

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

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**\$3,250,000 TAX-EXEMPT REVENUE BONDS  
(BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
PROJECT), SERIES 2015**

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**RECORD OF PROCEEDINGS**

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**CLOSING: NOVEMBER 3, 2015**

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

**\$3,250,000 TAX-EXEMPT REVENUE BONDS  
(BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
PROJECT), SERIES 2015**

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- Exhibit A: County Resolutions;
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  - Exhibit C: By-laws;
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**Tab No.**

**Instruments**

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**LOAN AGREEMENT**

by and between

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

and

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

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Dated as of November 1, 2015

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relating to

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

**\$3,250,000 TAX-EXEMPT REVENUE BONDS  
(BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
PROJECT), SERIES 2015**

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## LOAN AGREEMENT

**LOAN AGREEMENT**, dated as of November 1, 2015, by and between the **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit corporation constituting a local development corporation duly incorporated and existing under the laws of the State of New York (the “*Issuer*”), and **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**, a charter school organized under and existing by virtue of the New York State Education Law (the “*Institution*”).

### PRELIMINARY STATEMENT

The Issuer has adopted the Bond Resolution authorizing the issuance by the Issuer of its Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the “*Bonds*”) and simultaneously herewith executed and delivered the Bond Purchase Agreement dated November 1, 2015, by and between the Institution and First Niagara Bank, N.A. and issued the Bonds. The Institution, in order to enable it to obtain loans from the Issuer on the terms and conditions contained herein, requested the Issuer to adopt the Bond Resolution and issue the Bonds to provide moneys for loans to the Institution for, among other purposes, the payment of the Costs of the Project and costs of issuance of the Bonds. The principal amount of Bonds issued pursuant to the Bond Resolution and the Bond Purchase Agreement shall constitute the aggregate amount of the loan to the Institution made pursuant hereto.

**THE ISSUER AND THE COMPANY** hereby mutually covenant and agree as follows:

**SECTION 1. Definitions.** All terms which are defined in the Bond Purchase Agreement and not defined herein shall have the same meanings, respectively, herein as such terms are given in the Bond Purchase Agreement. In addition, as used herein, unless the context shall otherwise require the following terms shall have the following respective meanings.

“*Event of Default*” has the meaning given to such term in Section 30(a) hereof.

“*Issuer Fee*” means the fee payable to the Issuer attributable to the issuance of the Bonds, as more particularly described in Schedule A attached hereto and made a part hereof.

“*Loan Agreement*” means this Loan Agreement, as the same may be amended, supplemented or otherwise modified as permitted hereby and by the Bond Purchase Agreement.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in the Loan Agreement refer to the Loan Agreement.

**SECTION 2. Parties to Benefit; Compliance with Bond Purchase Agreement.** The Loan Agreement is executed in connection with the issuance of the Bonds and execution and delivery of the Bond Purchase Agreement by the Issuer. Except as otherwise expressly provided herein, nothing herein, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Issuer and the Institution, any right, remedy or claim, legal or equitable, hereunder or by reason hereof or of any provision hereof, the Loan Agreement and all the provisions hereof being intended to be and being for the sole and exclusive benefit of the Issuer and the Institution. The Issuer and the Institution agree that this Loan Agreement is executed in part to induce the purchase by others of the Bonds. Accordingly, all covenants and agreements on the part of the Issuer and the Institution set forth in this Loan Agreement are hereby declared to be for the benefit of the Holder of the Bonds. The Institution covenants and agrees that it will comply with the provisions of the Bond Purchase Agreement with respect to the Institution and that the Holder shall have the power, authority, rights and protections provided in the Bond Purchase Agreement. The Institution further covenants to use its best efforts to cause there to be obtained for the Issuer any documents or opinions required of the Issuer under the Bond Purchase Agreement.

**SECTION 3. Project Financing; Project Completion; Restricted Gifts.**

In order to provide moneys for the Costs of the Project, the Issuer has agreed to issue the Bonds to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 (the "*Land*") to be used to operate a charter school for grades 7-12 (the "*Facility*"); (b) to pay costs incidental to the issuance of the Bonds; and (c) to fund a debt service reserve fund, if any, required with respect to the Bonds (the foregoing collectively, the "*Project*").

**SECTION 4. The Project Fund.**

(a) Subject to the conditions hereof and of the Tax Compliance Agreement, the Issuer will, to the extent of moneys available in the Project Fund, cause the Institution to be reimbursed for, or pay, any costs and expenses incurred by the Institution which constitute Costs of the Project. To the extent that moneys are available therefor, moneys in the Project Fund shall be used for reimbursement to the Institution or payment of Costs of the Project to be reimbursed for, or pay, any costs and expenses incurred by the Institution which constitute Costs of the Project in accordance with the terms of hereof and of the Bond Purchase Agreement.

(b) (1) To the extent that moneys are available therefor, the Holder shall disburse Proceeds of the Bonds from the Project Fund to pay for Costs of the Project, all in accordance with the terms of the Bond Purchase Agreement.

(2) Except as otherwise disclosed and agreed to by the Issuer in writing, delivery of a Requisition by the Institution shall constitute a representation to the Issuer by the Institution that it has complied with all provisions of the Loan Agreement, the Bond Purchase Agreement and the Tax Compliance Agreement.

(c) The Institution shall permit the Issuer, the Holder and their respective Authorized Representatives, upon reasonable prior notice, at any time during normal business hours, to enter upon the Institution's property to inspect the Project.

(d) The Project shall be complete as of the Closing Date.

#### **SECTION 5. Reserved.**

**SECTION 6. Compliance with Laws.** The Institution shall comply with: (i) all Laws which, if not complied with, could have a Material Adverse Effect on the Institution; and (ii) any requirement of an insurance company writing insurance thereon. Anything contained in this Section to the contrary notwithstanding, the Institution shall have the right to contest the validity of any Laws or the application thereof at the Institution's sole cost and expense. During such contest, compliance with any such contested Laws may be deferred by the Institution, *provided that* prior to commencing any action or proceeding, administrative or judicial, contesting such Laws the Institution shall notify the Issuer and the Holder of the Institution's intention to contest such Laws and, if the Issuer or the Holder reasonably requests, shall furnish to the Issuer and the Holder a surety bond, moneys or other security, satisfactory to the Issuer and the Holder, securing compliance with the contested Laws 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 Laws. Any such action or proceeding instituted by the Institution shall be commenced as soon as is reasonably possible after the assertion of the applicability to the Project or any part thereof of the contested Laws by a Governmental Authority, and shall be prosecuted to final adjudication or other final disposition with reasonable dispatch. Notwithstanding the furnishing of any bond, deposit or other security, the Institution promptly shall comply with any such Laws and compliance shall not be deferred if at any time the Project or any part thereof to which such contested Laws relates would, in the reasonable judgment of the Issuer or the Holder, be in substantial danger by reason of the Institution's noncompliance with such Laws of being sold, attached, forfeited, foreclosed, transferred, conveyed, assigned or otherwise subjected to any proceeding, equitable remedy, lien, charge, fee or penalty that would impair: (i) the interests or security of the Issuer or the Holder hereunder or under the Bond Purchase 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 hereunder or under the Bond Purchase Agreement; (iv) the ability of the Institution to fulfill the terms of any covenants or perform any of its obligations hereunder or under the Bond Purchase Agreement; or (v) the interests or security of the Holder under the Bond Purchase Agreement or its ability to enforce its rights thereunder;

#### **SECTION 7. Financial Obligations and Covenants.**

(a) Except to the extent that moneys are available therefor under the Bond Purchase Agreement or hereunder, and interest accrued but unpaid on investments, the Institution hereby unconditionally agrees to pay or cause to be paid, so long as Bonds are Outstanding, to 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 the Project, including cost of issuance of the Bonds, and other costs in connection with the issuance of the Bonds;

(iii) On each Interest Payment Date, the interest coming due on the Bonds on such Interest Payment Date;

(iv) On each Principal Payment Date, the principal amount coming due on the Bonds on such Principal Payment Date;

(v) On 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) Promptly after notice from the Issuer, but in any event not later than fifteen (15) 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 hereof; (C) to reimburse the Issuer for any external costs or expenses incurred by it attributable to the issuance of the Bonds or the financing 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 Bond Purchase Agreement in accordance with the terms thereof; and (E) for the fees and expenses of the Holder in connection with performance of their duties under the Bond Purchase Agreement;

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

(viii) Promptly upon demand by the Issuer, the Institution shall pay the Rebate Amount to the Department of the Treasury of the United States of America;

(ix) 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 premium and interest on, the Bonds, on the dates, in the amounts, at the times and in the manner provided in or pursuant to the Bonds or the Bond Purchase Agreement, whether at maturity, upon acceleration, redemption, purchase or otherwise; and

(x) Make all payments required under the Bond Purchase Agreement as and when the same become due.

The Issuer hereby directs the Institution, and the Institution hereby agrees, to make the payments required by this Section 7(a) as follows: (i) the payments required by paragraphs (a)(i), (vi) and if related to the Unassigned Rights directly to the Issuer, (vii) of this Section directly to the Issuer; (ii) the payments required by paragraph (viii) of this Section to the Department of Treasury of the United States of America; (iii) the payments required by

paragraph (x) of this Section as required under the Bond Purchase Agreement; (iv) the payments required by paragraph (ii) to the appropriate payee in accordance with the Bond Purchase Agreement; and (v) all other payments directly to the Holder for application in accordance herewith and with the Bonds and the Bond Purchase Agreement.

(b) All moneys paid by the Institution to the Holder pursuant hereto or otherwise held by the Holder shall be applied in accordance with the Bonds and the Bond Purchase Agreement in reduction of the Institution's Indebtedness to the Issuer hereunder, first, with respect to interest and, then, with respect to the principal amount of such Indebtedness and any other amounts payable under the Bonds, including without limitation any prepayment premium, provided that if an Event of Default shall have occurred and be continuing, all such moneys shall be applied in accordance with the Bond Purchase Agreement.

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

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

(d) The Institution, if no Event of Default would be caused thereby, shall have the right to make voluntary payments in any amount to the Holder, in accordance with, and subject to the terms of the Bonds.

In the event of a voluntary payment, the amount so paid shall be deposited with the Holder and applied in accordance with the Bonds and the Bond Purchase Agreement. Upon any voluntary payment by the Institution, the Issuer agrees to direct the Holder to redeem Bonds in accordance with the Bond Purchase Agreement; provided, however, that in the event such voluntary payment is in the sole judgment of the Issuer sufficient to pay all amounts then due hereunder and under the Bonds and the Bond Purchase Agreement, including the purchase or redemption of all Bonds Outstanding, the Issuer agrees, in accordance with the instructions of the Institution, to direct the Holder to purchase or redeem all Bonds Outstanding.

## **SECTION 8. Loan Covenants.**

(a) The Institution shall maintain, at all times while the Bonds remain Outstanding, the minimum Debt Service Coverage Ratio required under the Bond Purchase Agreement. The Debt Service Coverage Ratio shall be tested annually based on the annual financial statements of the Institution delivered to the Holder pursuant to Section 27(a)(i)(1) hereof. "Debt Service Coverage Ratio" shall mean the ratio of total change in net assets plus interest expense plus depreciation and amortization to total of interest expense plus current portion of long term debt.

(b) Reserved.

(c) So long as any of the Bonds shall remain Outstanding, the Institution shall not, nor shall it permit any subsidiary to, directly or indirectly: (i) create, assume, incur or in any manner become or remain liable in respect to, any Indebtedness secured by the Project or the Collateral; or (ii) create, assume, incur or suffer to exist or allow to be created, assumed or incurred or suffered to exist any Lien upon any of the Project or the Collateral now owned or hereafter acquired, excepting, however, Permitted Encumbrances.

(d) So long as any of the Bonds shall remain outstanding, the Institution shall not sell, transfer or convey, directly or indirectly, the Project Facility without the prior consent of the Holder, including any change in ownership or control.

(e) So long as any of the Bonds are outstanding, the Institution shall maintain and fund an escrow account with the Holder as required pursuant to Section 4.03 of the Mortgage. Notwithstanding anything herein to the contrary, no such escrow account shall be required so long as the Project is exempt from real estate taxes.

(f) So long as any of the Bonds are outstanding, the Institution shall maintain all operating accounts for the Project and its deposit accounts with the Holder; provided, however, that the Institution shall be permitted to maintain one or more deposit accounts at other financial institutions so long as the balance of all such deposit accounts does not, in the aggregate, exceed \$250,000.

(g) So long as any of the Bonds are outstanding, there shall be no event or happening that would constitute a Material Adverse Event with respect to the Institution and there is no litigation or proceeding pending or, to the Institution's knowledge, threatened against the Institution, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds or the Institution Documents.

## **SECTION 9. No Liability.**

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

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

(b) No order or decree of specific performance with respect to any of the obligations of the Issuer hereunder or under the Bond Documents to which it is a party 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 thirty (30) 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 thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (ii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Issuer an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it or any of its members, directors, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (A) agree to indemnify and hold harmless the Issuer and its members, directors, officers, agents and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Issuer, furnish to the Issuer satisfactory security to protect the Issuer and its members, 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 this 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 10. Security Interest in Gross Revenues.** Except as prohibited by the Charter Schools Act, as in effect from time to time, the Institution does hereby grant the Issuer a security interest in all right, title and interest of the Institution in the Project 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 the proceeds of the Gross Revenues.

The Institution represents and warrants that no part of the Gross Revenues or any right to receive or collect the same or the proceeds thereof is subject to any Lien and that the Gross Revenues pledged and assigned pursuant hereto are legally available to provide security for the Institution's performance hereunder, except as prohibited by the Charter Schools Act, as in effect from time to time. The Institution agrees that, it shall not hereafter create or permit the creation of any Lien in or other commitment of or with respect to the Gross Revenues.

**SECTION 11. 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 Holder, such payments shall be made directly to the Issuer or the Holder notwithstanding anything contained in this subdivision, but the Institution shall continue to deliver to the Holder for deposit in accordance with the Bond Purchase Agreement 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, redemption price of or interest 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 shall not be required solely by virtue of paragraph (a) of this Section, to deliver Gross Revenues to the Holder.

(c) Any Gross Revenues collected by the Institution that are not required to be paid to the Issuer or the Holder, as applicable, pursuant to this Section or Section 30(b)(iv) hereof 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 12. Mortgage; Warranty of Title; Utilities and Access.** At or before the delivery by the Issuer of the Bonds, the Institution shall execute and deliver to the Issuer the Mortgage, in recordable form, mortgaging the Mortgaged Property acceptable to the Issuer.

The Institution warrants and represents to the Issuer that: (i) it has good and insurable title to the Land and Improvements and good and insurable title to the Equipment, 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 the 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, use and operation by the Institution of the Project and the Mortgaged Property.

As a condition precedent to the Issuer's obligation to deliver such Bonds, the Institution agrees to provide the Title Insurance Policy and a current ALTA/ACSM survey or surveys, including a metes and bounds description, of such Mortgaged Property, certified to, among others, the Issuer and the Holder of the Title Policy and showing any structures, encroachments, rights-of-way, easements and other customary and relevant information to which the Mortgaged Property is subject.

The Institution warrants, represents and covenants that: (i) title to the Project and the Mortgaged Property shall be kept free from any encumbrances, Liens or commitments of any kind, other than 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. Reserved.**

**SECTION 14. Consent to Pledge and Assignment, Assignment of Mortgage and Assignment of Assignment of Rents.** The Institution consents to and authorizes the Assignment of Mortgage, the Pledge and Assignment and the Assignment of Assignment of Rents and the assignment, transfer or pledge by the Issuer to the Holder of the Issuer's rights to receive any or all of the payments required to be made pursuant to Section 7(a) hereof, any or all security interests granted by the Institution hereunder, including, without limitation, any security interest in the Equipment located at or in the Project and all funds and accounts established by the Bond Purchase Agreement to secure any payment or the performance of any obligation of the Institution hereunder or arising out of the transactions contemplated hereby whether or not the right to enforce such payment or performance shall be specifically assigned by the Issuer to the Holder. The Institution further agrees that the Issuer may pledge and assign to the Holder any and all of the Issuer's rights and remedies hereunder. Upon any pledge and assignment by the Issuer to the Holder authorized by this Section, the Holder 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 hereby 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 hereby and to performing all other obligations required to be performed by the Institution hereunder. Any realization upon any pledge made or security interest granted hereby shall not, by operation of law or otherwise, result in cancellation or termination hereof or the obligations of the Institution hereunder.

**SECTION 15. Additional Representation and Covenants.** 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 Bond Purchase Agreement, the Tax Compliance Agreement, the Bonds and the other Institution Documents; (B) to incur the Indebtedness contemplated hereby and thereby; and (C) to grant the Issuer a first lien and security interest in the Mortgaged Property and the Gross Revenues given by Section 10 hereof (and subject to the limitations set forth therein) and to execute and deliver the Mortgage; (ii) each of the Bond Purchase Agreement, the Loan Agreement, the Mortgage, the 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 Bond Purchase Agreement, the Loan Agreement, the Mortgage, the Security Agreement, the Gross Revenues and the other Institution Documents, do not violate, conflict with or constitute a default under the charter or by-laws of the Institution or 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 governmental authority, body, agency or other instrumentality 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, other than Permitted Encumbrances, prior to, or of equal rank with, the pledge thereof made pursuant hereto; and (ii) that all corporate action on the part of the Institution to authorize the pledge thereof and the granting of a security interest therein has been duly and validly taken. The Institution further covenants that it shall at all times, to the extent permitted by law, defend, preserve and protect all of the rights of the Issuer and the Holder thereunder and under the Mortgage against all claims and demands of all persons whomsoever.

**SECTION 16. Tax-Exempt Status of Institution.** The Institution represents 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 shall not perform any act or enter into any agreement which shall adversely affect such federal income tax status and shall conduct its operations in the manner which will conform to the standards necessary to qualify the Institution as an educational organization within the meaning of Section 501(c)(3) of the Code or any successor provision of federal income tax law; and (b) it shall not perform any act, enter into any agreement or use or permit the Project to be used in a manner, or for any trade or business unrelated to the educational purposes of the Institution, which could adversely affect the exclusion of interest on the Tax-Exempt Bonds from federal gross income pursuant to Section 103 of the Code.

**SECTION 17. Reserved.**

**SECTION 18. Maintenance of 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 governmental approvals, consents, licenses and permits 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 Holder (in its sole discretion), 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 entity 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 hereby shall be permitted unless (1) the same would not in the opinion of Bond Counsel adversely affect the exclusion of interest on any Bond from gross income for purposes of federal income taxation, (2) the Institution will not as a result thereof be in default hereunder, (3) the surviving, resulting or transferee corporation, as the case may be, is incorporated or qualified to do business 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 hereunder, under the Mortgage, the Bond Purchase Agreement, the Security Agreement and other Bond Documents, and furnishes to the Issuer and the Holder (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 hereof, and will meet the requirements of the Act, and (y) such other certificates and documents as the Issuer and the Holder may reasonably require to establish compliance with this Section.

