

(a) Upon the occurrence of any Event of Default, the Issuer may proceed forthwith to protect and enforce its rights under the Mortgage and the other Bond Documents by such suits, actions or proceedings as the Issuer shall deem appropriate, including, without limitation, an action to foreclose the Lien of the Mortgage, in which case the Mortgaged Property or any interest therein may be sold for cash or credit in one or more interests and in any order or manner, (including the power of sale in effect from time to time under applicable State law).

(b) Upon the occurrence of any Event of Default, the Issuer may sue for, enforce payment of and receive any amounts due or becoming due from the Institution for principal, premium, interest or otherwise under any of the provisions of the Mortgage, or the other Bond Documents, without prejudice to any other right or remedy of the Issuer. The Issuer may also declare the entire indebtedness secured by the Mortgage immediately due and payable without presentment, demand, protest or notice of any kind and the Issuer may take any action permitted at law or in equity, without notice or demand, as it deems advisable to protect and enforce its rights against the Institution and the Mortgaged Property.

(c) Regardless of the happening of an Event of Default, the Issuer may institute and maintain such suits and proceedings as the Issuer may be advised shall be necessary or expedient to prevent any impairment of the security under the Mortgage by any acts which may be unlawful or in violation of the Mortgage, or to preserve or protect the interests of the Issuer.

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

(e) Upon the occurrence of any Event of Default under the Mortgage, the Institution, upon demand of the Issuer, shall forthwith surrender the possession of, and it shall be lawful for the Issuer, by such officer or agent as it may appoint, to take possession of, all or any part of the Mortgaged Property, together with the books, papers and accounts of the Institution pertaining thereto, and to hold, operate and manage the same, and from time to time to make all needed repairs and improvements as the Issuer shall deem wise, the Issuer may sell the Mortgaged Property or any part thereof, or lease the Mortgaged Property or any part thereof in the name and for the account of the Institution, collect, receive and sequester the rents, revenues, earnings, income, products and profits therefrom, and pay out of the same all proper costs and expenses of taking, holding, leasing, selling and managing the Mortgaged Property, including reasonable compensation to the Issuer and its agents and counsel, and any charges of the Issuer hereunder, and any taxes and other charges prior to the Lien of the Mortgage which the Issuer may deem it wise to pay, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received in accordance with the provisions of Section 11.11 of the Indenture.

Whenever all that is due under the Series 2011 Bonds and the other Bond Documents, including any amounts which may have been accelerated pursuant to Section 6.02 of the Mortgage, shall have been paid and all defaults made good, the Issuer shall surrender possession to the Institution, the same right of entry, however, to exist upon any subsequent Event of Default.

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

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enacted. The Institution, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure of the Mortgage.

(g) The Issuer shall have the rights and remedies of a secured party under the Uniform Commercial Code of the State.

(Section 6.03)

Waiver and Non-Waiver of Event of Default

(a) The Issuer may, in its discretion, agree to waive any Event of Default under the Mortgage and its consequences and annul any acceleration in accordance with Section 6.02 of the Mortgage. No such waiver shall extend to or affect any other existing or any subsequent Event of Default.

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

(Section 6.08)

Covenants Run with the Land

All of the grants, covenants, terms, provisions and conditions herein shall run with the Land and shall apply to, bind and inure to the benefit of the parties hereto, the Owners of the Series 2011 Bonds and their successors and assigns.

(Section 7.07)

Tax Laws

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

(Section 7.11)

SUMMARY OF CERTAIN PROVISIONS OF THE CUSTODY AGREEMENT

The following is a summary of certain provisions of the Custody Agreement. This summary does not purport to be complete and reference is made to the Custody Agreement for full and complete statements of its provisions.

Representation of the Institution

The School District of the City of Buffalo identified on Exhibit "A" attached to the Custody Agreement is the source for not less than fifty percent (50%) of the Per Pupil Aid payable to the Institution.

(Section 2.1(c))

Appointment of the Custodian

The Custodian is appointed by the Institution as custody agent under the Custody Agreement, and the Custodian agrees to act as such and to accept all cash, other amounts, instruments, securities and Investment Securities to be delivered to or held by the Custodian pursuant to the terms of the Custody Agreement. The Custodian shall establish one or more segregated accounts (the "Accounts") into which it shall deposit all cash, instruments and securities received under the Custody Agreement. The Custodian shall hold and safeguard the Accounts (and the cash, instruments and securities on deposit in the Custody Agreement) during the term of the Custody Agreement.

(Section 3.1(a))

Covenants of the Trustee

The Trustee covenants and agrees with the Institution and the Custodian that from and after the date of the Custody Agreement until the Series 2011 Bonds are paid in full:

(a) The Trustee shall prepare a Custody Agreement Notice with respect to each period from and including February 1, 2011, and from and including each succeeding Bi-Monthly Payment Date, through and including the calendar day preceding each subsequent Bi-Monthly Payment Date (each a "Per Pupil Aid Funding Period"), certifying the respective aggregate amounts to be transferred by the Custodian to the Trustee during the applicable Per Pupil Aid Funding Period with respect to each of the following:

(i) for deposit to the Bond Fund, no later than the tenth (10th) day of each January, March, May, July, September and November, commencing March 10, 2011, one sixth (1/6) of the interest coming due on all Bonds, on the immediately succeeding Interest Payment Date for such Bonds, on the immediately succeeding Interest Payment Date for such Bonds, provided, however, that on March 10, 2011 and May 10, 2011 such amount shall be equal to one-half (1/2) of the interest coming due on the Bonds, on the first Interest Payment Date;

(ii) for deposit to the Bond Fund, no later than the tenth (10th) day of each January, March, May, July, September and November, commencing March 10, 2011, one sixth (1/6) of the principal coming due on all Bonds, on the immediately succeeding Principal Payment Date for such Bonds, provided that on March 10, 2011, May 10, 2011, July 10, 2011, September 10, 2011 and November 10, 2011 such amount shall be equal to one-fifth (1/5) of the principal coming due on the Bonds on the first Principal Payment Date;

(iii) for deposit to the Debt Service Reserve Fund established under the Indenture, (i) with respect to the first, second, third, fourth, fifth and each subsequent Per Pupil Aid Funding Period beginning after any transfer from the Debt Service Reserve Fund which (x) results from a deficiency in the Bond Fund and (y) results in a deficiency in the Debt Service Reserve Fund which remains upon completion of all applications and other transfers of funds under the Indenture on the date of such transfer the respective amounts necessary to cause the aggregate amount so deposited since the date of such transfer to equal, respectively, one-sixth (1/6), two-sixths (2/6), three-sixths (3/6), four-sixths (4/6), five-sixths (5/6) and six-sixths (6/6) of the amount of such Debt Service Reserve Fund deficiency; and

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(b) The Trustee agrees to deliver the applicable Custody Agreement Notice to the Custodian and the Institution at least five (5) Business Days before each applicable Bi-Monthly Payment Date, provided, however that, notwithstanding the provisions of Section 4.1(a) above, it shall not be necessary for the Trustee to prepare a Custody Agreement Notice with respect to any period described in the Custody Agreement if the respective aggregate amounts to be transferred by the Custodian to the Trustee are the same as such amounts as certified in the most recent Custody Agreement Notice delivered by the Trustee.

(c) Upon receipt of any moneys pursuant to the Custody Agreement or from the Institution, the Trustee shall immediately deposit the moneys in the appropriate funds and accounts held by the Trustee in accordance with the Indenture.

(d) The Trustee shall immediately notify the Custodian and the Institution of any failure by the Custodian to transfer to the Trustee the amount of moneys described in the Custody Agreement Notice by seven (7) Business Days subsequent to a Bi-Monthly Payment Date.

(Section 4.1)

Covenants of the Institution

The Institution covenants and agrees with the Custodian and the Trustee that from and after the date of the Custody Agreement until the Series 2011 Bonds are paid in full:

(a) The Institution has provided and shall keep in full force and effect written instructions to the School District or Districts identified on Exhibit "A" attached to the Custody Agreement (as amended from time to time) directing the respective School District to pay directly to the Custodian, when due, any and all amounts of Per Pupil Aid payable from time to time by such School District(s) to the Institution. The Institution covenants and agrees that on each Bi-Monthly Payment Date, the Institution shall have given direction to one or more School District(s) constituting in the aggregate School Districts from whom not less than fifty percent (50%) of the total Per Pupil Aid is payable (the "Funding Requirement"). In the event that the School District or School Districts identified on Exhibit "A" attached to the Custody Agreement provide at any time during the term of the Custody Agreement in the aggregate less than the Funding Requirement to the Institution on any Bi-Monthly Payment Date, the Institution shall (1) notify the Custodian and the Trustee, (2) amend Exhibit "A" to identify such additional School District or Districts as shall be required to satisfy the Funding Requirement and (3) provide written instructions to each such additional School District to pay directly to the Custodian any and all amounts of Per Pupil Aid payable thereafter from time to time by such School District to the Institution. The Institution shall provide copies of all instructions, reports, notices and other information provided to or received from the School District or Districts identified on Exhibit "A" attached to the Custody Agreement, with respect to such Per Pupil Aid, to the Custodian and the Trustee. In the event that more than one School District is identified on Exhibit "A" and the Funding Requirement may be satisfied without one or more of the identified School Districts, the Institution may with the consent of the Custodian and the Trustee amend Exhibit "A" to remove such School District or Districts and revoke the direction to the respective School District to pay Per Pupil Aid to the Custodian, provided that no Event of Default under the Custody Agreement or under the other Bond Documents shall have occurred and be continuing.

(b) The Institution shall pay over to the Custodian any and all amounts of Per Pupil Aid paid by the School District or Districts identified on Exhibit "A" attached to the Custody Agreement immediately upon receipt by the Institution.

(c) The Institution irrevocably directs the Custodian pursuant to the Custody Agreement to deposit with the Trustee, immediately upon receipt by the Custodian of a payment of Per Pupil 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 Trustee with respect to such period, which amount shall not exceed the amounts required to be transferred pursuant to Section 4.1(a) of the Custody Agreement.

(d) The Institution agrees to provide the Trustee in a timely fashion such information as may be reasonably required by the Trustee in order to permit the Trustee to prepare each Custody Agreement Notice.

(Section 4.2)

Covenants of the Custodian

The Custodian covenants and agrees with the Institution and the Trustee that from and after the date of the Custody Agreement until the Series 2011 Bonds are paid in full:

(a) The Custodian shall establish one account under the Custody Agreement namely the Enterprise Charter School Series 2011 Per Pupil Aid Account (the "Aid Account") for the deposit of moneys received pursuant to the Custody Agreement.

(b) The Custodian shall immediately deposit all Per Pupil Aid received pursuant to the Custody Agreement into the Aid Account.

(c) Upon receipt and deposit of Per Pupil Aid pursuant to the Custody Agreement, the Custodian shall immediately transfer to the Trustee the amount of moneys from the Aid Account described in the then applicable Custody Agreement Notices, along with any deficiency in amounts described in prior Custody Agreement Notices, to the extent necessary, along with all other amounts previously transferred with respect thereto to fully fund the requirements described in the Custody Agreement.

(d) The Custodian shall transfer moneys, if any, remaining credited to the Aid Account after the completion of all transfers described in the then applicable Custody Agreement Notices within two (2) Business Days after completion of all transfers to the Trustee immediately to the Institution by wire transfer in immediately available funds unless the Custodian receives written instructions from the Institution to the contrary.

(e) The Custodian shall immediately notify the Trustee and the Institution of any failure to receive payment of Per Pupil Aid within one (1) Business Day of a Bi-Monthly Payment Date.

(f) The Custodian shall, at all times, maintain accurate books and records with respect to the moneys received and Investment Securities held pursuant to the Custody Agreement. The Custodian agrees that the Institution and the Trustee shall have the right to audit the books and records of the Custodian relating to said moneys and Investment Securities at any time, and from time to time, upon reasonable notice.

(g) Moneys held in the Aid Account shall not be invested.

(h) The Custodian shall, within fifteen (15) days after the end of each month, furnish to the Institution and the Trustee and upon request to the Issuer and each Interested Bondholder commencing in the month following the month in which the Bonds are delivered, and during each month thereafter, a report on the status of the Aid Account showing at least the balance in each such fund or account as of the first day of the preceding month, the total of deposits to (including interest on investments) and the total of disbursements from each such fund or account during such preceding month, the dates of such deposits and disbursements during such preceding month, and the balance in each such fund or account on the last day of the preceding month. The Custodian shall furnish copies of all checks, instructions, reports, notices and other information received from any School District to the Institution and the Trustee promptly upon receipt of the Custody Agreement.