**SECTION 19. Environmental Quality Review.** For the purpose of assisting the Issuer in making any findings or determinations which might be required by Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereunder (collectively, "SEQR"), the Institution agrees as follows:

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

(b) It has reviewed either:

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

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

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

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

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

**SECTION 20. Use and Possession of the Project.** Subject to the rights, duties and remedies of the Issuer hereunder and except as otherwise set forth herein, the Institution shall have 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 hereby, the foregoing shall not prohibit use or occupancy of the Project or the Mortgaged Property by persons other than the Institution or its staff or employees or the Institution's students or faculty 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 any Tax-Exempt Bonds from gross income for federal income tax purposes as evidenced by an Opinion of Bond Counsel delivered to the Issuer and the Holder.

**SECTION 21. Restrictions on Religious Use.** The Institution agrees that with respect to the Project or portion thereof, so long as the Project or portion thereof exists and unless and until the Project or portion thereof is sold for the fair market value thereof, the Project or portion thereof shall not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity for any religious denomination; *provided, however,* that the foregoing restriction shall not prohibit the free exercise of any religion; *provided, further, that* if at any time hereafter, in the opinion of Bond

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

**SECTION 22. Sale of the Project.** 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 Holder and the Issuer (each in their sole discretion), *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 Bond from gross income for federal income tax purposes; and (b) the Institution ~~pays to the Holder, an amount equal to the greater of:~~

(i) the amount, if any, which is sufficient to redeem or provide for payment in accordance with the Bond Purchase Agreement of any Outstanding Bonds required to be redeemed or deemed paid in order to preserve the exclusion of interest on 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 Bonds determined by dividing (1) the principal amount of Bonds issued to finance the portion of the Project being transferred, sold or conveyed (which principal amount shall be reasonably determined by the Issuer) by (2) the aggregate principal amount of Bonds issued.

Notwithstanding the foregoing, the Institution may remove Equipment that is part of the Project and was financed with the proceeds of Bonds in accordance with Section 23 hereof and grant or permit Permitted Encumbrances.

**SECTION 23. Maintenance, Repair and Replacement.** The Institution agrees that, throughout the term hereof, it shall, at its own expense, hold, operate and maintain the Project and the Mortgaged Property in a commercially reasonable manner, and keep 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 conducted. The Institution shall give the Issuer and the Holder 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 and 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 shall 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 24. Covenant as to Insurance.**

(a) At all times throughout the term of this Loan Agreement, including, without limitation, during any period of construction of the Project, the Institution shall maintain insurance, with insurance companies licensed to do business in the State with an A. M. Best Financial Strength Rating of no less than "A" and a size class rating of XIV or larger, against such risks, loss, damage and liability (including liability to third parties) and, except as otherwise specified herein, for such amounts as are customarily insured against by other enterprises of like size and type as that of the Institution, including, without limitation:

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

(ii) public liability insurance in accordance with customary insurance practices for similar operations with respect to the Project and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence, which insurance (A) will also provide coverage of the Institution's obligations of indemnity under Section 29 hereof; (B) may, with the consent of the Holder, be effected under overall blanket or excess coverage policies of the Institution or any Affiliate thereof, *provided, however*, that at least \$1,000,000 is effected by a comprehensive liability insurance policy; and (C) shall not contain any provisions for a deductible amount in excess of \$2,500 or for risk retention in any amount in excess of \$2,500 by the Institution;

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

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

(b) All insurance required by this Section above shall be procured and maintained in financially sound and generally-recognized, responsible insurance companies authorized to write such insurance in the State with an A.M. Best Financial Strength Rating of no less than "A".

(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 Holder 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 Holder in the mortgagee and lender loss payable clauses;

(ii) provide that there shall be no recourse against the Issuer or the Holder 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 Holder 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 Holder 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 Holder to the extent that such other insurance provides the Issuer or the Holder, 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 Holder until at least thirty (30) days after receipt by the Issuer and the Holder, respectively, of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

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

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

(d) Concurrently with the original issuance of the Bonds, the Institution shall deliver or cause to be delivered to the Issuer and the Holder certificates of insurance, and upon the written request of the Issuer or the Holder, duplicate copies of insurance policies and/or binders evidencing compliance with the insurance requirements of this Section. At least thirty (30) days prior to the expiration of any such policy, the Institution shall furnish the Issuer and the Holder with evidence that such policy has been renewed or replaced or is no longer required by this 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 Holder to collect from insurers for any loss covered by any insurance required to be obtained by this Section. The Institution shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section would or might be suspended or impaired.

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

**SECTION 25. Damage or Condemnation.** In the event of a taking of the Project or the Mortgaged Property or any portion thereof by eminent domain or condemnation, or of damage or destruction affecting all or part thereof, all property casualty insurance, condemnation or eminent domain proceeds shall be deposited with the Holder and, if not applied to reimburse

the Institution for costs incurred to repair or restore same in accordance with the terms and conditions applicable to disbursement of Bond Proceeds in Article IV of the Bond Purchase Agreement, shall be applied to the redemption of Outstanding Bonds on an Interest Payment Date next following such transfer in accordance with the Bond Purchase Agreement.

(i) If within one hundred eighty (180) days (or such longer period as the Issuer and the Institution may agree) after the Issuer receives actual notice or knowledge of the taking or damage, the Institution, with the consent of the Holder not to be unreasonably withheld, conditioned or delayed shall proceed to repair, replace or restore the same, or the affected portion thereof, including all Equipment and effects, to its original condition insofar as possible with such changes and additions as shall be appropriate to the needs of the Institution and approved in writing by the Holder. The funds required for such repair, replacement or restoration shall be paid, subject to such conditions and limitations as the Holder and the Issuer may impose, from the proceeds of insurance, condemnation or eminent domain awards received by reason of such occurrence and to the extent such proceeds are not sufficient, from funds to be provided by the Institution.

(ii) If the Institution elects not to repair, replace or restore the same, or the affected portion thereof, as set forth above, or fails to obtain Holder's consent, all of property casualty insurance, condemnation or eminent domain proceeds shall be applied to the redemption of Outstanding Bonds on an Interest Payment Date next following such transfer in accordance with the Bonds and the Bond Purchase Agreement.

(iii) The Issuer and the Bondholder shall have no obligation to replace, repair, rebuild or restore the Facility. There shall be no abatement or reduction in the amounts payable by the Institution under this Bond Purchase Agreement or the Bonds (whether or not the Facility is replaced, repaired, rebuilt or restored). The Institution shall promptly give notice thereof to the Issuer and the Bondholder.

**SECTION-26. Taxes and Assessments.** To the extent not exempt, the Institution shall pay when due at its own expense, and hold the Issuer harmless from, all taxes, assessments; water and sewer charges and other impositions, if any, or payments-in-lieu thereof, which may be levied or assessed upon the Project or any part thereof, and upon all ordinary costs of operating, maintaining, repairing and replacing the Project and its equipment. The Institution shall file exemption certificates as required by law. The Institution agrees to exhibit to the Holder and an Authorized Representative of the Issuer within ten (10) days after written demand by the Issuer, or the Holder, certificates or receipts issued by the appropriate authority showing full payment of all taxes, assessments, water and sewer charges and other impositions; *provided, however,* that the good faith contest of such impositions shall be deemed to be complete compliance with the requirements hereof if the Institution sets aside such reserves as may be required by good accounting practice. Notwithstanding the foregoing, the Holder or the Issuer, in each case in its sole discretion, after notice in writing to the Institution, may pay any such charges, taxes and assessments or payments-in-lieu thereof, if, in the reasonable judgment of the Issuer or the Holder, the Project or any part thereof would be in substantial danger by reason of the Institution's failure to pay such charges, taxes and assessments or payments-in-lieu thereof, 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 hereunder or under the Bond Purchase 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 hereunder or under the Bond Purchase Agreement; (iv) the ability of the Institution to fulfill the terms of any covenants or perform any of its obligations hereunder; or (v) the interests or security of the Holder under the Bond Purchase Agreement and the Mortgage or its ability to enforce its rights thereunder. The Institution agrees to reimburse the Holder or the Issuer for any such payment, with interest thereon from the date payment was made by the Holder or the Issuer at a rate equal to the highest rate of interest payable on any investment held by the Holder on the date such payment was made by the Holder or the Issuer.

To the extent that the Project is not exempt from the payment of real estate taxes at any point while the Bonds remain outstanding, the Institution shall pay (a) monthly to the Holder on or before the first day of each and every calendar month a sum equal to one-twelfth (1/12th) of the known or estimated yearly taxes, assessments, sewer rents, water rates and other liens and charges with respect to the Project and (b) an initial payment such that, when such monthly payments are added thereto, the total of such payments will be sufficient to pay such taxes, assessments, sewer rents, water rates and other liens and charges and, if applicable, such insurance premiums on or before the date when they become due. Such payments will be calculated in accordance with the Holder's standard practices. The Holder shall hold such payments in trust without obligation to pay interest thereon, except such interest as may be mandatory by any applicable statute, regulation or other law, to pay such taxes, assessments, sewer rents, water rates and other liens and charges and, if applicable, such insurance premiums within a reasonable time after they become due. If the total of such payments made by the Institution shall exceed the amount of such payments made by the Holder, such excess shall be held or credited by the Holder for the benefit of the Institution. If the total of such payments made by the Institution shall be less than the amount of such taxes, assessments, sewer rents, water rates and other liens and charges and, if applicable, such insurance premiums, then the Institution shall pay to the Holder any amount necessary to make up the deficiency on or before the date when any such amount shall be due:

## **SECTION 27. Reporting Requirements; Access to Records.**

### **(a) Reporting Requirements.**

(i) The Institution shall provide to the Holder and the Issuer, in form satisfactory to the Holder and the Issuer, promptly upon request by the Holder or the Issuer, all information relating to such Institution or to such Institution's business, operations, assets, affairs or condition (financial or otherwise) or to the Institution's Property or any portion thereof that is so requested. Without limiting the generality of the preceding sentence:

(1) Annual Financial Statements: The Institution shall provide to the Holder annually unqualified audited financial statements of the Institution, prepared by independent certified public accountants reasonably acceptable to the Holder, (including income balance sheet) within 120 days following fiscal year end;

(2) Periodic Financial Statements: The Institution shall provide to the Holder quarterly internally prepared interim financial statements of the Institution within 45 days of the end of each fiscal quarter; and

(3) Operating Budget. Within 120 days following the end of each of the Institution's fiscal years, the Institution shall provide to the Holder a copy of the Institution's operating budget for the then current fiscal year;

(4) Miscellaneous. On an annual basis, the Institution shall submit to the Holder a copy of its IRS form 990. Upon request of the Holder, the Institution shall supply the Holder with its annual enrollment statistics and such other financial or other information as the Holder may reasonably request from time to time; and

(5) Certification: On an annual basis within 150 days of the Institution's fiscal year end, a covenant compliance certificate executed by such Institution's chief executive and chief financial officers: (A) stating that the signers of the certificate have reviewed this Bond Purchase Agreement and the Loan Agreement and the operations and condition (financial or other) of such Institution and any Subsidiaries during the relevant period; and (B) stating that no Event of Default occurred during the period, or if an Event of Default did occur, describing its nature, the date(s) of its occurrence or period of existence and what action Institution has taken with respect thereto.

All financial statements furnished to the Holder and/or the Issuer pursuant to the terms hereof, will be prepared in accordance with GAAP, consistently applied, be in form and content satisfactory to the Holder, certified to be true and correct by the party offering such statement, and include a representation that Holder and Issuer may rely on such statements.

(ii) The Institution shall furnish or cause to be furnished to the Issuer and the Holder and such other persons as the Issuer or the Holder may designate prompt written notice, but in no event more than thirty (30) days after commencement, of any adverse litigation (A) seeking damages in excess of the applicable insurance coverage, or (B) in which an adverse determination may have a material adverse effect on the combined financial or operating condition of the Institution;

(iii) The Institution shall furnish or cause to be furnished to the Issuer and the Holder and such other persons as the Issuer or the Holder may designate prompt written notice of any pending formation, acquisition, merger, consolidation, change in ownership or dissolution of or by the Institution and, within ten (10) days after any of the foregoing become effective;

(iv) The Institution shall furnish or cause to be furnished to the Issuer and the Holder and such other persons as the Issuer or the Holder may designate, such reports with respect to the condition of, and material repairs, replacements, renovations, and maintenance, to the Project as the Issuer or the Holder may from time to time reasonably request;

(v) The Institution shall furnish or cause to be furnished to the Issuer and the Holder and such other persons as the Issuer or the Holder may designate copies of any detailed audit reports, management letters or recommendations, if any, submitted to the Institution by independent accountants in connection with their respective accounts or books or any audit of any of them;

(vi) The Institution shall furnish or cause to be furnished to the Issuer and the Holder and such other persons as the Issuer or the Holder may designate such other information respecting the business, property or the condition or operations, financial or otherwise, of the Institution as the Issuer or the Holder may from time to time reasonably request (other than information the Institution is required by law to keep confidential).

(b) *Access to Records.* At any and all reasonable times during normal business hours upon reasonable prior notice, and from time to time, permit the Issuer and the Holder, 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 its officers.

**SECTION 28. Opinion of Counsel to the Institution.** In addition to the documents required pursuant to the Bond Purchase Agreement, at or prior to the delivery of any Bonds there shall be delivered to the Issuer and the Holder an opinion or opinions of counsel to the Institution, in form and substance satisfactory to the Issuer and the Holder, addressed to the Issuer and the Holder and upon which Bond Counsel may expressly rely.

**SECTION 29. Indemnity by Institution.** (a) The Institution releases the Issuer and the Holder and their respective officers, directors, agents, officials, employees (and, as to the Issuer, members of its governing body) and any person who controls the Issuer or the Holder within the meaning of the 1933 Act from, and covenants and agrees to indemnify, hold harmless and defend the Issuer and the Holder and their respective officers, directors, employees, agents, members of its governing body, officials, grantors, beneficiaries and any person who controls such party within the meaning of the 1933 Act and employees and each of them (each an "*Indemnified Party*") from and against, any and all losses, claims, damages, demands, liabilities and expenses (including reasonable attorneys' fees and expenses, whether incurred in a third party action or an action to enforce this Loan Agreement), taxes, causes of action, suits, claims, demands and judgments of any nature, joint or several, by or on behalf of any person, except to the extent caused by the gross negligence or willful misconduct of an Indemnified Party, 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) any and all claims arising in connection with: (A) the issuance or sale of any Bonds or any certifications or representations made by any person other than the party seeking indemnification, including, but not limited to, any: (1) statement or information made by the Institution with respect to the Institution or the Project in any offering document or materials regarding the Bonds, the Project or the Institution or in the Tax Compliance Agreement or in any other certificate executed by the Institution which, at the time made, is misleading, untrue or incorrect in any material respect; (2) untrue statement or alleged untrue statement of a material fact relating to the Institution or the Project contained in any offering material relating to the sale of the Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to the Institution or the Project required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading; and (3) failure to properly register or otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold; and (B) the carrying out by the Institution of any of the transactions provided for in the Bond Documents;

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

(vii) any act or omission of the Institution or any of its members, agents, servants, employees or licensees in connection with this 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;

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

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

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

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

(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 hereunder nor in any way impair the obligations of the Institution under this Section.

(d) The provisions of this Section and the indemnification provided herein shall survive repayment of the Bonds. Notwithstanding anything to the contrary in this 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 this 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 shall not be deemed to constitute an employee, agent or servant of the Issuer or a person under the Issuer's control or supervision.

(e) In the event of any claim against any Indemnified Party by any employee or contractor of the Institution or anyone directly or indirectly employed by any of them or anyone ~~for whose acts any of them may be liable,~~ the obligations of the Institution hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

(f) The Institution and every assignee of the Institution's interest in this Loan Agreement hereby waive any and all of their rights against the Issuer and the Holder (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 hereof, not only its own liability in respect of the matters therein mentioned, but also the liability pursuant to this Section. Should an insurance carrier provide for the defense of an Indemnified Party in connection with any claim subject to indemnity under this Section, the Institution shall cause such insurance carrier (and the attorneys retained by such insurance carrier) to promptly provide such Indemnified Party with

such information regarding the status of such claims as the Indemnified Party may from time to time reasonably request, to immediately advise such Indemnified Party of any monetary verdict against it, and in no event shall the Institution permit a judgment to be entered against such Indemnified Party arising out of such claim without thirty (30) days' prior written notice to such Indemnified Party. Should the Institution provide the defense of any such claim directly, the attorneys selected by the Institution shall be subject to the prior approval of such Indemnified Party, and the Institution shall cause such attorneys to promptly provide such Indemnified Party with such information regarding the status of such claims as such Indemnified Party may from time to time reasonably request, to immediately advise such Indemnified Party of any monetary verdict against it, and in no event shall the Institution permit a judgment to be entered against such Indemnified Party arising out of such claim without thirty (30) days' prior written notice to such Indemnified Party.

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

### **SECTION 30. Defaults and Remedies.**

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

(i) the Institution shall default in the timely payment of any amount payable pursuant to Section 7 (a) hereof; or shall default in the payment of any other amounts required to be delivered or paid by or on behalf of the Institution in accordance herewith and such default continues for a period in excess of ten (10) days after written notice requiring the same to be remedied shall have been given to the Institution by the Issuer or the Holder; or

(ii) the Institution defaults in the due and punctual performance or observance of any other covenant, condition or agreement herein contained and such default continues for thirty (30) days after written notice requiring the same to be remedied shall have been given to the Institution by the Issuer or the Holder, *provided, however*, if the covenant, condition or agreement which the Institution has failed to observe or perform is of such a nature that it cannot reasonably be fully cured within such thirty (30) days, the Institution shall not be in default if the Institution commences a cure within such thirty (30) days and thereafter diligently proceeds with all action required to complete the cure and, in

any event, completes such cure within sixty (60) days of such written notice from the Holder and the Issuer; or

(iii) the occurrence of an Event of Default under any of the Bonds, the Bond Purchase Agreement or any other Bond Document which continues beyond any applicable grace or cure period; or

(iv) the Institution shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under any Debtor Relief Laws, (C) make a general assignment for the benefit of its general creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (E) be adjudicated insolvent or be liquidated, or (F) take corporate action for the purpose of any of the foregoing; or

(v) a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the Institution, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Institution, or any petition for any such relief shall be filed against the Institution and such petition shall not be dismissed or stayed within sixty (60) days; or

(vi) a petition shall be filed with a court having jurisdiction for an order directing or providing for the sale, disposition or distribution of all or substantially all of the property belonging to the Institution which petition shall remain undismissed or unstayed for an aggregate of sixty (60) days; or

(vii) an order of a court having jurisdiction shall be entered directing or providing for the sale, disposition or distribution of all or substantially all of the property ~~belonging to the Institution, which order shall remain undismissed or unstayed for the~~ earlier of (A) three (3) business days prior to the date provided for in such order for such sale, disposition or distribution, or (B) an aggregate of thirty (30) days from the date such order shall have been entered.

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

(i) with the consent or at the direction of the Holder, declare all sums payable by the Institution hereunder immediately due and payable;

(ii) with the consent or at the direction of the Holder, direct the Holder to withhold any and all disbursements from the Project Fund to which the Institution may otherwise be entitled hereunder and apply any such proceeds or moneys for such purposes as are authorized by the Bond Purchase Agreement;

(iii) withhold any or all further performance hereunder;

(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 hereof, 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 Holder, 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 shall 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 acquaintance 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 hereunder 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 hereunder, 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) maintain an action against the Institution hereunder to recover any sums payable by the Institution or to require its compliance with the terms hereof or of the Mortgage;

(vi) take any action necessary to enable the Issuer to realize on its liens hereunder or under the Mortgage 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 hereunder, 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 31. Issuer's Compliance with Bond Purchase Agreement.** 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 Bond Purchase Agreement 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 Bond Purchase Agreement.

**SECTION 32. Limitation on Agreements.** The Institution shall not enter into any contract or agreement which impairs the Institution's ability to comply with the provisions of this Agreement in any material respect.

**SECTION 33. Arbitrage; Tax Exemption.** Each of the Institution and the Issuer covenants that it shall take no action, nor shall it approve the Holder'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 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. UCC Filings.** The Institution hereby irrevocably appoints each of the Holder and the Issuer during the term hereof as its lawful attorney-in-fact to execute, on behalf of the Institution, one or more financing statements and continuation statements therefor as to the security interests granted to the Issuer or the Holder, as the case may be, in any moneys (or investments thereof), and the rights to receive the same, pledged to the Issuer hereunder and to

file such financing statements and continuation statements therefor in any appropriate public office. The Issuer and the Holder shall forward to the Institution, in due course, a copy of any such financing or continuation statement executed on behalf of the Institution as provided herein.

**SECTION 35. Disclaimer of Personal Liability.** No recourse shall be had against or liability incurred by any member, director, trustee, officer, official, counsel, consultant, employee or agent of the Issuer or of the Institution or any person executing the Loan Agreement for any covenants and provisions hereof or for any claims based hereon.

**SECTION 36. Severability of Invalid Provisions.** If any one or more of the covenants, stipulations, promises, obligations and agreements provided herein or in the Bond Purchase Agreement, the Bond Documents or any of the Bonds on the part of the Issuer or the Institution to be performed should be contrary to law, then such covenant or covenants, stipulation or stipulations, promise or promises, obligation or obligations, agreement or agreements shall be null and void, shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, obligations and agreements contained herein and shall in no way affect the validity of the other provisions hereof or of the Bond Purchase Agreement, the Bond Documents or any of the Bonds.

**SECTION 37. Further Assurances.** The Institution, at any and all times, shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as are necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, moneys, securities, funds and security interests hereby or by the Bond Purchase Agreement pledged, assigned or granted, or intended so to be, or which the Institution may hereafter become bound to pledge, assign or grant to the Issuer pursuant hereto.

**SECTION 38. Amendments to Loan Agreement.** The Loan Agreement may only be amended with the consent of the Issuer and the Holder in accordance with the terms hereof and in the Bond Purchase Agreement and each amendment shall be made by an instrument in writing signed by the Institution, the Issuer and the Holder.

**SECTION 39. 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 shall 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) hereof and to provide reimbursement for or indemnification against expenses, costs or liabilities made or incurred pursuant to Sections 24, 26 and 29 hereof shall nevertheless survive any such termination. Upon such termination, the Issuer and the Holder shall promptly deliver, at the sole cost and expense of the Institution, such documents as may be reasonably requested by the Institution to evidence such termination and the discharge of the Institution's duties hereunder and the release or surrender of any security interests granted by the Institution to the Issuer or the Holder pursuant hereto.

**SECTION 40. Notices.** All notices, approvals, requests, consents, demands and directions required or authorized to be given by either party pursuant to or in respect hereof or the Bonds shall be in writing and shall be sent by registered or certified mail, in the case of the

Issuer, addressed to it to the attention of the Issuer's Chief Executive Officer, at 95 Perry Street, Suite 403, Buffalo, New York 14203; in the case of the Institution, addressed to it to the attention of Financial Analyst at 190 Franklin Street, Buffalo, New York 14202; and, in the case of the Holder, addressed to it at 726 Exchange Street, Suite 900, Buffalo, New York 14210, Attention: Commercial Loan Administration; or at such other address as the person to be notified shall have specified by notice to the other persons. The Institution agrees to give to the Issuer all notices sent by it to the Holder and to the Holder all notices sent by it to the Issuer and the Issuer agrees to give to the Institution all notices sent by it to the Holder.

**SECTION 41. Section Headings.** All headings preceding the text of the several sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part hereof nor shall they affect the meaning, construction or effect hereof.

**SECTION 42. Governing Law.** The Loan Agreement shall be governed by and construed in accordance with the laws of the State.

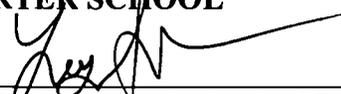
**SECTION 43. Schedules.** Schedule A is incorporated herein and made a part hereof.

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

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

By:   
Karen Fiala, Assistant Treasurer

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By:   
Yusuf Akyar, Authorized Representative

**SCHEDULE A**

**ISSUER FEE**

In connection with the Bonds:

Amount of Fee: \$32,500.00 payable at Closing.



STATE OF NEW YORK  
DEPARTMENT OF STATE  
ONE COMMERCE PLAZA, 99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

ANDREW M CUOMO  
GOVERNOR

CESAR A PERALES  
SECRETARY OF STATE

**FILING ACKNOWLEDGMENT**

November 9, 2015

BARCLAY DAMON, LLP  
ONE PARK PLACE  
SYRACUSE NY 13202

Attached is the acknowledgment copy of your recently submitted filing. This filing consists of a total of 3 pages, however, only the first page of the filed document is returned as part of this acknowledgment. This document has been filed with the New York State Department of State, Uniform Commercial Code Division.

The Financing Statement has been assigned Filing Number: 201511050573516, Filing Date: 11/05/2015 and is currently reflected in our automated database as follows:

**Debtor's Name & Address**

BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
190 FRANKLIN STREET  
BUFFALO NY 14202

**Secured Party's Name & Address**

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION  
95 PERRY STREET, SUITE 403  
BUFFALO NY 14203

This filing will lapse on 11/05/2020, unless continued. We encourage filers to take full advantage of the six-month window of opportunity in which to file a Financing Statement Amendment (Continuation). Submission of your documents at the onset of the six-month window will allow ample time to rectify potential filing errors and help to assure timely recording of your filing.

If you have any concerns regarding the way this document is recorded, please contact one of our Customer Service Representatives at (518) 473-2492, or respond in writing to the UCC Data Processing Unit at the address indicated above.

Sincerely,

Uniform Commercial Code Division  
Data Processing Unit

REF #: 114097

114097

2015 NOV -5 AM 9:00

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A NAME & PHONE OF CONTACT AT FILER (optional)  
**Susan R. Katzoff, Esq.**

B SEND ACKNOWLEDGMENT TO (Name and Address)

**Susan R. Katzoff, Esq.  
 Barclay Damon, LLP  
 One Park Place  
 300 South State Street  
 Syracuse, NY 13202**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1 DEBTOR'S EXACT FULL LEGAL NAME insert only one debtor name (1a or 1b) do not abbreviate or combine names

1a ORGANIZATION'S NAME  
**Buffalo Academy of Science Charter School**

OR 1b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**190 Franklin Street Buffalo NY 14202 USA**

1d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e TYPE OF ORGANIZATION 1f JURISDICTION OF ORGANIZATION 1g ORGANIZATIONAL ID #, if any  
 Not Applicable education corporation New York  NONE

2 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME

OR 2b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e TYPE OF ORGANIZATION 2f JURISDICTION OF ORGANIZATION 2g ORGANIZATIONAL ID #, if any  
 Not Applicable  NONE

3 SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME  
**Buffalo and Erie County Industrial Land Development Corporation**

OR 3b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**95 Perry Street, Suite 403 Buffalo NY 14203 USA**

4 This FINANCING STATEMENT covers the following collateral  
**The right, title and interest of the Debtor granted to Secured Party under the Loan Agreement dated as of November 1, 2015, in the property described in Schedule "A" attached hereto.**

5 ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG LIEN NON-UCC FILING

6 This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7 Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2 (ADDITIONAL FEE)

8 OPTIONAL FILER REFERENCE DATA  
**Buffalo Charter School - Loan Agreement (State)**

114097

2015 NOV -5 AM 9:00

### UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

9a ORGANIZATION'S NAME <b>Buffalo Academy of Science Charter School</b>		
OR	9b INDIVIDUAL'S LAST NAME	
	FIRST NAME	MIDDLE NAME, SUFFIX

10 MISCELLANEOUS

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names**

11a ORGANIZATION'S NAME					
OR	11b INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
11c MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
11d SEE INSTRUCTIONS Not Applicable	ADD'L INFO RE ORGANIZATION DEBTOR	11e TYPE OF ORGANIZATION	11f JURISDICTION OF ORGANIZATION	11g ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE	

**12 ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a ORGANIZATION'S NAME					
OR	12b INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
12c MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

13 This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing

14 Description of real estate

16 Additional collateral description  
**Schedule "A" attached hereto.**

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest)

17 Check only if applicable and check only one box.  
Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction — effective 30 years  
 Filed in connection with a Public-Finance Transaction — effective 30 years

114097

2015 NOV -5 AM 9:6

**SCHEDULE "A"**  
**TO UCC-1 FINANCING STATEMENT**  
**FROM BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**  
**TO BUFFALO AND ERIE COUNTY INDUSTRIAL LAND**  
**DEVELOPMENT CORPORATION**  
**RELATING TO LOAN AGREEMENT**

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION** (the "*Issuer*") and **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL** (the "*Institution*") have entered into a Loan Agreement dated as of November 1, 2015 (as amended, modified and supplemented from time to time, the "*Loan Agreement*"). Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Loan Agreement.

Except as prohibited by the Charter Schools Act, as in effect from time to time, the Institution grants the Issuer a security interest in all right, title and interest of the Institution in the Project 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 the proceeds of the Gross Revenues.

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**FILED**  
 NOV 04 2015  
 ERIE COUNTY  
 CLERK'S OFFICE

A. NAME & PHONE OF CONTACT AT FILER [optional]  
**Susan R. Katzoff, Esq.**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Susan R. Katzoff, Esq.  
 Barclay Damon, LLP  
 One Park Place  
 300 South State Street  
 Syracuse, NY 13202

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1 DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names**

1a. ORGANIZATION'S NAME  
**Buffalo Academy of Science Charter School**

OR  
 1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**190 Franklin Street Buffalo NY 14202 USA**

1d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any  
 Not Applicable education corporation New York  NONE

**2 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

2a. ORGANIZATION'S NAME

OR  
 2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any  
 Not Applicable  NONE

**3 SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)**

3a. ORGANIZATION'S NAME  
**Buffalo and Erie County Industrial Land Development Corporation**

OR  
 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**95 Perry Street, Suite 403 Buffalo NY 14203 USA**

**4. This FINANCING STATEMENT covers the following collateral:**

**The right, title and interest of the Debtor granted to Secured Party under the Loan Agreement dated as of November 1, 2015, in the property described in Schedule "A" attached hereto.**

5. ALTERNATIVE DESIGNATION (if applicable), LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

**Buffalo Charter School - Loan Agreement (County)**

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9 NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a ORGANIZATION'S NAME  
**Buffalo Academy of Science Charter School**

OR

9b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME, SUFFIX

10 MISCELLANEOUS.

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a ORGANIZATION'S NAME

OR

11b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 11e TYPE OF ORGANIZATION 11f JURISDICTION OF ORGANIZATION 11g ORGANIZATIONAL ID #, if any  NONE

Not Applicable

12  ADDITIONAL SECURED PARTY'S or  ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a ORGANIZATION'S NAME  
**FIRST NIAGARA BANK, N.A.**

OR

12b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**726 Exchange Street Buffalo NY 14210 USA**

13 This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing

14 Description of real estate:  
**See Schedule "B"**

15 Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest)

16 Additional collateral description.  
**Schedule "A" attached hereto.**

17. Check only if applicable and check only one box.  
 Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction — effective 30 years  
 Filed in connection with a Public-Finance Transaction — effective 30 years

**SCHEDULE "A"**  
**TO UCC-1 FINANCING STATEMENT**  
**FROM BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**  
**TO BUFFALO AND ERIE COUNTY INDUSTRIAL LAND**  
**DEVELOPMENT CORPORATION**  
**RELATING TO LOAN AGREEMENT**

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION** (the "*Issuer*") and **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL** (the "*Institution*") have entered into a Loan Agreement dated as of November 1, 2015 (as amended, modified and supplemented from time to time, the "*Loan Agreement*"). Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Loan Agreement.

Except as prohibited by the Charter Schools Act, as in effect from time to time, the Institution grants the Issuer a security interest in all right, title and interest of the Institution in the Project 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 the proceeds of the Gross Revenues.

## SCHEDULE B

### LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:

BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.

---

**BOND PURCHASE AGREEMENT**

by and among

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

and

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

and

**FIRST NIAGARA BANK, N.A.**

Dated November 2, 2015

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<b>EXHIBIT B</b>	Form of Requisition
<b>EXHIBIT C</b>	Form of Assignment and Assumption

## BOND PURCHASE AGREEMENT

**THIS BOND PURCHASE AGREEMENT**, dated November 2, 2015, by and among **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit corporation constituting a local development corporation, duly organized, existing and in good standing under the laws of the State of New York, having an office for the transaction of business at 95 Perry Street, Suite 403, Buffalo, New York 14203 (together with its successors and permitted assigns, the “*Issuer*”), **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**, a charter school organized under and existing by virtue of the New York State Education Law, having an office at 190 Franklin Street, Buffalo, New York 14202 (together with its successors and permitted assigns, the “*Institution*”), and **FIRST NIAGARA BANK, N.A.**, a national banking association organized and existing under the laws of the United States of America, having an address of 726 Exchange Street, Buffalo, New York 14210 (together with its successors and permitted assigns, “*Holder*”).

### WITNESSETH:

**WHEREAS**, pursuant to the purposes and powers contained within Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the “*State*”), as amended (the “*NFP Law*”) and Resolution Nos. 218 of 2009 adopted by the Erie County Legislature (the “*Legislature*”) on July 24, 2009, as amended by Resolution No. 295 of 2009, adopted by the Legislature on November 19, 2009, and Resolution Intro 5-3 (2010) adopted by the Legislature on March 25, 2010, and Resolution No. 110 of 2011, adopted by the Legislature on June 30, 2011 (collectively the “*County Resolutions*” and with the NFP Law, the “*Act*”) and pursuant to its Certificate of Incorporation filed on January 13, 1982, as amended, the Issuer was established as a not-for-profit local development corporation of the State 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; and

**WHEREAS**, the Act further authorizes the Issuer to issue the “Bonds” (as defined below) and to make loans for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal, 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 said loans to secure the payment of such Bonds and interest thereon; and

**WHEREAS**, pursuant to a certain resolution, duly adopted by the Issuer on October 21, 2015 (as the same may be amended or supplemented from time to time, the “*Bond Resolution*”), the Issuer, among other things, authorized the issuance and sale of the Issuer’s Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the

aggregate principal amount of \$3,250,000 (the "**Bonds**") for the benefit of the Institution to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 (the "**Land**") to be used to operate a charter school for grades 7-12 (the "**Facility**"); (b) to pay costs incidental to the issuance of the Bonds; and (c) to fund a debt service reserve fund, if any, required with respect to the Bonds (the foregoing collectively, the "**Project**"). At the request of the Institution, the Issuer has granted certain other financial assistance to the Project in the form of exemption from mortgage recording tax (together with the Bonds, the "**Financial Assistance**").

**WHEREAS**, the Bonds are being issued pursuant to, and subject to the terms, covenants and conditions of this Bond Purchase Agreement; and

**WHEREAS**, the execution and delivery of this Bond Purchase Agreement and the issuance of the Bonds under the Act have been in all respects approved and duly and validly authorized by the Bond Resolution; and

**WHEREAS**, the proceeds of the Bonds will be loaned by the Issuer to the Institution pursuant to a certain Loan Agreement, dated as of November 1, 2015, by and between the Issuer and the Institution (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"); and

**WHEREAS**, among other things, as security for the Institution's obligations under the Loan Agreement, the Institution has granted to the Issuer a first priority mortgage lien on and security interest in the Project pursuant to a certain Mortgage and Security Agreement, dated November 2, 2015, by the Institution to the Issuer (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Mortgage**"); and

**WHEREAS**, as security for the repayment of the Bonds the Issuer has, among other things, assigned all of its right, title and interest (other than the Unassigned Rights) in and to: (i) the Loan Agreement and certain other documents to the Holder pursuant to a certain Pledge and Assignment, dated as of November 1, 2015, between the Issuer and the Holder, with an acknowledgment by the Institution (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Pledge and Assignment**"); and (ii) the Mortgage pursuant to a certain Assignment of Mortgage, dated November 2, 2015 from the Issuer to the Holder (the "**Assignment of Mortgage**"); and

**WHEREAS**, to further secure the Bonds and the obligations of the Institution with respect thereto, the Institution has given an Assignment of Leases and Rents dated as of November 1, 2015 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Assignment of Rents**") to the Issuer which the Issuer has assigned to Holder pursuant to a certain Assignment of Assignment of Leases and Rents, dated as of November 1, 2015 by the Issuer to the Holder (the "**Assignment of Assignment of Rents**"); and

**WHEREAS**, the undertaking of the Project and the grant of the Financial Assistance is for a proper purpose, to wit: to relieve and reduce unemployment, promote and provide for additional and maximum employment and/or alleviate the burdens of government; and

**WHEREAS**, the Holder, in consideration of, among other things, the express promises of the Institution set forth in Section 2.04 hereof, has agreed to purchase the Bonds for the purpose of financing the Project; and

**WHEREAS**, the Bonds shall be substantially in the form attached to this Agreement as Exhibit A; and

**NOW, THEREFORE**, the parties agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01. Definitions of Terms.** All capitalized terms used in this Agreement and not otherwise defined shall have the meanings given respectively thereto in the Loan Agreement. The following words and terms as used in this Bond Purchase Agreement shall have the following meanings:

“*1933 Act*” means the Securities Act of 1933, as amended, and the regulations thereunder.