(Section 4.3)

Default

(a) Any one or more of the following events shall constitute an "Event of Default" under the Custody Agreement:

(i) The failure of the Custodian, the Institution or the Trustee to make or cause to be made any payment or observe any term, condition or covenant required of the Custody Agreement under Article IV of the Custody Agreement within two (2) Business Days after receipt of written notice specifying the nature of such default;

(ii) The failure of the Custodian, the Institution or the Trustee to observe or perform any of the terms, covenants or conditions applicable to it (other than as described in clause 5.1(a)(i) of the Custody Agreement) within thirty (30) days after written notice specifying the nature of such default; or

(iii) Any direction by the Institution (A) to a School District identified on Exhibit "A" to make payments of Per Pupil Aid to any Person other than the Custodian, or (B) to the Custodian to apply

Appendix D

Per Pupil Aid in any manner which is inconsistent with the express requirements of the Custody Agreement.

(Section 5.1)

Remedies on Default

Whenever any Event of Default under the Custody Agreement by one of the parties thereto shall have occurred and be continuing after the applicable notice and cure periods, 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.

(Section 5.2)

Term

(a) The term of the Custody Agreement shall commence upon the Closing Date.

(b) Subject to the prior written consent of the Trustee, which consent shall not be unreasonably withheld, the Custody Agreement shall terminate and the obligations of the Institution and the Custodian created under the Custody Agreement shall be discharged upon the irrevocable payment in full of the Series 2011 Bonds, *provided that* no Event of Default has theretofore occurred and is continuing under the Custody Agreement or under the other Bond Documents, and *provided further that* the provisions of the Custody Agreement which expressly survive termination or discharge of the Custody Agreement shall survive.

(Section 6.1)

Applicable Law

The Custody Agreement shall be construed in accordance with and governed exclusively by the applicable laws of the State without regard to conflicts of laws principles.

(Section 6.3)

Amendments, Changes and Modifications

The Custody Agreement may not be amended, changed, modified, altered or terminated, except in accordance with the Indenture and except as provided in Section 6.10 of the Custody Agreement.

(Section 6.6)

Amendment in Connection with Permitted Long-Term Indebtedness

The Institution, the Trustee and the Custodian shall enter into an amendment of the Custody Agreement as requested by a provider of Long-Term Indebtedness permitted under Section 8A of the Loan Agreement and secured by a Lien on Gross Revenues which is equal to the Lien of the Trustee in Gross Revenues to provide for the right of such provider to receive, and to deliver to the Custodian a Custody Agreement Notice with respect to, amounts in respect of Per Pupil Aid sufficient to pay Debt Service as and when due on Long-Term Indebtedness held by such provider.

(Section 6.10)

APPENDIX E
PROPOSED FORM OF CONTINUING DISCLOSURE AGREEMENT

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CONTINUING DISCLOSURE AGREEMENT

THIS CONTINUING DISCLOSURE AGREEMENT (this "Agreement"), dated as of February 1, 2011, by and between **ENTERPRISE CHARTER SCHOOL**, a New York education corporation (the "Institution"), and **MANUFACTURERS AND TRADERS TRUST COMPANY**, as trustee (the "Trustee") under the Indenture of Trust, dated as of February 1, 2011 (the "Indenture"), between the Buffalo and Erie County Industrial Land Development Corporation, a not-for-profit local development corporation organized under the laws of the State of New York (the "Issuer"), and the Trustee, is executed and delivered in connection with the issuance by the Issuer of \$7,125,000 aggregate principal amount of its Tax-Exempt Revenue Bonds (Enterprise Charter School Project), Series 2011A (the "Series A Bonds") and \$220,000 aggregate principal amount of its Taxable Revenue Bonds (Enterprise Charter School Project), Series 2011B (together with the Series A Bonds, the "Bonds"). The proceeds of the Bonds are being loaned by the Issuer to the Institution pursuant to the Loan Agreement, dated as of February 1, 2011 (the "Loan Agreement"), between the Issuer and the Institution. Capitalized terms used in this Agreement which are not otherwise defined herein shall have the respective meanings given to those terms in Article IV hereof.

ARTICLE I

The Undertaking

Section 1.1. Purpose; No Issuer Responsibility or Liability. This Agreement shall constitute a written undertaking for the benefit of the holders of the Bonds and is being executed and delivered solely to assist the Participating Underwriter in complying with subsection (b)(5) of the Rule. The Institution and the Trustee acknowledge that the Issuer has undertaken no responsibility, and shall not be required to undertake any responsibility, and shall have no liability to any person, including any holder of the Bonds, with respect to any reports, notices or disclosures that are part of such undertaking.