“*Act*” has the meaning set forth in the Recitals to this Agreement.

“*Affiliate*” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“*Assignment and Assumption*” means the assignment and assumption agreement entered into by the Holder and an assignee in substantially the form of Exhibit C or any other from approved by the Issuer.

“*Assignment of Assignment of Rents*” shall have the meaning set forth in the recitals to this Agreement.

“*Assignment of Mortgage*” shall have the meaning set forth in the recitals to this Agreement.

“*Assignment of Rents*” has the meaning set forth in the Recitals to this Agreement.

“*Authorized Investments*” means: (a) unsecured certificates of deposit, time deposits, federal funds or bankers’ acceptances issued by any depository institution or trust company incorporated under the laws of the United States or of any state thereof (including the Holder or an Affiliate of the Holder) and subject to supervision and examination by federal and/or state banking authorities, which investments are fully insured by the Federal Deposit Insurance Corporation or any other similar governmental deposit insurance program; (b) unsecured certificates of deposit, time deposits and bankers’ acceptances with maturities of not more than 365 days of any bank, the short-term obligations of which are rated in the highest short-term

rating category by Standard & Poor's Ratings Service; (c) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, whose investment assets are obligations which (i) constitute direct noncallable obligations of, or noncallable obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America or (ii) are rated AAAm-G, AAAm or Aam by Standard & Poor's Rating Service or another similar rating service acceptable to the Holder; or (d) such other investment as the Holder shall approve in writing.

*"Authorized Representative"* means, 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; in the case of the Institution, the person or persons authorized by a written action, authorization or resolution, a certified copy of which has been delivered to the Holder, of the trustees of the Institution, to perform any act or execute any document and in case of the Issuer and the Institution, such additional persons as, at the time, are designated to act on behalf of the Issuer and the Institution, as the case may be, by written certificate furnished to the Holder, and to the Issuer or the Institution, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Issuer by the Chairman, Vice Chairman, Secretary or the President & Chief Executive Officer of the Issuer, or (ii) Institution by an authorized person.

*"Bond"* or *"Bonds"* or *"Bonds"* means the Series 2015 Bonds.

*"Bond Counsel"* means the law firm of Barclay Damon, LLP, or an attorney or firm of attorneys whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized.

*"Bond Documents"* means, collectively, this Bond Purchase Agreement, the Loan Agreement, the Bonds, the Pledge and Assignment, the Mortgage, the Assignment of Mortgage, the Assignment of Assignment of Rents, the Security Agreement, the Tax Compliance Agreement, Assignment of Rents, the Environmental Compliance and Indemnification Agreement, all financing statements to be filed in the appropriate offices pursuant to the UCC and any other document now or hereafter executed by the Issuer, the Institution, and/or any other Person in favor or for the benefit of the Holder which affects the rights of the Holder in or to the Project, in whole or in part, or which secures or guarantees any sum due on the Bonds or any of the other Bond Documents, each as amended, restated, supplemented or otherwise modified from time to time and all documents related thereto and executed in connection therewith.

*"Bondholder"* or *"Owner"* means the Holder.

*"Bond Proceeds"* means the sum of the face amount of the Bonds plus accrued interest, if any, less the sum of the original issue discount plus the underwriter's or similar discount, if any.

*"Bond Purchase Agreement"* or *"Agreement"* means this Bond Purchase Agreement dated November 2, 2015, by and among the Issuer, the Institution and the Holder, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Bond Resolution"* has the meaning set forth in the Recitals to this Agreement.

"*Charter*" means the Provisional Charter, and any amendments thereto, granted January 12, 2004, by the Board of Regents incorporating the Institution and the agreement by and between the Board of Regents and the Institution last executed February 10, 2015, 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.

"*Closing Date*" means the date of sale and delivery of the Bonds, being November 2, 2015.

"*Code*" means the Internal Revenue Code of 1986, as amended, and the final, temporary and proposed regulations of the Department of Treasury promulgated thereunder.

"*Collateral*" shall mean any and all assets and rights and interests in or to Property of the Institution, the Issuer and other Persons, whether real or personal, tangible or intangible, now owned or hereafter acquired, and all proceeds thereof, in which a Lien is granted or purported to be granted pursuant to the Collateral Documents, including but not limited to, all personalty and fixtures located in or on the Mortgaged Property, including any and all inventory; leases, rental and sale agreements, all security deposits, all income and/or profits, accounts; chattel paper, including all electronic chattel paper; general intangibles; books and records; investment property; deposit accounts; and letter-of-credit rights, whether or not specifically assigned to the Bondholder or the Issuer, including all receivables, now owned or hereafter acquired, all as defined in the Uniform Commercial Code, and all other assets of Institution specific to the Facility, including all proceeds of the foregoing, all building materials, whether on or off the Mortgaged Property, and all insurance and condemnation claims and proceeds/awards relating thereto.

"*Collateral Documents*" means all agreements, instruments and documents now or hereafter executed and delivered in connection with this Agreement pursuant to which Liens are granted or purported to be granted to the Holder or the Issuer in Collateral securing all or part of the Obligations each in form and substance satisfactory to the Holder, including, without limitation, the Mortgage, the Assignment of Rents, the Pledge and Assignment and the Security Agreement.

"*Control*" (and its derivatives) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, partnership interests or other equity interest, by contract or otherwise, including the power to elect a majority of the directors of a corporation or trustees of a trust, as the case may be. A Person shall be deemed to Control another Person if the Controlling Person owns five percent (5%) or more of any class of voting securities, partnership interests or other Equity Interests of the Controlled Person or possess, indirectly or directly, the power to direct or cause the direction of the management or policies of the Controlled Person, whether through the ownership of voting securities, by contract or otherwise.

"*Cost(s) of the Project*" means all those costs and items of expense incurred in connection with the Project as approved by the Holder.

"*Debtor Relief Laws*" means the Bankruptcy Code of the United States and all other

liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“*Debt Service*” means the aggregate annual debt service actually due and payable on the Bonds.

“*Debt Service Coverage Ratio*” means the ratio of total change in net assets plus interest expense, plus depreciation and amortization to total of interest expense, plus current portion of long term debt, as calculated in accordance with GAAP existing as of the date of this Agreement.

“*Default*” means any event or condition that constitutes an Event of Default or that, with the giving of notice or the passage of time, would constitute an Event of Default.

“*Environmental Compliance and Indemnification Agreement*” means the Environmental Compliance and Indemnification Agreement, dated as of November 1, 2015, from the Institution to the Issuer and the Holder, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“*Environmental Laws*” shall have the meaning ascribed to such term in the Environmental Compliance and Indemnification Agreement.

“*Equipment*” means the goods, furniture, furnishings, equipment, machinery and other tangible personal property now owned or hereafter acquired and used in connection with the operation of the Mortgaged Property 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.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as the same may, from time to time, be amended or supplemented, and all regulations thereunder.

“*ERISA Affiliate*” means any trade or business (whether or not incorporated) under common control with the Institution within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“*ERISA Event*” means: (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Institution or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Institution or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which

constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Institution or any ERISA Affiliate.

*“Event of Default”* means any of those events defined as Events of Default by Section 6.01 of this Bond Purchase Agreement.

*“Event of Taxability”* means: (A) a final determination by any court of competent jurisdiction or a final determination by the Internal Revenue Service to which the Institution shall consent or from which no timely appeal shall be taken to the effect that interest on the Bonds is includable in the gross income of the Holder thereof for Federal income tax purposes; (B) ninety (90) days after receipt by the Issuer, the Holder or the Institution of written notice that the Internal Revenue Service has issued a "notice of deficiency" or similar notice to any present or former Holder of the Bond assessing a tax in respect of any interest on the Bond as a result of such interest being includable in gross income for Federal income tax purposes, provided that such notice has not been withdrawn by the Internal Revenue Service and from which such Holder (or the Institution or the Holder, if allowable) has not filed a timely petition in the United States Tax Court contesting the same; (C) the delivery to the Institution, the Holder and the Issuer of an opinion of Bond Counsel to the effect that interest on the Bond is includable in the gross income of a Holder thereof for Federal income tax purposes; or (D) demand by the Internal Revenue Service for payment or asserting in writing that the Bond does not constitute a "qualified tax-exempt obligation" under the Code.

*“Facility”* has the meaning set forth in the Recitals to this Agreement.

*“Financing Commitment”* means that certain Commitment Letter, dated August 6, 2015, of the Holder to the Institution, as the same may be amended.

*“Fiscal Year”* means the twelve (12) month period beginning on January 1 in any year or such other fiscal year as the Institution may adopt from time to time.

*“GAAP”* means generally accepted accounting principles, consistently applied

*“Governmental Authority”* means the United States, the State, and any other state or any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of these, having jurisdiction over the construction, equipping, ownership, leasing, operation and/or maintenance of the Project.

*“Gross Revenues”* means: (i) all interest earnings on all funds and accounts (except the Rebate Amount) held by the Issuer under the Bond Purchase Agreement; and (ii) all amounts payable by, or on behalf of, the Institution pursuant to the Loan Agreement, including all Loan Payments (except payment of any Rebate Amount or representing any Unassigned Rights). Gross Revenues shall not, however, include any gifts, grants, bequests, donations and contributions heretofore or hereafter 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.

“*Hazardous Substance*” shall have the meaning ascribed to such term in the Environmental Compliance and Indemnification Agreement.

“*Hedging Contracts*” means interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, or any other agreements or arrangements entered into between the Institution and the Holder or a counterparty satisfactory to the Holder and designed to protect the Institution against fluctuations in interest rates, currency exchange rates or forward rates.

“*Holder*” means First Niagara Bank, N.A., a national banking association organized and existing under the laws of the United States of America, and its successors and assigns as the Holder.

“*Holder’s Office*” means the office or offices of the Holder described as such in the first paragraph of this Agreement or such other office or offices as the Holder may from time to time notify the Institution, the Issuer and any other Holder.

“*Improvements*” has the meaning set forth in the Recitals to this Agreement.

“*Indebtedness*” means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit (other than letters of credit collateralized by cash or cash equivalents, but only to the extent of the amount of such cash or cash equivalents), or for the deferred purchase price of Property for which such Person or its assets is liable; (b) all outstanding amounts under a loan agreement, letter of credit (other than letters of credit collateralized by cash or cash equivalents, but only to the extent of the amount of such cash or cash equivalents), or other credit facility; (c) all amounts required to be paid by such Person as a guaranteed payment to partners, members (or other equity holders) or a preferred or special dividend, including any mandatory redemption of shares or interests; (d) all obligations under leases that constitute capital or operating leases for which such Person is liable or as otherwise determined in accordance with GAAP; (e) Hedging Contracts, including but not limited to, all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss; and (f) all Indebtedness referred to in clauses (a), (b), (c), (d) or (e) above guaranteed directly or indirectly in any manner by such Person. The parties agree that any Indebtedness of a Loan Party to any other Loan Party shall not constitute Indebtedness hereunder.

“*Indemnified Liabilities*” has the meaning specified in Section 7.11 of this Agreement.

“*Indemnified Persons*” has the meaning specified in Section 7.11 of this Agreement.

“*Institution*” shall have the meaning set forth in the Recitals to this Agreement.

“*Institution Documents*” means this Bond Purchase Agreement, the Loan Agreement, the Mortgage, the Assignment of Rents, the Security Agreement, the Pledge and Assignment, the Environmental Compliance and Indemnification Agreement, the Tax Compliance Agreement and any other document entered into by the Institution in connection with the issuance of the

Bonds, each as may be amended, restated, supplemented or otherwise modified from time to time.

*“Interest Payment Date”* has the meaning set forth in the Bonds.

*“Issuer”* has the meaning set forth in the Recitals to this Agreement.

*“Issuer Documents”* means the Bonds, this Bond Purchase Agreement, the Loan Agreement, the Assignment of Mortgage, the Pledge and Assignment, of the Assignment of the Assignment of Rents and any other documents executed by the Issuer in connection with the issuance of the Bonds.

*“Land”* has the meaning set forth in the Recitals to this Agreement.

*“Laws”* means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

*“Lien”* means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including, but not limited to, a security interest arising from a mortgage, 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, mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real Property. For the purposes hereof, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional lease 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”* has the meaning set forth in the Recitals to this Agreement.

*“Loan Party”* means the Issuer or the Institution under this Agreement or any other Bond Document.

*“Loan Payments”* means payment of amounts due by the Institution under the Loan Agreement.

*“Material Adverse Effect”* means: (a) a material adverse change in, or a material adverse effect upon, the operations, business, Properties, assets, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Institution; (b) a material impairment of the ability of any Loan Party to perform their obligations under any Bond Document to which they are a party; (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Bond Document to which it is a party; or (d) a material adverse change in or material adverse effect upon the ability of Holder to exercise its

rights and remedies with respect to, or otherwise realize upon, any of the collateral or any of the security for the obligations of Institution to Holder under this Agreement or any Bond Documents.

*"Mortgage"* means the Mortgage and Security Agreement, dated November 2, 2015, given by the Institution to the Issuer, pursuant to which the Institution grants to the Issuer, a first priority mortgage lien on and a security interest in the estate, right, title and interest in the Land and a first priority mortgage lien on and a security interest in the Project, subject to the Permitted Encumbrances, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*"Mortgaged Property"* has the meaning set forth in the Mortgage.

*"Net Proceeds"* means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs, including, but not limited to, reasonable attorneys' fees, and taxes incurred in obtaining such gross proceeds.

*"Obligations"* means all unpaid principal of, and accrued and unpaid interest due on, the Bonds or any Hedging Contracts, and all other advances to, and debts, liabilities, obligations, interest, fees, charges, expenses, covenants, stipulations, promises, agreements, obligations and duties of, any Person arising under any Bond Document or otherwise with respect to the Bonds or any Hedging Contracts, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Person party to any Bond Documents or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

*"Outstanding"* means all Bonds which have been executed and delivered by the Issuer under this Agreement except the following:

- (i) Bonds canceled or delivered to the Issuer for cancellation;
- (ii) Bonds paid in full pursuant to the terms thereof; and
- (iii) Bonds in lieu of which other Bonds have been executed in exchange thereof or to replace mutilated, lost, stolen or destroyed Bonds.

*"Owner"* or *"Bondholder"* means the Holder.

*"Participants"* has the meaning specified in Section 7.12(c) of this Agreement.

*"PBGC"* means the Pension Benefit Guaranty Corporation or any Person succeeding to any or all of its functions under ERISA.

*"Pension Plan"* means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Institution or any ERISA Affiliate or to which the

Institution or any ERISA Affiliate contributes or has an obligation to contribute or, in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five (5) plan years.

"*Permitted Encumbrances*" means (i) the Bond Purchase Agreement, (ii) the Mortgage, (iii) the Assignment of Rents, (iv) the Security Agreement, (v) utility, access and other easements and rights of way, restrictions and exceptions that do not materially impair the use or the value of the Property affected thereby for the purpose for which it is intended, (vi) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens to the extent permitted by the Bond Purchase Agreement (vii) taxes, assessments and other charges to the extent permitted by the Bond Purchase Agreement, (viii) liens for taxes at the time not delinquent, (ix) purchase money mortgages, liens or encumbrances on existing or newly acquired equipment (subject to the terms and conditions of the Bond Documents), (x) liens securing Indebtedness permitted under this Agreement; (xi) any matters shown as exceptions on the Title Insurance Policy, (xii) 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 and (xiii) such other encumbrances, defects and irregularities to which the prior written consent of the Issuer and the Holder has been obtained.

"*Person*" means an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision or branch thereof.

"*Plan*" means any plan defined in Section 4021(a) of ERISA in respect of which the Institution is an "employer" or a "substantial employer" as defined in Sections 3(5) and 4001(a)(2) of ERISA, respectively.

"*Pledge and Assignment*" has the meaning set forth in the Recitals to this Agreement.

"*Project*" has the meaning set forth in the Recitals to this Agreement.

"*Project Fund*" means the fund established pursuant to Section 4.01 of this Bond Purchase Agreement.

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

"*Qualified Costs*" has the meaning given to such term in the Tax Compliance Agreement.

"*Rebate Amount*" has the meaning set forth in the Tax Compliance Agreement.

"*Record Date*" means the 15<sup>th</sup> day of each calendar month immediately preceding an Interest Payment Date.

"*Register*" has the meaning specified in Section 7.12(b)(iv) of this Agreement.

"*Related Parties*" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents and trustees of such Person and of such Person's Affiliates.

*“Reportable Event”* means any reportable event as that term is defined in ERISA.

*“Requisition”* shall have the meaning set forth in Section 4.01(a) of this Agreement.

*“Restricted Gift”* means, when used in connection with the Project, any gift, grant or bequest of money or other property made or given by any person the use of which has been restricted by such person to paying any cost or expense of the Project.

*“Returned Payment”* shall have the meaning set forth in Section 7.16 of this Agreement.

*“SEC”* means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

*“Security Agreement”* means that certain Security Agreement, dated as of November 1, 2015, by and between the Holder and the Institution, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*“Series 2015 Account”* means the account in the Project Fund established pursuant to Section 4.01 of this Bond Purchase Agreement.

*“Series 2015 Bonds”* means the Issuer’s Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000.

*“SEQRA”* means the State Environmental Quality Review Act, as amended, and the regulations thereunder.

*“State”* means the State of New York.

*“Survey”* means the survey dated September 23, 2015, job no. 0652-0309A, by Nussbaumer & Clarke, Inc.

*“Tax Compliance Agreement”* means the Tax Compliance Agreement dated as of November 1, 2015, between the Issuer and the Institution, as the same may be amended, restated, supplemented or otherwise modified from time to time.

*“Title Insurance Policy”* means a paid mortgagee title insurance policy issued by a title insurance company satisfactory to the Holder insuring the Mortgage to be a good and valid first mortgage lien and security interest in favor of the Issuer and the Holder, as their interests may appear in the Mortgaged Property, free and clear of all defects and encumbrances except as approved by the Holder and containing such endorsements and affirmative coverage as the Holder may reasonably require.

*“UCC”* means the Uniform Commercial Code as adopted in effect from time to time in the State, except when the provisions of the UCC as adopted in another jurisdiction are applicable due to the location of any collateral in such other jurisdiction.

“*USA Patriot Act*” has the meaning set forth in Section 2.03(m) of this Agreement.

“*Unassigned Rights*” means

(i) the right of the Issuer on 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;

(iii) the right of the Issuer to enforce on its own behalf the obligation of the Institution to complete the Project;

(iv) the right of the Issuer to enforce or otherwise exercise on 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 on 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, 6, 7(a)(i), (vi), and (vii), 7(c), 9, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 33, 34, 35, 37 and 39 of the Loan Agreement; and

(vii) the right of the Issuer on 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 Holder pursuant to the Assignment, shall be deemed to and shall constitute obligations of the Institution to the Issuer and the Holder, jointly and severally, and either the Issuer or the Holder may commence an action to enforce the Institution’s obligations under the Loan Agreement.

**Section 1.02. Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Bond Purchase Agreement:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the redemption or calling for redemption of Bond shall not be deemed to refer to or connote the payment of Bonds at their stated maturity.

(c) All references herein to particular articles or sections are references to articles or sections of this Bond Purchase Agreement.

(d) The Table of Contents and headings of the several Sections herein are solely for convenience of reference and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

(e) The use of the neuter gender shall include the masculine and feminine genders as well.

(f) All undefined terms contained in this Agreement shall, unless the context indicates otherwise, have the meanings provided for by the UCC to the extent the same are used or defined therein. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including the Exhibits and Schedules hereto, as the same may from time to time be amended, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement.

(g) The words, "including," "include" and "includes" shall be deemed to be followed by the words "without limitation."

(h) Without limitation and for the avoidance of doubt, in regard to use of the words "during the continuance of," "that is continuing" and the like in connection with "Event of Default" shall be deemed to be noncurable absent a waiver by the Holder.

(i) References to the Holder with respect to consent, waiver, approval or other action to be taken by the Holder shall, in the event there is more than one Holder, mean Holders of not less than fifty-one percent (51%) of the principal amount of Outstanding Bonds.

## ARTICLE II

### REPRESENTATIONS BY AND COVENANTS OF THE ISSUER, THE INSTITUTION AND THE HOLDER

**Section 2.01. Representations by the Issuer.** The Issuer represents and warrants that:

(a) The Issuer is a not-for-profit corporation under the laws of the State, duly organized and existing as such under the laws of the State;

(b) The Issuer has full power and authority to undertake the acquisition, construction, installation and equipping of the Project, to issue and sell the Bonds to finance the Cost of the Project and to pay the costs of issuance of the Bonds as provided in this Bond Purchase Agreement, to enter into, and to loan the proceeds of the Bonds to the Institution pursuant to, the Loan Agreement, to accept the Mortgage and to enter into the Assignment of Mortgage, the Assignment of Assignment of Rents and the Pledge and Assignment and any other documents or agreements for the purposes of securing the Bonds, and the Issuer has taken all actions and obtained all approvals required by the Act;

(c) The Issuer has duly adopted the Bond Resolution and has duly authorized the execution and delivery of each of the Issuer Documents, and the issuance and sale of the Bonds, and has taken all actions necessary or appropriate to carry out the same;

(d) There is no litigation or proceeding pending or, to the Issuer's knowledge, threatened against the Issuer, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds or the Issuer Documents;

(e) The consummation of the transactions contemplated by the Bond Resolution and this Bond Purchase Agreement and the performance of the Issuer Documents will, to the Issuer's knowledge, not result in any breach of, or constitute a default under, the Act or any mortgage, deed or trust, lease, purchase loan or credit agreement, order or judgment, by-law or other instrument or document to which the Issuer is a party or by which it may be bound or affected;

(f) The Issuer has not made and does not intend to make in connection with the Project or the sale of the Bonds to the Holder or otherwise any inquiry concerning the financial position or business condition of the Institution. The Issuer makes no warranty or representation as to the financial position or business condition of the Institution and does not represent or warrant as to any of the statements, materials, representations or certifications (financial or otherwise) made or furnished, or to be made and furnished by the Institution in connection with the Project or the sale of the Bonds to the Holder or the making of disbursements hereunder or otherwise or as to the correctness, completeness or accuracy of such statements, materials, representations or certificates; and

**Section 2.02. Covenants of the Issuer.** Subject to Section 7.10 hereof, the Issuer hereby agrees with the Holder and the Institution that, so long as the Bonds remain unpaid:

(a) The Issuer will not create, assume or suffer to exist any assignment, mortgage, pledge, security interest or other lien, encumbrance or charge on any revenues derived or to be derived from the Project, unless otherwise authorized hereunder or under the Loan Agreement;

(b) The Issuer will not take any action impairing any authority, right or benefit given or conferred by the Bond Resolution, this Bond Purchase Agreement or any of the other Bond Documents;

(c) The Issuer will pay or cause to be paid the principal of, premium, if any, and the interest on the Bonds as the same become due, but solely to the extent provided in Section 7.10 hereof;

(d) The Issuer will, at the sole cost and expense of the Institution, execute, acknowledge, when appropriate, and deliver from time to time at the request of the Holder such instruments and documents as in the opinion of the Holder are necessary or desirable to carry out the intent and purpose of the Bond Documents; and

(e) The Issuer will make no use of any of the Bond Proceeds or of any other moneys which, if such use had been reasonably expected on the date of issue thereof, would have caused the Bonds to be an "arbitrage bond" within the meaning of Section 103 of the Code.

**Section 2.03. Representations by the Institution.** The Institution makes the following representations, all of which will survive the purchase of the Bonds:

(a) The Institution is a charter school organized under and existing by virtue of the New York State Education Law, and has the full power and authority to enter into each of the Institution Documents and to carry out its obligations thereunder and by proper corporate action has been duly authorized to execute, deliver and perform its obligations under this Bond Purchase Agreement;

(b) Neither the Institution nor anyone acting on its behalf has, directly or indirectly, offered the Bonds for sale to, or solicited any offer to buy the same from, anyone other than the Holder except for offers made to any Accredited Investors, as such term is defined in Rule 501(a) as promulgated under the 1933 Act, as amended;

(c) Each of the Institution Documents, when executed and delivered by the respective parties thereto, will constitute valid and binding obligations of the Institution enforceable in accordance with their terms, except as such enforcement may be limited by applicable state or federal laws affecting the enforcement of creditors' rights generally. The execution and delivery by the Institution of the Institution Documents and the performance by the Institution of its obligations thereunder will not conflict with, or result in any breach of, or constitute a default under its charter or by-laws, any indenture, mortgage, deed of trust, purchase loan or credit agreement or any other agreement or instrument to which the Institution is a party or by which it or any of its Property may be bound or affected for which a valid consent has not been secured; nor is any approval nor any action by any Governmental Authority required in connection with the execution and performance thereof by the Institution;

(d) There has been no Material Adverse Effect in the business, Properties or financial condition of the Institution from that shown on the financial statements, if any, submitted to the Holder;

(e) There is no litigation or proceeding pending or, to the Institution's knowledge, overtly threatened against the Institution challenging the validity of any of the Institution Documents or seeking to enjoin the performance of the obligations of the Institution, the acquisition, construction or equipping of the Project or the operation of the Project;

(f) The Institution is at present not in default under any indenture, mortgage, deed of trust, purchase loan or credit agreement to which the Institution is a party and there exists no condition, event or act which constitutes, or after notice or lapse of time would constitute, an event of default thereunder. The Institution is not in violation of any order, writ, judgment, injunction or decree of any court of competent jurisdiction. To the Institution's best knowledge, the Institution is not in violation of any statute, rule or regulation of any competent governmental authority, the violation of which could have a Material Adverse Effect.

(g) The Institution will apply the proceeds from the sale of the Bonds which are loaned by the Issuer to the Institution pursuant to the Loan Agreement for the sole purpose of providing funds for paying the Cost of the Project in accordance with Article IV of this Bond Purchase Agreement and paying the costs of issuance of the Bonds;

(h) The Institution has or will have prior to the issuance of the Bonds good and insurable title to the Land and the Facility free and clear of all liens, pledges, mortgages, security interests, charges, claims and other encumbrances, except the Permitted Encumbrances. The Institution has or will have prior to the issuance of the Bonds, good title to the Collateral, free and clear of all liens, pledges, mortgages, security interests, charges, claims and other encumbrances, except the Permitted Encumbrances. The Mortgage, the Security Agreement and other Bond Documents create or will create a valid and prior lien or security interest in favor of the Holder, in the Collateral, subject to no other liens or encumbrances arising by, through or under the Institution or any other person, except for the Permitted Encumbrances;

(i) No Reportable Event or Prohibited Transaction (as defined in Section 4975 of the Code) has occurred and is continuing with respect to any Plan and the Institution has not incurred any "accumulated funding deficiency" as such term is defined in Section 302 of ERISA;

(j) The Institution does not have outstanding on the date hereof any Indebtedness for borrowed money, except: (i) for such Indebtedness reflected on the financial statements which may previously have been delivered to the Holder; and (ii) Indebtedness in connection with the Bonds;

(k) The Institution hereby restates and incorporates herein by reference its representations and warranties set forth in the Loan Agreement and the Tax Compliance Agreement as if the same were fully set forth herein.

(l) The Institution is not insolvent as defined in any applicable state or federal statute, nor will Institution be rendered insolvent by the execution and delivery of this Agreement or any of the Bond Documents. After the making of the loan under the Loan Agreement, Institution reasonably expects to: (a) be able to pay its debts as they become due; (b) have funds and capital sufficient to carry on its business and pay its obligations when due.

(m) The Institution is not (i) in violation of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq.*), as amended; (ii) on the Specially Designated Nationals and Blocked Person List maintained by the OFAC, Department of the Treasury, and/or any other similar lists maintained by Office of Foreign Assets Control ("OFAC") pursuant to any authorizing statute, Executive Order or regulation; (iii) in violation of the USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001 ("USA Patriot Act"); (iv) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; or (v) to the best of its knowledge, engaging in any dealings or transactions, or is otherwise associated, with any of the foregoing blocked Persons.

#### **Section 2.04. Covenants of the Institution.**

(a) The Institution covenants and agrees with the Issuer and the Holder that the Institution has acquired the Project on or before the Closing Date.

(b) The Institution will furnish to the Holder for its review and approval before the Closing Date, and shall maintain at all times while the Bonds remain Outstanding, insurance on the Project from duly licensed and responsible insurers in accordance with the Loan Agreement.

(c) The Holder, and its agents and representatives shall, at all times while the Bonds are Outstanding, have the right of entry and free access to the Project, upon reasonable notice to the Institution (except in such circumstances which the Holder determines to be an emergency), to inspect all books and records of the Institution kept in connection with the Project; provided the exercise of such rights shall, except in such circumstances which the Holder determines to be an emergency, be during business hours at times reasonably convenient to the Institution and the Holder and shall not interfere in a material way with the Institution's ability to operate.

(d) The Institution shall cause all financial statements furnished in accordance with Section 27 of the Loan Agreement to be certified to the Holder to be true and correct by the chief executive and chief financial officers of the Institution.

(e) The Institution will execute, acknowledge, when appropriate, and deliver from time to time at the request of the Holder, within a reasonable time after such request, such instruments and documents as in the opinion of the Holder are necessary or desirable to carry out the intent and purpose of this Agreement.

(f) So long as any Bonds shall remain Outstanding, the Institution shall:

(i) Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including: (1) all tax liabilities, assessments and governmental charges or levies upon it or its Properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Institution; (2) all lawful claims which, if unpaid, would by law become a Lien upon its Property; and (3) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness;

(ii) Preserve, renew and maintain in full force and effect its legal existence as a charter school and organization described in Section 501(c)(3) of the Code and maintain good standing under the Laws of the jurisdiction of its organization, except as otherwise consented to by the Holder in its sole discretion; and (2) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(iii) Maintain, preserve and protect all of its material Properties and equipment necessary in the operation of its business in reasonably good working order and condition, ordinary wear and tear excepted; (2) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (3) use the standard of care typical in the industry in the operation and maintenance of its facilities;

(iv) Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or Property, except in such instances in which: (1) such requirement of Law or order, writ, injunction

or decree is being contested in good faith by appropriate proceedings diligently conducted; or (2) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect;

(v) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP shall be made of all financial transactions and matters involving the assets and business of the Institution; and (2) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Institution. The Institution shall maintain at all times books and records pertaining to the Collateral in such detail, form and scope as the Holder shall reasonably require;

(vi) Permit representatives of the Holder to visit and inspect any of its Properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Institution and at such reasonable times during normal business hours, upon reasonable prior notice, and as often as may be reasonably desired, upon reasonable advance notice to the Institution, *provided, however*, that when an Event of Default exists and is continuing, the Holder (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Institution at any time and without advance notice;

(vii) Promptly notify the Holder of: (1) the occurrence of any Event of Default; (2) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including: (x) breach or non-performance of, or any default under, a contractual obligation of the Institution; or (y) any dispute, investigation, proceeding or suspension involving any Governmental Authority related to the Institution or the Project; or (z) the commencement of, or any material development in, any litigation or proceeding affecting the Institution, including pursuant to any applicable Environmental Laws; (3) the occurrence of any ERISA Event; and (4) any material change in accounting policies or financial reporting practices by the Institution; and

(viii) At all times while the Bonds remain Outstanding, the Institution shall maintain all operating accounts for the Project and its deposit accounts with the Holder; provided, however, that the Institution shall be permitted to maintain one or more deposit accounts at other financial institutions so long as the balance of all such deposit accounts does not, in the aggregate, exceed \$250,000; and

(ix) The Institution shall maintain a Debt Service Coverage Ratio of not less than 1.2 or 1.0. The Debt Service Coverage Ratio shall be tested annually based on the annual financial statements of the Institution delivered to the Holder pursuant to Section 27(a)(i)(1) of the Loan Agreement.

(g) So long as any of the Bonds shall remain Outstanding, the Institution shall not, directly or indirectly:

(i) Directly or indirectly guarantee the Indebtedness or obligation of any other Person;

(ii) Create, assume, incur or suffer to exist or allow to be created, assumed or incurred or suffered to exist any Lien upon any of its Properties, now owned or hereafter acquired, nor acquire nor agree to acquire any kind of Property subject to a Lien excepting, however, Permitted Encumbrances;

(iii) Sell, convey, assign, lease, abandon or otherwise transfer or dispose of, voluntarily or involuntarily, any of its Properties without the prior written consent of the Holder except as otherwise permitted in the Bond Documents or in the ordinary course of business;

(iv) Engage in any business operation other than the operation of a charter school;

(v) At any time permit any Plan of the Institution to (a) engage in any “prohibited transaction” as such term is defined in Section 4975 of the Code, (b) incur any “accumulated funding deficiency” as such term is defined in Section 302 of ERISA, whether or not waived, or (c) be terminated in a manner which could result in the imposition of a lien on the Property of the Institution pursuant to Section 4068 of ERISA;

(vi) Merge with or consolidate into any other Person or permit any Person to consolidate with or merge into the Institution, or acquire all or a substantial part of the assets, capital stock or membership interests of any other Person or permit any Person to acquire all or a substantial part of the assets or capital of the Institution except as otherwise permitted in the Bond Documents;

(vii) Make loans or advances to any Person, except in its capacity as trustee or manager of any pension, profit sharing or retirement plan for its employees;

(viii) Enter into or carry out any material transaction (including, without limitation, purchasing Property or services or selling Property or services) with an Affiliate unless such transaction (i) is not otherwise prohibited by this Agreement or any of the other Bond Documents, (ii) is entered into in the ordinary course of the Institution’s business and upon fair and reasonable arm’s-length terms and conditions which are fully disclosed to the Holder beforehand, and (iii) is in accordance with all applicable Laws;

(ix) Without twenty (20) days prior written notice to the Holder, amend the Institution’s Charter or By-Laws or other organizational document of the Institution and if, in the reasonable judgment of the Holder, such amendment would be adverse to the Holder, obtaining the Holder’s prior written consent;

(h) The Institution hereby restates and incorporates herein by reference its covenants set forth in the Loan Agreement as if the same were fully set forth herein, including, but not limited to, the loan covenants in Section 8 of the Loan Agreement; and

(i) Promptly upon receipt of evidence of such extension, the Institution will furnish to the Holder evidence of the extension of the Institution's charter to operate a charter school from the New York Board of Regents (or any such successor entity). The Institution shall provide a written notice to the Holder on the status of the extension process no earlier than one hundred twenty (120) days and no later than sixty (60) days prior to the then-current expiration date of the charter.

**Section 2.05. Representations by and Covenants of the Holder.** The Holder represents to, and covenants and agrees with, the Issuer that:

(a) The Holder has had an opportunity to make such investigations and has had access to such information with respect to the Institution and its affairs and condition, financial and otherwise, which the Holder has deemed necessary in connection with and as a basis for the purchase of the Bonds, and any and all information relating to the Institution and its affairs which the Holder has requested has been provided to the Holder.

(b) The Holder has approved the Bonds, the Bond Resolution and each of the Bond Documents, and such documents contain the terms agreed to by the Holder.

(c) The Holder is purchasing the Bonds: (i) for its own account, for the purpose of investment and not with a present view to the distribution or resale thereof; and (ii) not for the account of others. The Holder has not offered, offered to sell, offered for sale or sold the Bonds by means of any form of general solicitation or general advertising and will not sell the Bonds without registration under the applicable federal and state securities laws or an exemption therefrom. The Holder presently has no arrangement, written or oral, with any Person for the distribution, transfer or resale of the Bonds. The Holder agrees to notify the Issuer and the Institution at least thirty (30) days in advance in writing of any proposed transfer or resale of the Bonds or any portion thereof and to furnish to them prior to any such transfer or resale: (i) an opinion of Bond Counsel that such transfer or resale does not and will not require registration of the Bonds under any applicable federal and state securities laws; and (ii) a certificate of the purchaser of the Bonds to the effect that such purchaser has been provided with all requested disclosure information by the Institution. In the event such transfer is at the request of the Institution, the Institution shall pay all expenses incurred by the Holder, including, but not limited to, reasonable legal fees, in connection with such transfer or resale and the cost of obtaining the opinion of Bond Counsel referred to above. If the proposed transfer of the Bonds is other than at the request of the Institution, the Holder will bear such costs and expenses.

(d) The Holder understands that: (i) the Bonds being purchased shall be a special obligation of the Issuer payable solely from payments (other than in respect of the Unassigned Rights) received from the Institution pursuant to Section 7 of the Loan Agreement and the other security given for the payment of the Bonds; (ii) neither the Issuer or the Institution have the power of taxation; and (iii) the Issuer makes no representations or warranties, express or implied, with respect to the merchantability, condition or workmanship of any part of the Project or the suitability of the Project for the Institution's purposes or needs or the extent to which the proceeds derived from the sale of the Bonds will be sufficient to pay the Cost of the Project.