Section 1.2. Annual Financial Information. (a) The Institution shall provide to the Trustee Annual Financial Information with respect to each fiscal year of the Institution, commencing with its fiscal year ending June 30, 2011, by no later than the 150th day after the end of each such fiscal year. The Trustee shall provide notice in writing to the Institution that such Annual Financial Information is required to be provided by such date, at least 30 days but not more than 60 days in advance of such date. The Trustee shall provide such Annual Financial Information to the MSRB through the EMMA System within five business days after receipt by the Trustee.

(b) The Trustee shall provide, in a timely manner, notice of any failure of the Institution or the Trustee to provide the Annual Financial Information by the date specified in subsection (a) above, in each case to the MSRB through the EMMA System and, if such failure is of the Institution, to the Institution.

Section 1.3. Quarterly Financial Information. (a) The Institution shall provide to the Trustee Quarterly Financial Information with respect to each fiscal quarter of the Institution, commencing with its fiscal quarter ending March 31, 2011, by no later than the 45th day after the end of each such fiscal quarter. The Trustee shall provide such Quarterly Financial Information to the MSRB through the EMMA System within five business days after receipt by the Trustee.

(b) The Trustee shall provide, in a timely manner, notice of any failure of the Institution or the Trustee to provide the Quarterly Financial Information by the date specified in

subsection (a) above, in each case to the MSRB through the EMMA System and, if such failure is of the Institution, to the Institution.

Section 1.4. Notice Events. (a) If a Notice Event occurs, the Institution shall provide, in a timely manner (but in all cases in sufficient time for the Trustee to send notice thereof to the MSRB through the EMMA System within ten business days after the occurrence of such Notice Event pursuant to the next following sentence), written notice of such Notice Event to the Trustee. The Trustee shall send notice of such Notice Event to the MSRB through the EMMA System not later than ten business days after the occurrence of such Notice Event.

(b) The Trustee shall promptly advise the Institution whenever, in the course of performing its duties as Trustee under the Indenture, the Trustee has actual notice of the occurrence of any event which would require the Institution to provide notice of a Notice Event hereunder; *provided, however*, that the failure of the Trustee so to advise the Institution shall not constitute a breach by the Trustee of any of its duties and responsibilities under this Agreement or the Indenture or relieve the Institution of any of its responsibilities or obligations hereunder or under any other instrument or agreement relating to the Bonds.

Section 1.5. Additional Disclosure Obligations. The Institution acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933, as amended, and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, as amended, may apply to the Institution, and that under some circumstances compliance with this Agreement, without additional disclosures or other action, may not fully discharge all duties and obligations of the Institution under such other laws.

Section 1.6. Additional Information. Nothing in this Agreement shall be deemed to prevent the Institution from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any information in any Annual Financial Information, Quarterly Financial Information or notice of a Notice Event in addition to that which is required by this Agreement. If the Institution chooses to include any information in any Annual Financial Information, Quarterly Financial Information or notice of a Notice Event in addition to that which is specifically required by this Agreement, the Institution shall have no obligation under this Agreement to update such information or include it in any future Annual Financial Information, Quarterly Financial Information or notice of a Notice Event.

Section 1.7. No Previous Non-Compliance. The Institution represents that it has not failed to comply in any material respect with any previous undertaking in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.

ARTICLE II

Operating Rules

Section 2.1. Reference to Other Agreements. It shall be sufficient for purposes of Section 1.2 hereof if the Institution provides Annual Financial Information or Quarterly Financial Information by specific reference to documents (a) either (i) provided to the MSRB through the EMMA System or (ii) filed with the SEC, or (b) if such document is a "final official statement" (as defined in the Rule), available from the MSRB.

Section 2.2. Submission of Information. Annual Financial Information and Quarterly Financial Information may be provided in one document or multiple documents, and at one time or in part from time to time.

Section 2.3. Event Notices. Each notice of a Notice Event given by the Institution to the Trustee shall be so captioned and shall prominently state the title, date and CUSIP numbers of the Bonds.

Section 2.4. Fiscal Year. Annual Financial Information shall be provided at least annually notwithstanding any fiscal year longer than twelve calendar months. The Institution's current fiscal year consists of the period from and including July 1 of one calendar year to and including June 30 of the next following calendar year, and the Institution shall promptly notify the Trustee in writing of each change in its fiscal year. The Trustee shall provide such notice to the MSRB through the EMMA System within ten business days after receipt by the Trustee.