(e) The Holder has not requested or received from the Issuer any information which it, as a reasonable investor, deems important in reaching its investment decision to purchase the Bonds. It has received from the Institution and not the Issuer whatever information requested with respect to the Institution and the Project which it deems as a reasonable investor important in reaching its investment decision to purchase the Bonds. The Holder acknowledges that neither the Issuer nor its counsel nor Bond Counsel have made any investigation or inquiry with respect to the affairs or condition, financial or otherwise, of the Institution and that the Issuer, its counsel and Bond Counsel do not make any representations to the Holder with respect to the adequacy, sufficiency or accuracy of any financial statements and information or other information provided to the Holder or with respect to the ability of the Institution to pay the Bonds or fulfill its obligations with respect to the transactions contemplated in connection therewith. The Holder is not relying on any statements or representations by the Issuer with respect to: (i) the financial condition of the Institution; (ii) the creditworthiness of the Institution; (iii) the competency or integrity of the management of the Institution; or (iv) the suitability of the Project for the Institution's business. The Holder has made an independent evaluation of the facts listed above without reliance upon any evaluation or investigation by the Issuer, its counsel or Bond Counsel as to any of them, except to the extent such facts are specifically opined upon by the Issuer's counsel or Bond Counsel in their respective opinion letters to be delivered to the Holder on the Closing Date.

(f) The Holder has not relied upon the determination of the Issuer to issue the Bonds to finance the Project for any purpose in connection with its evaluation of the Institution's financial condition, creditworthiness and competency, or of the integrity of the Institution's management, or of the suitability of the Project for the Institution's business.

(g) The Holder acknowledges that neither the Issuer nor the Institution has prepared an offering document with respect to the Bonds.

(h) The Holder understands that the Bonds have not been registered under the 1933 Act or any state securities laws.

(i) The Holder is an "accredited investor" as defined in Rule 501 of Regulation D of the 1933 Act and is duly and validly organized under the laws of its jurisdiction of incorporation or organization. The Holder can bear the economic risk of the purchase of the Bonds, considers itself a substantial, sophisticated institutional investor and has such knowledge and experience in business and financial matters, including the analysis of a participation in the purchase of similar investments, as to be capable of evaluating the merits and risks of an investment in the Bonds on the basis of the information and review described in paragraph (e).

(j) The Holder has read the Bond Documents in their entirety and understands the risks associated with an investment in the Bonds.

(k) The Holder acknowledges that no credit rating or credit enhancement has been sought or obtained with respect to the Bonds, and it acknowledges that the Bonds are a speculative investment and that there is a high degree of risk in such investment.

## ARTICLE III

### CLOSING AND PURCHASE AND SALE OF BOND

**Section 3.01. Issuance of the Bonds.** There are hereby authorized to be issued the Bonds of the Issuer to be designated generally as “Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the “*Bonds*”). The Bonds shall be special obligations of the Issuer payable solely from loan payments received by the Issuer and other collateral pledged therefore including Gross Revenues. The Bonds may be issued in one or more Series, and the designation thereof, in addition to the name, shall include such further appropriate particular designations added to or incorporated in such title for the Bonds of any particular Series as the Issuer may determine. Each Bond shall bear upon its face the designation so determined for the Series to which it belongs. All Bonds shall be dated the date of delivery, shall bear interest from the date of delivery and shall be issued in the form of fully registered Bonds without coupons having installments of principal and interest due at the times, bearing interest at the rates set forth therein and being substantially the Forms of Bond set forth in Exhibit A attached hereto. The Bonds shall be payable at the places and in the manner set forth in said Forms of Bond. The Bonds will be signed on behalf of the Issuer with the manual or facsimile signature of the Authorized Representative of the Issuer. The Person in whose name any Bond is registered at the close of business on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date, notwithstanding the cancellation of such Bond upon any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date. Any Bonds issued in exchange for Bonds surrendered for transfer or exchange or in place of mutilated, lost, stolen, destroyed or undelivered Bonds will bear interest from the last date to which interest has been paid on the Bonds being transferred, exchanged or replaced or, if no interest has been paid, as of the dated date of the Bonds. Bonds will be numbered consecutively upwards. The Issuer hereby appoints the Institution as Registrar. The Institution shall keep a Register of the Bonds in which shall be maintained the names and addresses of all Holders thereof, the numbers and amounts of each Bond and other information appropriate to the discharge of its duties hereunder as provided in Section 7.12 of this Agreement. For purposes of determining whether a Holder holds a certain percentage or amount of aggregate principal amount of Bonds Outstanding for the purposes of this Agreement, ownership by Holders which are Affiliates shall be aggregated. The Issuer and the Institution shall be entitled to rely upon a certificate of any two or more Holders with respect to their status as Affiliates.

The person in whose name a Bond is registered in the Register shall be treated as the Holder thereof for all purposes, including the receipt of principal of, and premium, if any, and interest on such Bond.

**THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF WITHOUT REGISTRATION UNDER SAID ACT OR EXEMPTION THEREFROM. ANY SALE, TRANSFER OR DISPOSITION OF A BONDS SHALL COMPLY WITH THE TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE BOND.**

If any Bond is mutilated, lost, stolen or destroyed, the Issuer will upon request of the Holder and the Institution execute a new Bond of the same denomination and the same Series if any mutilated Bond shall first be surrendered to the Issuer, and if, in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Issuer evidence of such loss, theft or destruction, together with an indemnity, reasonably satisfactory to it. If the Bond has matured, instead of issuing a duplicate Bond, the Issuer may pay the Bond without requiring surrender of the Bond and make such requirements as the Issuer deems fit for its protection, including a lost instrument bond. The Issuer may charge the Owner its reasonable fees and expenses in this connection.

**Section 3.02. Closing Date.** On November 2, 2015, or on such other date as the Issuer, the Holder and the Institution may mutually agree upon, the Holder agrees, subject to the conditions and provisions herein, to purchase from the Issuer the Bonds in the aggregate principal amount of \$3,250,000 (i) upon receipt of the Bonds in such aggregate principal amount, and (ii) subject to the terms and conditions of this Bond Purchase Agreement.

**Section 3.03. Conditions Precedent to Closing.** The obligation of the Issuer to issue the Bonds and of the Holder to purchase the Bonds as contemplated by this Bond Purchase Agreement and to make disbursements from the Project Fund shall be subject to receipt by the Issuer and the Holder of all documents, fees and assurances required by the Financing Commitment and the receipt by the Issuer and the Holder of each of the following in form and substance reasonably satisfactory to the Issuer, the Holder and their respective counsel and Bond Counsel:

- (a) The original, executed Bonds and executed originals of all of the other Bond Documents;
- (b) the Survey;
- (c) the Title Insurance Policy in the amount of the Bonds;
- (d) An environmental questionnaire and a Phase I Environmental Site Assessment, conducted by an environmental consultant acceptable to the Holder at the sole expense of the Institution, dated no more than ninety (90) days prior to closing, certified to the Holder and the Issuer, in accordance with the most current ASTM standards, in form and content acceptable to Holder, indicating that the Project is free from risk, in Holder's sole judgment, from all hazardous substances, toxic substances or hazardous wastes as defined by any federal, state or local law, statute, ordinance or regulation and is free of all other contamination which, even if not so regulated, is known to pose a hazard to the health of any person on or about the Project, and that the Land is not in a "Wetlands" area, and contains no underground storage tanks or oil or gas wells;
- (e) Evidence satisfactory to the Holder and its counsel as to:
  - (i) the valid existence of the Issuer and the Institution;

(ii) the due authorization and execution by, and the valid and binding affect upon, the respective parties thereof of a contract to purchase the Land and each of the Bond Documents;

(iii) proof the renewal of the Institution's charter through 2020;

(iv) documentation satisfactory to the Holder from Apple Education Services that the Institution is entitled to a rent credit in the amount of approximately \$450,000;

(v) that the Project is and will be in compliance with all applicable Laws of the Governmental Authorities having jurisdiction over the Project, and that as of the Closing Date there are no outstanding violations of any applicable Laws with respect to any portion of the Project, where the failure to comply or such violation can reasonably be expected to have a Material Adverse Effect; and

(vi) no litigation materially affecting the business, operations, Properties, assets or business prospects of the Issuer or the Institution; and no required consents and no material defaults by the Issuer or the Institution;

(vii) the issuance of Bonds has been approved by applicable elected official of Erie County, New York;

(f) A certified copy of the Bond Resolution and proof of due corporate authorization, action, existence and good standing by and of the Issuer;

(g) A resolution adopted by the Institution authorizing the execution, delivery and performance by the Institution of the Institution Documents, and the execution and delivery of all documents by the Institution's authorized signer(s), together with the Institution's general certificate with certified true copies of the Institution's Charter, By-Laws, and currently dated status certificate from the New York Department of Education;

(h) An opinion of counsel to the Issuer as to the valid corporate existence of the Issuer, the due authorization, execution and delivery by the Issuer of the Bonds and the other Issuer Documents, the absence of material litigation involving the Issuer and such other matters as the Holder and its counsel or Bond Counsel may reasonably require;

(i) An opinion or opinions of counsel to the Institution in a form acceptable to the Holder and the Issuer;

(j) An opinion of Bond Counsel as to the due existence and authority of the Issuer, the valid issuance of the Bonds under the Bond Resolution and that interest on such Bonds are exempt from federal income taxation and from personal income tax imposed by the State and each political subdivision of the State;

(k) Certificates for insurance providing coverage required by the Loan Agreement;

(l) Judgment and lien searches in all counties in which the Institution is located;

(m) UCC-1 search in all counties in which the Institution is located and with the Secretary of State of New York;

(n) Payment of the commitment fee in the amount of \$8,125 and any other fees due and payable on or before on the Closing Date pursuant to the financing commitment, together with all reasonable fees and actual expenses incurred or payable by the Issuer or the Holder (including, without limitation, reasonable fees and actual expenses of counsel for the Holder and the Issuer) arising in connection with the negotiation, preparation and execution of this Agreement and the other Bond Documents and all other instruments and documents to be delivered hereunder or thereunder or arising in connection with the transactions contemplated hereunder or thereunder;

(o) An appraisal of the Facility showing a loan to value of not greater than 78.4%;

(p) A Hedging Contract satisfactory to the Holder entered into by the Institution with respect to the entire principal amount of the Bonds; and

(q) Such other documents, instruments, certificates, opinions or approvals as the Holder reasonably requests.

## ARTICLE IV

### PROJECT FUND; BOND PROCEEDS AND APPLICATION THEREOF

#### Section 4.01. Establishment of Project Fund; Requisitions; Completion.

(a) The Holder shall establish a Project Fund for the payment of Costs of the Project. The Project Fund shall consist of the amounts deposited therein pursuant to this Agreement, and shall contain any other amounts the Institution or the Holder may cause to be deposited therein pursuant to Section 7 or 25 of the Loan Agreement. The amounts in the Project Fund shall be held for the security of the Bonds Outstanding and may be invested at the direction of the Institution in Authorized Investments. The Institution hereby assigns to the Holder and grants to the Holder a security interest in all of the Institution's right, title and interest, if any, in the Project Fund and all amounts on deposit in the Project Fund. Payment for Costs of the Project (other than capitalized interest) shall be made on the Closing Date from the Project Fund pursuant to the initial Requisition (as defined herein) and in accordance with the terms hereof and the Tax Compliance Agreement; thereafter payments for Costs of the Project shall be made from the Project Fund, and in each case, only upon receipt by the Holder of a Requisition in the form of Exhibit B attached to this Agreement (a "**Requisition**"), executed by the Institution and delivered as provided hereinafter and in the Loan Agreement, authorizing such payment.

Any Requisition may authorize the making of payments to or on behalf of the Institution for advances made in respect of Qualified Costs, but only to the extent that such amounts are properly chargeable against the Project Fund in accordance with this Agreement and the Tax

Compliance Agreement. In any such case, the Requisition shall relate to capital expenditures (except as otherwise permitted under the Tax Compliance Agreement) and (i) in the case of payments for work or obligations performed, to the work or obligations so performed, and (ii) in the case of reimbursements for advances made by or on behalf of the Institution, to the underlying obligation for which the Institution is being reimbursed. Within ten (10) days after receipt by the Holder of a Requisition (except for the initial Requisition which shall be paid at closing) which complies with the provisions hereof, the Holder shall deliver to the Institution or its designee checks made payable to the Institution or its designee for the payment thereof or shall make arrangements for the transfer and deposit of the amount for such payment, as the Institution shall request.

Upon the acceleration of the principal of all Bonds Outstanding pursuant to Section 6.02 hereof, the Holder shall immediately transfer all amounts in the Project Fund, including the accounts therein, to payment of the Bonds in accordance with Section 6.02 hereof. In addition, the Institution shall have no right to obtain any disbursements from the Project Fund if an Event of Default, or an event or condition which, with notice or passage of time, would constitute an Event of Default hereunder, has occurred and is continuing. In the event the acceleration of the Bonds is annulled pursuant to Section 6.02(b) hereof, the Holder shall transfer back to the Project Fund any amounts remaining from the moneys transferred from such Project Fund upon such annulment.

(b) Each disbursement from the Project Fund shall be made upon the Institution's Requisition to the Holder in accordance with the terms hereof. The Holder shall disburse moneys from the Project Fund to the Institution or its order in immediately available funds not later than 1:00 p.m. on the business day specified in the applicable Requisition upon satisfaction of the applicable conditions set forth herein.

#### **Section 4.02 Bond Proceeds and Application Thereof.**

On the Closing Date, the Holder shall deposit and transfer the proceeds of the Bonds, being \$3,250,000 consisting of the face amount of the Bonds, as follows:

(a) deposit in the Project Fund \$57,226.50 for application to the payment of the costs incidental to the issuance of the Bonds in accordance with the terms hereof and the initial Requisition; and

(b) deposit in the Project Fund \$3,192,773.50 for application to the acquisition costs for the Project and any additional permitted disbursements in accordance with the terms hereof and the initial Requisition.

#### **Section 4.03. Reserved.**

**Section 4.04. Reports by the Holder.** The Holder shall notify the Issuer of the principal of the Outstanding Bonds annually on the anniversary of the Closing Date and at such other times as the Issuer may request and of the redemption and prepayment the Bonds upon such payment or prepayment.

## ARTICLE V

### REPAYMENT BY ISSUER; TAXES; EXPENSES

**Section 5.01. Payment of Principal and Interest.** Solely to the extent provided in Section 7.10 hereof, the Issuer shall pay, or cause to be paid, interest, premium, if any, the redemption price and the principal of the Bonds to the Holder in accordance with the terms thereof and this Agreement.

**Section 5.02. Taxes.** All payments by the Issuer and the Institution under this Agreement shall be made free and clear of any restrictions or conditions, without setoff or counterclaim. If any such deduction or withholding is required by law to be made by the Issuer, the Institution or any other Person (whether or not a party to, or on behalf of a party to, this Agreement) from any sum paid or payable by, or received or receivable from, the Issuer or the Institution, the Institution shall pay in the same manner and at the same time such additional amounts as will result in the Holder receiving and retaining (free from any liability other than tax on its overall net income) such net amount as would have been received by Holder had no such deduction or withholding been required to be made.

**Section 5.03. Expenses.** The Institution shall pay all reasonable fees and actual expenses incurred or payable by the Holder and the Issuer (including, without limitation, reasonable fees and actual expenses of counsel for the Holder or the Issuer, as the case may be), arising in connection with the negotiation, preparation and execution of this Agreement and the other Loan Documents and all other instruments and documents to be delivered hereunder or thereunder, and arising from time to time in connection with the transactions contemplated hereunder or thereunder.

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES

**Section 6.01. Events of Default.** The following shall be “Events of Default” under this Bond Purchase Agreement, and the term “Event of Default” shall mean, when it is used in this Bond Purchase Agreement, any one or more of the following events:

(a) The failure by the Institution or the Issuer to pay any Obligation under Section 5.01 hereof when due; or a default in the payment of any other amounts required to be delivered or paid by or on behalf of the Institution in accordance herewith and such default continues for a period in excess of ten (10) days after written notice requiring the same to be remedied shall have been given to the Institution by the Issuer or the Holder.

(b) The failure by the Institution to observe and perform any covenant, condition or agreement hereunder (except under (a) above) on its part to be observed or performed, for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Institution or the Issuer, as the case may be, by the

Holder; *provided, however*, if the covenant, condition or agreement which the Institution or the Issuer has failed to observe or perform is of such a nature that it cannot reasonably be fully cured within such thirty (30) days, the Institution or the Issuer shall not be in default if the Institution or the Issuer, as the case may be, commences a cure within such thirty (30) days and thereafter diligently proceeds with all action required to complete the cure and, in any event, completes such cure within sixty (60) days of such written notice from the Holder;

(c) The occurrence of an Event of Default under any of the other Bond Documents, which continues beyond any applicable grace or cure period;

(d) The occurrence of an event of default, or an event or circumstance which with the passage of time or giving of notice would constitute an event of default, under any other agreement heretofore or hereafter entered into between the Institution and the Holder;

(e) The Issuer, the Institution or an Authorized Representative of either, shall have made, in any certificate, statement, representation, warranty or financial statement furnished to the Holder in connection with the financing of the Project, a material representation which proves to have been false or misleading in any material respect as of the time such statement was made, or any such certificate, statement, representation, warranty or financial statement shall omit to state any material fact required to be stated therein or necessary to make the statements therein not materially misleading;

(f) If the Institution: (i) fails to pay any Indebtedness for borrowed money (other than as arising under the other Bond Documents) owing by the Institution when due, whether at maturity, by acceleration or otherwise; or (ii) fails to perform any term, covenant or agreement on its part to be performed under any agreement or instrument (other than this Bond Purchase Agreement or any other Bond Document) evidencing, securing or relating to such Indebtedness when required to be performed, or is otherwise in default thereunder, if the effect of such failure is to accelerate, or to permit the holder(s) of such Indebtedness or the trustee(s) under any such agreement or instrument to accelerate, the maturity of such Indebtedness, unless waived by such holder(s) or trustee(s);

(g) If any of the following events occur: (i) any Reportable Event which the Holder determines in good faith might constitute grounds for the termination of any Plan or for the appointment by the appropriate United States District Court of a trustee to administer any Plan continues for thirty (30) days after the Holder has given written notice thereof to the Institution; (ii) any Plan incurs any "accumulated funding deficiency" (as such term is defined in ERISA), whether waived or not; (iii) the Institution engages in any Prohibited Transaction (as defined in Section 4975 of the Code); (iv) a trustee is appointed by an appropriate United States District Court to administer any Plan; or (v) the Pension Benefit Guaranty Corporation, or any successor thereto, institutes proceedings to terminate any Plan or to appoint a trustee to administer any Plan;

(h) Any Loan Party or any of the Subsidiaries of a Loan Party institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all

or any material part of its Property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its Property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) days, or an order for relief is entered in any such proceeding;

(i) If the Institution shall merge or consolidate with any other corporation or entity or sell, lease, transfer or otherwise dispose of a substantial part of its Property or assets, except as otherwise permitted under the Loan Agreement, without first having obtained the Holder's written consent to the extent required under Section 2.04(g) hereof;

(j) The Collateral Documents shall for any reason fail to create a valid first priority lien and security interest in the Collateral in favor of the Holder, except for Permitted Encumbrances;

(k) Any Bond Document or any provision thereof, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Bond Document or any provision thereof; or any Loan Party denies that it has any or further liability or obligation under any Bond Document, or purports to revoke, terminate or rescind any Bond Document or any provision thereof;

(l) An attachment or garnishment writ or the like is levied against all or any portion of any Collateral and such attachment or garnishment writ has not been discharged, vacated or modified to exclude any such Collateral within thirty (30) days and the Holder shall not be liable for contempt for failing to comply with such attachment or writ;

(m) Final judgment for the payment of money which shall be in excess, if applicable, of amounts covered by insurance, or in excess of \$50,000 in the aggregate for all uninsured judgments, is rendered against any Loan Party and within sixty (60) days from the entry of such judgment has not been discharged or stayed pending appeal or has not been discharged within sixty (60) days from the entry of a final order of affirmance on appeal;

(n) [Reserved];

(o) The direct or indirect sale, transfer or conveyance by the Institution of the Project, or any portion thereof, or any interest (legal or equitable) therein unless approved by the Holder in its sole and absolute discretion;

(p) There occurs any event or circumstance that has a Material Adverse Effect; or

(q) The occurrence of a default under any Hedging Contracts, which continues beyond any applicable grace or cure period.

### **Section 6.02. Acceleration; Annulment of Acceleration.**

(a) Upon the occurrence of an Event of Default (other than under Section 6.01(h) hereof), the Holder shall not be obligated to make any further disbursements from the Project Fund and may declare the Bonds immediately due and payable without protest, presentment, any further notice or demand, all of which to the extent permitted by law are expressly waived by the Issuer and the Institution. In such event, there shall be due and payable the total Outstanding principal amount of the Bonds, all interest accrued thereon and which will accrue thereon to the date of payment and all other amounts due thereunder. Upon the happening of an event of default under Section 6.01(h) hereof, Holder may declare all obligations hereunder to be canceled and the principal of the Bonds then outstanding to be immediately due and payable, together with all interest thereon and fees and expenses accruing under this Agreement without presentation, demand or further notice of any kind to the Institution.

(b) At any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Bond Purchase Agreement, the Holder may, at its sole option, annul in writing such declaration and its consequences.

### **Section 6.03. Other Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default, the Holder: (i) shall have, in addition to all other rights of the Holder, the rights and remedies of a secured party under the UCC; (ii) may proceed to protect and enforce the Holder's rights by suit in equity, action of law and/or other appropriate proceeding either for specific performance of any covenant or condition contained in this Agreement, any other Bond Document or in any instrument or document delivered to the Holder pursuant hereto or thereto; and (iii) in the exercise of any rights, remedies or powers granted in this Agreement, any other Bond Document and/or any such instrument or document, may proceed to declare the Obligations to be due and payable pursuant to Section 6.02 hereof, and the Holder may proceed to enforce payment of such Obligations as provided herein or in any Bond Document, and may offset and apply toward the payment of such amount any Indebtedness of the Holder to the Institution.

(b) Upon the occurrence and during the continuance of an Event of Default, the Holder and each of its Affiliates in its discretion may also set off any or all of the Obligations against any securities, cash or other Property of the Institution in the possession of the Holder or its Affiliates and against any obligations owed to the Institution by the Holder or its Affiliates to the extent that it does not impact the Holder's or its Affiliate's ability to recover amounts owed to the Holder or its Affiliates. THE INSTITUTION UNDERSTANDS THAT, PURSUANT TO THE TERMS OF THIS AGREEMENT, THE INSTITUTION IS ALLOWING THE HOLDER AND ITS AFFILIATES TO SET OFF ANY OR ALL OBLIGATIONS OF THE INSTITUTION TO THE HOLDER OR ANY OF ITS AFFILIATES AND BY ALLOWING FOR THE HOLDER'S AND SUCH AFFILIATE'S SETOFF, THE INSTITUTION IS WAIVING ALL OF ITS RIGHTS TO LIMIT SETOFF TO THOSE OBLIGATIONS WHICH ARE MUTUAL AS BETWEEN THE HOLDER AND THE INSTITUTION .

**Section 6.04. Remedies Not Exclusive.** No failure by the Holder to exercise and no delay in exercising, and no course of dealing with respect to, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. No remedy conferred upon or reserved to the Holder by this Bond Purchase Agreement is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Holder now or hereafter existing at law or in equity or by statute or otherwise pursuant to any other Bond Documents.

## ARTICLE VII

### MISCELLANEOUS

**Section 7.01. Institution to Pay Expenses.** The Institution agrees to pay: (a) the reasonable fees and expenses of the Issuer, the Holder and the Issuer and their respective counsel, and all other reasonable costs and expenses incidental to the financing hereunder, the issuance of the Bonds and the costs of producing the documents referred to herein, including, without limitation, the fees and expenses of Bond Counsel, plus disbursements; (b) all taxes, if any, upon all documents and transactions pursuant to, or contemplated by, this Bond Purchase Agreement; (c) all expenses of all recordings and filings pursuant to or contemplated by this Bond Purchase Agreement; and (d) all costs and expenses of collection and the enforcement of any and all remedies and rights (including, without limitation, reasonable legal fees and disbursements) in the event of the occurrence of an Event of Default under this Bond Purchase Agreement.

**Section 7.02. Recording and Filing.** The Institution shall cause to be recorded or filed, as the case may be, in the appropriate office, the Mortgage, and all other security instruments in such manner and in such places as may be required by law to perfect the security interests contemplated herein and therein and all financing statements and continuation statements under the UCC in such manner and in such places as may be required by law to protect and maintain in force all such security interests.

**Section 7.03. Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Bond Purchase Agreement or the Bonds is intended or shall be construed to give to any Person, other than the parties hereto, and their successors and assigns, any right, remedy or claim under or with respect to this Bond Purchase Agreement or any covenants, conditions and provisions herein contained. This Bond Purchase Agreement and all of the covenants, conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto and their successors and assigns as herein provided.

**Section 7.04. Severability.**

(a) If any provision of this Bond Purchase Agreement shall, for any reason, be held or shall, in fact, be inoperative or unenforceable in any particular case, such circumstance

shall not render the provision in question inoperative or unenforceable in any other case or circumstance or render any other provision herein contained inoperative or unenforceable.

(b) The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections in this Bond Purchase Agreement shall not affect the remaining portion of this Bond Purchase Agreement or any part thereof.

**Section 7.05. Notices.** All notices, certificates or other communications hereunder shall be in writing and shall be (a) delivered personally, or (b) sent by United States Postal Service prepaid, first-class mail, or by registered or certified mail, return receipt requested, or (c) sent overnight via substantial national delivery service, addressed as set forth immediately following this paragraph, or at such other addresses as the Issuer, the Institution or the Holder shall otherwise have given notice as herein provided:

<p><b>To the Issuer:</b></p> <p>Buffalo and Erie County Industrial Land Development Corporation 95 Perry Street, Suite 403 Buffalo, New York 14203 Attention: President and Chief Executive Officer</p>	<p><b>With a copy to:</b></p> <p>Harris Beach PLLC 726 Exchange Street, Suite 1000 Buffalo, New York 14210 Attn: Robert Murray, Esq.</p>
<p><b>To the Holder:</b></p> <p>First Niagara Bank, N.A. 726 Exchange Street Buffalo, New York 14210 Attn: Commercial Loan Administration</p>	<p><b>With a copy to:</b></p> <p>Hodgson Russ LLP The Guaranty Building 140 Pearl Street, Suite 100 Buffalo, New York 14202 Attn: Christofer C. Fattey, Esq.</p>
<p><b>To the Institution:</b></p> <p>Buffalo Academy of Science Charter School 190 Franklin Street Buffalo, New York 14202 Attn: Financial Analyst</p>	<p><b>With a copy to:</b></p> <p>Jaeckle Fleischmann &amp; Mugel, LLP Avant Building, Suite 900 200 Delaware Avenue Buffalo, New York 14202 Attn: George F. Bellows, Esq.</p>

All notices shall be deemed given on the date of personal delivery or, if mailed, five (5) days after mailing, or if given by overnight service, on the date of receipt as indicated by the records of the overnight delivery service.

A duplicate copy of each notice, certificate or other communication given hereunder by any of the parties hereto to the addressee of such notice, certificate or other communication, shall

be given to the remaining party hereto. The Issuer, the Institution and the Holder may, by notice hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 7.06. Counterparts.** This Bond Purchase 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. Any executed counterpart may be introduced into evidence in any action or proceeding without having to produce any of the other counterparts.

**Section 7.07. Applicable Law.** This Bond Purchase Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

**Section 7.08. Reserved.**

**Section 7.09. Amendment.** No amendment, waiver or modification of any provision of this Agreement shall be effective except pursuant to an agreement or agreements in writing entered into by the parties hereto.

**Section 7.10. No Recourse; Special Obligation of Issuer.** The obligations of the Issuer contained herein shall not constitute or give rise to an obligation of the State, Erie County, New York, or the City of Buffalo, New York, and neither the State, Erie County, New York or the City of Buffalo, New York shall be liable thereon, and further such obligations shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute limited obligations of the Issuer payable solely from the revenues of the Issuer derived and to be derived from sources set forth herein.

**Section 7.11. Indemnity.** The Institution hereby agrees to indemnify, defend and hold harmless the Holder and the Issuer, and their respective officers, directors, employees, agents, representatives, successors and assigns (each, an "*Indemnified Person*") in connection with any losses, claims, damages, liabilities, obligations, penalties, actions, suits, costs, charges and actual expenses, including reasonable attorneys' fees: (i) of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement and any other Bond Document, or the transactions contemplated hereby or thereby, and with respect to any investigation, litigation or proceeding (including any bankruptcy, insolvency or appellate proceeding) related to this Agreement or the other Bond Documents or the transactions contemplated hereby or thereby or the use of any of the Bond Proceeds, whether or not any Indemnified Person is a party thereto; and (ii) which may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding (including any bankruptcy or insolvency proceeding) or any action taken by any Person with respect to any environmental claim or suit arising out of or related to any Property of the Issuer or the Institution (all of the foregoing, the "*Indemnified Liabilities*"). Notwithstanding the foregoing, the Institution shall have no obligation to any Indemnified Person for any Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person, or the breach by the Holder of its obligations under this Agreement or the other Bond Documents, in each case as determined in a final, non-appealable decision of a court of competent jurisdiction or of an arbitration panel.

## Section 7.12. Assignment, Etc.

(a) Any Holder may sell, assign, transfer or negotiate its rights and obligations under this Agreement and the other Bond Documents, in whole or in part, at any time only to: (i) any of its Affiliates without notice to the Issuer or the Institution; or (ii) to any other domestic bank or entity upon notice to the Institution, at the sole cost and expense of the Institution, and the Issuer, in each case, subject to subsection (b) of this Section 7.12. The Issuer agrees to execute any additional or replacement Bonds requested by such Holder to further document any such sale, assignment, transfer or negotiation and to execute and deliver to the Holder such documents and instruments as they may require in connection with the same. Any assignee or transferee of such Holder's rights and/or obligations shall be entitled to the full benefit of this Agreement to the same extent as if it were an original party in respect of the rights or obligations assigned or transferred to it.

(b) Assignments shall be subject to the following additional conditions:

(i) Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Holder's rights and obligations under this Agreement; and

(ii) The parties to each assignment shall execute and deliver to the Issuer an Assignment and Assumption, together with the fees and expenses of the Issuer with respect to each such assignment.

(iii) Subject to acceptance and recording thereof pursuant to subsection (b)(v) of this Section 7.12, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Holder under this Agreement, and the assigning Holder thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Holder's rights and obligations under this Agreement, such Holder shall cease to be a party hereto, but shall continue to be entitled to the benefits of Sections 6.03 and 7.11 hereof). Any assignment or transfer by a Holder of rights or obligations under this Agreement that does not comply with this Section 7.12 shall be treated for purposes of this Agreement as a sale by such Holder of a participation in such rights and obligations in accordance with paragraph (c) of this Section 7.12.

(iv) The Issuer as registrar shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Holders, and principal amount of the Bonds owing to, the Holder pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and the Institution, the Issuer, and the Holders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Holder hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Institution and any Holder at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Holder and an assignee, and any written consent to such assignment required by paragraph (a) of this Section, the Issuer shall accept such Assignment and Assumption and record the information contained therein in the Register, *provided that* if either the assigning Holder or the assignee shall have failed to make any payment required to be made by it pursuant to Sections 4.01(a) or 6.03(b), the Issuer shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) Any Holder may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Holder, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest, *provided that* no such pledge or assignment of a security interest shall release a Holder from any of its obligations hereunder or substitute any such pledgee or assignee for such Holder as a party hereto.

(c) Any Holder may sell participating interests in the Indebtedness evidenced by any Bond held by such Holder, any Bond held by such Holder or any other interest of such Holder under this Agreement and the other Bond Documents to one or more banks or other entities (“*Participants*”). In the event of any such sale by a Holder of participating interests to a Participant, such Holder’s obligations under this Agreement and the other Bond Documents shall remain unchanged, such Holder shall remain solely responsible to the other parties hereto for the performance of such obligations, such Holder shall remain the owner of the indebtedness evidenced by the Bonds and the holder of any Bond issued to it in evidence thereof for all purposes under the Bond Documents, all amounts payable by the Issuer and the Institution under this Agreement shall be determined as if such Holder had not sold such participating interests, and the Issuer and the Institution shall continue to deal solely and directly with such Holder in connection with such Holder’s rights and obligations under the Bond Documents.

(d) Neither the Issuer nor the Institution may assign its rights or obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of all the parties to this Agreement.

(e) The Holder may at any time change the office through which it is acting for the purpose of this Agreement and may at any time act for this purpose through more than one office. The Holder may disclose to an assignee or transferee permitted by this Agreement such information about the Issuer, the Institution and the Bond Documents as it may deem appropriate, so long as such assignee or transferee has agreed in writing to treat such information as confidential to the same extent and in the same manner as the Holder is required to treat such information as confidential.

**Section 7.13. Table of Contents and Section Headings Not Controlling.** The Table of Contents and the headings of the several Articles and Sections of this Bond Purchase Agreement

have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Bond Purchase Agreement.

**Section 7.14. Survival.** This Bond Purchase Agreement shall survive the purchase and sale of the Bonds and shall remain in full force and effect until the Bonds, together with interest thereon, and all amounts payable under this Bond Purchase Agreement and all of the other Bond Documents shall have been paid in full.

**Section 7.15. Reserved.**

**Section 7.16. Reinstatement of Obligations.** If and to the extent the Holder receives any payment with respect to the Obligations or this Agreement and all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by the Holder or paid over to a trustee, receiver or any other entity, whether under any bankruptcy law or otherwise (any such payment is referred to as a “*Returned Payment*”), then this Agreement shall continue to be effective or shall be reinstated, as the case may be, to the extent of such payment or repayment by the Holder, and the Obligations or part thereof intended to be satisfied by such Returned Payments shall be revived and continued in full force and effect as if the Returned Payment had not been made.

**Section 7.17. USA Patriot Act.** The Holder hereby notifies the Institution that, pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies the Institution, which information includes the names and addresses of the Institution and other information that will allow the Holder to identify the Institution in accordance with the USA Patriot Act.

**Section 7.18. Jurisdiction and Venue.** The Institution knowingly, voluntarily, intentionally and irrevocably: (a) consents in each action and other legal proceeding commenced by Holder or any Holder affiliate and arising out of or otherwise relating to this Agreement, or any Bond Documents to the nonexclusive personal jurisdiction of any court that is either a court of record of the State or a court of the United States located in the State; (b) waives each objection to the laying of venue of any such action or other legal proceeding; (c) waives personal service of process in each such action and other legal proceeding; and (d) consents to the making of service of process in each such action and other legal proceeding by registered mail directed to Institution at the last address of Institution shown in the records relating to this Agreement maintained by Holder, with such service of process to be deemed completed five (5) days after the mailing thereof.

**Section 7.19. Waiver of Jury Trial.** The Institution: (a) knowingly, voluntarily, intentionally and irrevocably waives each right Institution may have to a trial by jury with respect to, and in, any action or other legal proceeding, of any nature relating to: (i) this Agreement or any Bond Documents; (ii) any transaction contemplated in any such documents; or (iii) any negotiation, administration, performance or enforcement of this Agreement or any of the Obligations, any of the Bond Documents or collateral or any other Collateral; and (b) certifies that: (i) neither Holder, any Holder affiliate nor any representative of Holder or any Holder affiliate has represented to Institution that Holder or any Holder affiliate will not seek to enforce the waiver made by Institution in this section; and (ii) it has been represented (or has had the

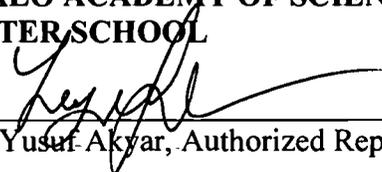
opportunity to be represented) in the signing of this Agreement as necessary and appropriate by independent legal counsel.

**IN WITNESS WHEREOF**, the parties hereto have caused this Bond Purchase Agreement to be executed in their respective names by their duly authorized representatives, and have caused this Bond Purchase Agreement to be dated as the date first set forth above.

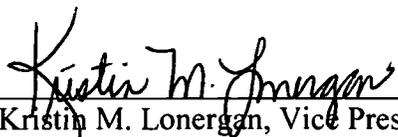
**BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION**

By:   
Karen Fiala, Assistant Treasurer

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By:   
Yusuf Akyar, Authorized Representative

**FIRST NIAGARA BANK, N.A.**

By:   
Kristin M. Lonergan, Vice President

[ACKNOWLEDGMENT PAGES TO BOND PURCHASE AGREEMENT]

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

On the 30<sup>th</sup> day of October in the year 2015 before me, the undersigned, personally appeared **Karen Fiala**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lori L McRobbie  
Notary Public

LORI L McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co No 01MC5055591  
Commission Expires on Feb. 12, 20 18

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

On the 30<sup>th</sup> day of October in the year 2015 before me, the undersigned, personally appeared **Yusuf Akyar**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lori L McRobbie  
Notary Public

LORI L McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co No 01MC5055591  
Commission Expires on Feb. 12, 20 18

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

On the 30<sup>th</sup> day of October in the year 2015 before me, the undersigned, personally appeared Kristin M Loneragan personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to in the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lori L McRobbie  
Notary Public

LORI L McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co No 01MC5055591  
Commission Expires on Feb. 12, 20 18

**EXHIBIT A**  
**FORM OF BONDS**

**THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF WITHOUT REGISTRATION UNDER SAID ACT OR EXEMPTION THEREFROM. ANY SALE, TRANSFER OR DISPOSITION OF THE BONDS SHALL COMPLY WITH THE TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE BOND.**

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION  
TAX-EXEMPT REVENUE BONDS  
(BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
PROJECT), SERIES 2015**

**NO.:** RA-1

**MATURITY DATE:** April 30, 2023

**INTEREST RATE:** LIBOR-Based Rate

**DATED DATE:** November 3, 2015

**REGISTERED OWNER:** First Niagara Bank, N.A.

**PRINCIPAL AMOUNT:** Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000)

The Buffalo and Erie County Industrial Land Development Corporation, a not for profit corporation constituting a local development corporation duly organized and existing under the laws of the State of New York, having its principal office at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "*Issuer*"), for value received, hereby promises to pay, solely from the sources hereinafter described, to the Registered Owner identified above or registered assigns, on the Maturity Date identified above (subject to any right of prior redemption hereinafter provided for), the Principal Sum set forth above (subject to reduction as hereinafter provided) and interest thereon from the Dated Date set forth above, to the Maturity Date identified above (or such earlier date on which the principal hereof has been paid or duly provided for). Interest shall be payable at the Interest Rate identified above on the last day of each month, commencing November 30, 2015. Principal shall be payable monthly in the amounts set forth at Schedule A attached hereto and made a part hereof on: (a) the last day of each month, commencing November 30, 2015; and (b) the Maturity Date or optional or extraordinary redemption date; provided that, if any such date shall not be a Business Day, as defined herein, then such payment shall be made on the immediately preceding Business Day (with interest payable through the stated Maturity Date, purchase date or redemption date). In no event shall the interest rate payable hereon exceed the maximum permitted by, or enforceable under, applicable law.