ARTICLE III

Termination, Amendment and Enforcement

Section 3.1. Termination. (a) If the Institution's obligations under the Loan Agreement are assumed in full by some other entity, such person shall be responsible for compliance with this Agreement in the same manner as if it were the Institution, and thereupon the Institution shall have no further responsibility hereunder.

(b) The Institution's and the Trustee's obligation under this Agreement shall terminate upon a legal defeasance of all of the Bonds pursuant to Article 10 of the Indenture or upon the prior redemption or payment in full of all of the Bonds.

(c) This Agreement, or any provision hereof, shall be null and void and of no further force and effect in the event that (i) the Institution delivers to the Trustee an opinion of Counsel, addressed to the Institution and the Trustee, to the effect that those portions of the Rule which require this Agreement, or any specific provisions hereof (as appropriate), do not or no longer apply to the Bonds, whether because such portions of the Rule are invalid, have been repealed, or otherwise, all as shall be specified in such opinion, and (ii) the Trustee delivers copies of such opinion to the MSRB through the EMMA System and to the Issuer. The Trustee shall so deliver such opinion within one business day after receipt by the Trustee.

Section 3.2. Amendment. (a) This Agreement may be amended, by written agreement of the parties, without the consent of the holders of the Bonds (except to the extent required under clause (4)(ii) below), if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the Institution or the type of business conducted thereby, (2) this Agreement as so amended would have complied with the requirements of the Rule as of the date of this Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the Institution shall have delivered to the Trustee an opinion of Counsel, addressed to the Institution and the Trustee, to the same effect as set forth in clause (2) above, (4) either (i) the Institution shall have delivered to the Trustee an opinion of Counsel or a determination by a person, in each case unaffiliated with the Issuer or the Institution (such as bond counsel or the Trustee) and acceptable to the Institution, addressed to the Institution and the Trustee, to the effect that the amendment does not materially impair the interests of the holders of the Bonds or (ii) the holders of the Bonds consent to the amendment to this Agreement pursuant to the same procedures as are required for amendments to the Indenture with consent of holders of Bonds pursuant to Section 13.2 of the Indenture as in effect on the date of this Agreement, and (5) the Trustee shall have delivered copies of such opinion(s) and amendment to the MSRB through the EMMA System

and to the Issuer. The Trustee shall so deliver such opinion(s) and amendment with one business day after receipt by the Trustee.

(b) In addition to subsection (a) above, this Agreement may be amended and any provision of this Agreement may be waived, by written agreement of the parties, without the consent of the holders of the Bonds, if all of the following conditions are satisfied: (1) an amendment to the Rule is adopted, or a new or modified official interpretation of the Rule is issued, after the effective date of this Agreement which is applicable to this Agreement, (2) the Institution shall have delivered to the Trustee an opinion of Counsel, addressed to the Institution and the Trustee, to the effect that performance by the Institution and the Trustee under this Agreement as so amended or giving effect to such waiver, as the case may be, will not result in a violation of the Rule and (3) the Trustee shall have delivered copies of such opinion and amendment to the MSRB through the EMMA System and to the Issuer. The Trustee shall so deliver such opinion and amendment within one business day after receipt by the Trustee.

(c) To the extent any amendment to this Agreement results in a change in the type of financial information or operating data provided pursuant to this Agreement, the first Annual Financial Information or Quarterly Financial Information provided thereafter shall include a narrative explanation of the reasons for the amendment and the impact of the change.

(d) If an amendment is made to the accounting principles to be followed in preparing financial statements, the Annual Financial Information and Quarterly Financial Information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a qualitative and, to the extent reasonably feasible, quantitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information. Notice of such amendment shall be provided by the Institution to the Trustee, and the Trustee shall provide such notice to the MSRB through the EMMA System and to the Issuer, in each case within one business day after receipt by the Trustee.

Section 3.3. Benefit; Third-Party Beneficiaries; Enforcement. (a) The provisions of this Agreement shall inure solely to the benefit of the parties hereto, the Issuer, the Participating Underwriter and the holders from time to time of the Bonds. In addition, beneficial owners of Bonds held in a book-entry system by a securities depository shall also be third-party beneficiaries of this Agreement.

(b) Except as provided in this subsection (b), the provisions of this Agreement shall create no rights in any other person or entity. The obligations of the Institution to comply with the provisions of this Agreement shall be enforceable (i) in the case of enforcement of obligations to provide financial statements, financial information, operating data and notices, by any holder of Outstanding Bonds, or by the Trustee on behalf of the holders of Outstanding Bonds, or by the Participating Underwriter, or (ii), in the case of challenges to the adequacy of the financial statements, financial information and operating data so provided, by the Trustee on behalf of the holders of Outstanding Bonds or by the Participating Underwriter; *provided, however*, that the Trustee shall not be required to take any enforcement action except at the direction of the holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, who shall have provided the Trustee with adequate security and indemnity. The holders' and Trustee's rights to enforce the provisions of this Agreement shall be limited solely to a right, by action for specific performance, to compel performance of the Institution's obligations under this Agreement. In consideration of the third-party beneficiary status of beneficial owners of Bonds pursuant to subsection (a) of this Section, beneficial owners shall be deemed to be holders of Bonds for purposes of this subsection (b).

(c) Any failure by the Institution or the Trustee to perform in accordance with this Agreement shall not constitute a default or an Event of Default under the Indenture or the Loan Agreement, and the rights and remedies provided by the Indenture or the Loan Agreement upon the occurrence of a default or an Event of Default shall not apply to any such failure.

(d) This Agreement shall be construed and interpreted in accordance with the laws of the State of New York; *provided, however*, that to the extent this Agreement addresses matters of federal securities laws, including the Rule, this Agreement shall be construed in accordance with such federal securities laws and official interpretations thereof.

ARTICLE IV

Definitions

Section 4.1. Definitions. The following terms used in this Agreement shall have the following respective meanings:

(1) "Annual Financial Information" means, collectively, (i) Audited Financial Statements, (ii) information and calculations in reasonable detail, certified by the President or the chief financial officer of the Institution, demonstrating whether or not the Institution has complied with the financial covenants described in the section of the Official Statement captioned "SECURITY FOR THE SERIES 2011 BONDS – Financial Covenants" for its most recently ended fiscal year, and (iii) the information regarding amendments to this Agreement pursuant to Sections 3.2(c) and (d) of this Agreement.

(2) "Audited Financial Statements" means the annual financial statements, if any, of the Institution, as audited by a firm of independent certified public accountants. Audited Financial Statements shall be prepared in accordance with GAAP; *provided, however*, that the Institution may from time to time, if required by federal or state legal requirements, modify the accounting principles to be following in preparing its financial statements. The written notice of any such modification required by Section 3.2(d) hereof shall include a reference to the specific federal or state law or regulation describing such accounting principles.

(3) "Counsel" means any attorney or firm of attorneys nationally recognized as expert in federal securities laws.

(4) "EMMA System" means the Electronic Municipal Market Access online municipal securities disclosure system operated by the MSRB.

(5) "GAAP" means generally accepted accounting principles applicable to the preparation of financial statements of New York education corporations similar to the Institution.

(6) "MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15(B)(b)(1) of the Securities Exchange Act of 1934, as amended.

(7) "Notice Event" means any of the following events with respect to the Bonds, whether relating to the Institution or otherwise:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;

- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Securities, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or a similar event of the obligated person;
- (xiii) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, 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
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material.

(8) "Official Statement" means the Official Statement, dated February 9, 2011, of the Issuer and the Institution with respect to the Bonds.

(9) "Participating Underwriter" means M&T Securities, Inc.

(10) "Quarterly Financial Information" means, collectively, (i) Unaudited Financial Statements, and (ii) enrollment and wait list information (by grade) for the Institution.

(11) "Rule" means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended and in effect on and as of the date of this Agreement, including any official interpretations thereof issued either before or after the effective date of this Agreement which are applicable to this Agreement.

(12) "SEC" means the United States Securities and Exchange Commission.

(13) "Unaudited Financial Statements" means the unaudited quarterly financial statements of the Institution.

ARTICLE V

Miscellaneous

Section 5.1. Duties, Immunities and Liabilities of Trustee. Article 12 of the Indenture is hereby made applicable to this Agreement as if this Agreement were (solely for this purpose) contained in the Indenture. The Trustee shall have only such duties under this Agreement as are specifically set forth in this Agreement.

Section 5.2. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ENTERPRISE CHARTER SCHOOL

By: _____

Name:

Title:

**MANUFACTURERS AND TRADERS
TRUST COMPANY, AS TRUSTEE**

By: _____

Name:

Title:

Signature Page to Continuing Disclosure Agreement