The principal of, and LIBOR Breakage Fee (as defined below), if applicable, and interest on this Bond are payable in coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts. Any payment required hereunder prior to the final payment of this Bond, including partial redemption of principal, may be made for the account of the Issuer by check delivered or mailed by BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL, a charter school (the "*Institution*"), to FIRST NIAGARA BANK, N. A., or its registered assigns (the "*Bondholder*") at 726 Exchange Street, Buffalo, New York 14210 or such other location as may be designated by the Bondholder to the Institution in writing. The final payment of this Bond upon maturity, acceleration, purchase or redemption shall be made upon surrender of this Bond to the Institution.

This Bond is one of the duly issued bonds of the Issuer, designated "Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015" and issued in the original aggregate principal amount of \$3,250,000 (the "*Series 2015 Bonds*" or the "*Bonds*"). The Bonds were issued for the purpose of financing a project to provide funds to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 to be used to operate a charter school for grades 7-12 (the "*Facility*"); (b) to pay costs incidental to the issuance of the Bonds; and (c) to fund a debt service reserve fund, if any, required with respect to the Bonds (the "*Project*").

This Bond is secured by: (i) a Pledge and Assignment from the Issuer to the Bondholder; and (ii) the Mortgage and Security Agreement granted in favor of the Issuer and the Bondholder, with the Issuer's interest being assigned to the Bondholder; and (iii) certain Collateral Documents. The Pledge and Assignment assigns to the Bondholder certain of the rights and remedies of the Issuer under the Loan Agreement, including the right to collect and receive certain amounts payable thereunder. The Mortgage grants to the Issuer for the benefit of the Bondholder, and the Bondholder, a first priority mortgage and a security interest in the interest of the Institution in and to the Facility. The Issuer has assigned its interest in the Mortgage to the Bondholder. The Assignment of Rents assigns to the Issuer and the Bondholder a first priority Lien in the leases relating to and rents from the Project. The Issuer has assigned its interest in the Assignment of Rents to the Bondholder. The Security Agreement grants to the Bondholder a first priority security interest in the Collateral (as defined therein) of the Institution. Reference is hereby made to the Loan Agreement, the Pledge and Assignment, the Mortgage, the Assignment of Rents and the Security Agreement and to all amendments and supplements thereto for a description of the property mortgaged, pledged and assigned, the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Bondholder and the terms upon which this Bond is issued and secured.

Reference is made to the Bond Purchase Agreement dated November 2, 2015 (the "*Bond Purchase Agreement*"), among the Issuer, the Institution and the Bondholder for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for this Bond, the rights, duties and obligations of the Issuer, the Institution and the Bondholder, and the terms and conditions upon which this Bond is issued and secured. All terms used herein with initial capitalization and which are not expressly defined herein, and

where the rules of grammar or context do not otherwise require, shall have the meanings as set forth in the Bond Purchase Agreement. The Bondholder assents, by its acceptance hereof, to all of the provisions of the Bond Purchase Agreement.

Determination of Interest Rate.

“*Business Day*” means a day that is both a New York Business Day and a London Business Day.

“*Closing Date*” means the date of issuance, sale and delivery of the Bonds.

“*Interest Payment Date*” means the last day of each month commencing November 30, 2015; provided however, if in any month the last day is not a Business Day, the Interest Payment Date shall be the immediately preceding Business Day, so as to, in all instances, coincide with the end of the applicable Interest Period.

“*Interest Period*” means one (1) month.

“*LIBOR-Based Rate*” means (a) prior to an Event of Taxability, a rate per annum equal to sixty-seven percent (67%) of the sum of (i) the LIBOR Rate for the Interest Period and (ii) 2.75%; and (b) after an Event of Taxability, a rate per annum equal to the LIBOR Rate for the Interest Period plus 2.75%.

“*LIBOR Rate*” means a variable interest rate per annum (rounded upwards, if necessary) determined by Lender by dividing (a) the LIBOR rate which is published on Bloomberg Screen, BBAM1 (or any successor as may replace such page in said service for the purposes of display of the interbank interest rates offered on the London market) at 11:00 a.m. London time two (2) Business Days prior to the commencement of the Interest Period; provided, however, if such rate is not available, “LIBOR Rate” shall mean either (i) the rate of interest per annum determined by Holder to be the average rate per annum at which United States dollar deposits in a similar amount are offered for such Interest Period by major banks in the London interbank deposit market at approximately 11:00 a.m. London time two (2) Business Days prior to the commencement of the Interest Period or (ii) a similar rate based upon a comparable index chosen by Lender in its sole discretion, by (b) a number equal to 1.00 less the Reserve Requirement.

“*LIBOR Breakage Fee*” means (i) the accrued interest on the principal being prepaid and (ii) a prepayment premium in an amount computed as follows: the current rate for United States Treasury securities with a maturity date closest to the maturity of the applicable Interest Period (the “Reinvestment Rate”) shall be subtracted from the LIBOR Rate at the time of prepayment. If the LIBOR Rate is less than or equal to the Reinvestment Rate, no prepayment premium shall be due. If the Reinvestment Rate is less than the LIBOR Rate, then the excess percentage shall be multiplied by the amount of the principal balance being prepaid. The resulting amount shall be divided by 360 and multiplied by the number of days remaining until maturity of the applicable Interest Period, and the amount shall be reduced to present value calculated by using the number of days remaining in the designated term and using the above-referenced United States Treasury security rate and the number of days remaining until maturity

of the applicable Interest Period. The resulting amount shall be the prepayment premium due to the Holder upon prepayment.

*"Prime Rate"* shall mean the variable rate of interest announced by Holder from time to time as its prime rate for calculating interest on certain loans. The Prime Rate may or may not be the most favorable rate charged by Holder to its customers from time to time.

*"Reserve Requirement"* means the percentage which Bondholder determines to be the maximum reserve requirement (including, without limitation, any emergency, marginal, special or supplemental reserve requirement) prescribed for so-called "Eurocurrency liabilities" (or any other category of Eurocurrency funding) prescribed by the Board of Governors of the Federal Reserve System (or under any successor regulation which Bondholder determines to be applicable) with each change in such maximum reserve requirement automatically, immediately and without notice changing the LIBOR thereafter applicable.

*"Variable Rate"* shall mean: (a) prior to an Event of Taxability, sixty-seven percent (67%) of the Prime Rate; and (b) after an Event of Taxability, the Prime Rate. The Variable Rate shall change simultaneously with changes to the Prime Rate.

The Institution shall also pay the LIBOR Breakage Fee, determined as described below, upon any acceleration of this Bond, any purchase or redemption of this Bond from the Bondholder on any payment date, or redemption date that is not the last day of the relevant Interest Period.

Upon: (i) any redemption of all or any portion of the principal of this Bond (including, for the purposes of this paragraph, any purchase of this Bond from the Bondholder or acceleration) on any day that is not the last day of the relevant Interest Period (regardless of the source of such redemption and whether voluntary, by acceleration or otherwise); or (ii) the occurrence of an Event of Default, as defined in the Bond Purchase Agreement, the Institution shall pay the LIBOR Breakage Fee. The Institution understands, agrees and acknowledges that: (i) the Bondholder has no obligation to purchase, sell and/or match funds in connection with the use of the LIBOR-Based Rate as a basis for calculating the rate of interest on this Bond; (ii) the LIBOR-Based Rate may be used merely as a reference in determining such rate; and (iii) the Institution has accepted such losses, expenses, costs, funding losses and liabilities as a reasonable and fair basis for calculating the LIBOR Breakage Fee and other funding losses incurred by the Bondholder. The Institution further agrees to pay the LIBOR Breakage Fee and other funding losses, if any, whether or not the Bondholder or the Bondholder elects to purchase, sell and/or match funds.

If pursuant to the terms of this Bond, the Institution is at any time obligated to pay interest on the principal balance of this Bond at a rate in excess of the maximum interest rate permitted by applicable law, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder.

In case any Event of Default (as defined in the Bond Purchase Agreement) occurs and is continuing, the principal amount of this Bond, together with LIBOR Breakage Fee, if applicable, and accrued interest, may be declared due and payable in the manner and with the effect provided in the Bond Purchase Agreement. After the occurrence and during the continuance of any such Event of Default, this Bond will, at the option of the Bondholder, bear interest at a rate per annum which at all times shall be equal to the sum of: (i) six percent (6%) per annum plus; (ii) the LIBOR-Based Rate then payable with respect thereto (but in no event in excess of the maximum rate from time to time permitted by then applicable law). In addition, if the entire amount of any required principal and/or interest payment is not paid within ten (10) days after the same is due, the Institution shall pay to the Bondholder a late fee equal to six percent (6%) of such overdue payment.

If the adoption of, any change in or any change in the interpretation of, any law, regulation or guideline applicable to financial institutions by any governmental authority (a "*Governmental Rule*") exercising control over the Bondholder, or the compliance by the Bondholder with the Governmental Rule (including, without limitation, Regulation D of the Board of Governors of the Federal Reserve System and regulations of the Securities Exchange Commission relating to financial instruments), imposes any reserve, deposit, allocation of capital or similar requirement or any tax (other than taxes on the Bondholder's income) the Bondholder which reduces the rate of return on the Bondholder's capital then, and in each such case, the Bondholder may require the Institution to pay the amount necessary to compensate the Bondholder for such reduced rate of return. The Bondholder will deliver to the Institution a statement of the justification for the payment(s), and the determination by the Bondholder shall be conclusive absent obvious error and shall be payable by the Institution to the Bondholder upon the Bondholder's demand. In determining any such amount, the Bondholder may use reasonable averaging and attribution methods. Notwithstanding the foregoing, a Governmental Rule referred to above will not be deemed to include any change the result of which is an Event of Taxability. Upon the occurrence of an Event of Taxability, the Interest Rate shall be the applicable LIBOR-Based Rate.

The Company will promptly reimburse the Bondholder of this Bond subject to an Event of Taxability an amount which (after deduction of all federal, state and local taxes required to be paid by such owner in respect of the receipt of such amount less any tax benefit resulting from the deductibility of such amount for purposes of such taxes) is equal to all interest and penalties, if any, paid to the United States as a consequence of the failure to include the interest on this Bond in the federal gross income of such owner prior to notice of the determination or the failure of this Bond to constitute a "qualified tax-exempt obligation" under the Code, provided that any amounts paid as reimbursement under this sentence shall be repaid by the owner to the extent of any recovery thereof from the United States. Upon notice of the determination of the failure of this Bond to constitute a "qualified tax-exempt obligation" under the Code, the interest rate on this Bond shall equal the applicable LIBOR-Based Rate.

If the Bondholder determines (which determination shall be conclusive and binding upon the Issuer and the Institution, absent manifest error):

(i) that dollar deposits in an amount approximately equal to the aggregate unpaid principal amount of the Bonds for the designated Interest Period are not generally available at such time in the London InterBank Eurodollar Market for deposits in dollars;

(ii) that the rate at which such deposits are being offered will not adequately and fairly reflect the cost to the Bondholder of maintaining the LIBOR-Based Rate on the aggregate unpaid principal amount of the Bonds or of funding the same for such Interest Period due to circumstances affecting the London InterBank Eurodollar Market generally;

(iii) that reasonable means do not exist for ascertaining a LIBOR;

(iv) that any applicable law, treaty, regulation, guideline or directive, or any change therein or in the interpretation or application thereof, shall make it unlawful or impossible for Bondholder to maintain a LIBOR; or

(v) that the LIBOR-Based Rate would be in excess of the maximum interest rate which the Institution may by law pay,

then, in any such event, the Bondholder shall so notify the Issuer and the Institution and all portions of the aggregate unpaid principal amount of the Bonds shall, as of the date of such notification with respect to an event described in clause (ii) or (v) above, or as of the expiration of the applicable Interest Period with respect to an event described in clause (i), (iii) or (iv) above, bear interest at a LIBOR-Based Rate equal to the Variable Rate until such time as the situations described above are no longer in effect.

Interest on this Bond shall be calculated on the basis of a 360-day year for the actual number of days elapsed. All payments shall be made absolutely net of, without deduction or offset and free and clear of taxes, deductions, charges or withholding of any kind. Bondholder shall apply all payments received on this Bond to any accrued and unpaid interest then due and owing, then to the reduction of principal of this Bond, then to other sums due hereunder in such order and in such amounts as Bondholder may determine from time to time. The sum or sums shown on Bondholder's records shall be evidence of the correct unpaid balances of principal and interest on this Bond, absent manifest error. If any payment comes due on a day that is not a Business Day, as defined above, Institution shall make the payment on the Business Day immediately preceding the payment date.

Optional Redemption. This Bond is subject to redemption, in whole or in part, prior to maturity at the election of the Issuer upon the direction of the Institution, at a price equal to one hundred percent (100%) of the principal amount of this Bond to be redeemed, together with the LIBOR Breakage Fee, if any, and interest accrued thereon to the redemption date. The Institution shall notify the Issuer and the Bondholder of the date and amount of principal directed to be redeemed in writing at least thirty (30) days in advance thereof.

Extraordinary Redemption. This Bond shall be redeemed on any Interest Payment Date in whole or in part prior to maturity:

(i) in the event and to the extent excess moneys on deposit in the Project Fund after the completion of the Project, or from excess title insurance or property insurance proceeds or condemnation awards remaining after the application thereof pursuant to the Loan Agreement and the Bond Purchase Agreement, in each case at a redemption price equal to one hundred percent (100%) of the principal amount of the Bonds to be redeemed, together with the LIBOR Breakage Fee, if applicable, and interest accrued thereon to the redemption date; or

(ii) in the event the Project shall have been damaged or destroyed or title to, or the temporary use of, all or substantially all of the Project shall have been taken or condemned by a competent authority and the Institution elects not to repair, replace or restore the same, or the affected portion thereof, as set forth in the Loan Agreement, or fails to obtain Bondholder's consent therefor, all of property casualty insurance, condemnation or eminent domain proceeds shall be applied to the redemption of the this Bond on an Interest Payment Date next following such transfer in each case at a redemption price equal to one hundred percent (100%) of the principal amount of this Bond to be redeemed, together with the LIBOR Breakage Fee, if applicable, and interest accrued thereon to the redemption date.

Any partial redemption of this Bond will reduce principal payments due hereunder in the inverse order of maturity.

If an Event of Default as defined in the Bond Purchase Agreement occurs, the principal of this Bond may become due and payable upon the conditions and in the manner and with the effect provided in the Bond Purchase Agreement.

This Bond is transferable by the registered Owner hereof or its duly authorized attorney upon surrender of this Bond to the Institution, as Registrar, accompanied by a duly executed instrument of transfer in form and with guaranty of signature satisfactory to the Registrar, subject to such reasonable regulations as the Institution, the Issuer or the Registrar may prescribe. Upon any such transfer, a new Bond or Bonds in the same aggregate principal amount will be issued to the transferee. No service charge shall be made for any transfer or exchange of Bonds, but the Issuer or the Institution may make a charge for transfer or exchange of Bonds sufficient to reimburse them for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and such charge shall be paid before any new Bond shall be delivered.

Except as set forth in this Bond and as otherwise provided in the Bond Purchase Agreement, the person in whose name this Bond is registered shall be deemed the Owner hereof for all purposes, and payment or on account of the principal of, or LIBOR Breakage Fee, if applicable, and interest on, this Bond shall be made only to or upon the order of the registered Owner thereof or his duly authorized legal representative, and the Issuer and the Institution shall not be affected by any notice to the contrary. Such registration may be changed only as provided in this Bond and in the Bond Purchase Agreement, and no other notice to the Issuer or the Institution shall affect the rights or obligations with respect to the transfer of any Bond or be effective to transfer any Bond. All payments to the Person in whose name any Bond shall be

registered shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM PAYMENTS MADE BY THE INSTITUTION UNDER THE LOAN AGREEMENT, MONEYS AND SECURITIES HELD BY THE BONDHOLDER UNDER THE BOND PURCHASE AGREEMENT, AND THE SECURITY PROVIDED BY THE PLEDGE AND ASSIGNMENT, THE MORTGAGE, THE SECURITY AGREEMENT.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR REDEMPTION PRICE OF OR THE INTEREST ON THIS BOND OR FOR ANY CLAIM BASED HEREON OR ON THE BOND PURCHASE AGREEMENT, AGAINST ANY PAST, PRESENT OR FUTURE MEMBER, OFFICER, DIRECTOR, EMPLOYEE OR AGENT (EXCEPT THE INSTITUTION), AS SUCH, OF THE ISSUER OR OF ANY PREDECESSOR OR SUCCESSOR ENTITY, EITHER DIRECTLY OR THROUGH THE ISSUER OR OTHERWISE, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY, OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE HEREOF, EXPRESSLY WAIVED AND RELEASED.

THE BONDS DO NOT CONSTITUTE AND SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING ERIE COUNTY, NEW YORK, THE CITY OF BUFFALO, NEW YORK AND NEITHER THE STATE OF NEW YORK NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING ERIE COUNTY, NEW YORK AND THE CITY OF BUFFALO, NEW YORK, SHALL BE LIABLE THEREON. THE BONDS DO NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING ERIE COUNTY, NEW YORK.

This Bond shall not be entitled to any benefit under the Bond Purchase Agreement or become valid or obligatory for any purpose until executed by an Authorized Representative of the Issuer.

Any transfer of this Bond shall be made only to "qualified institutional buyers" or "accredited investors," as such terms are used in the Securities Act of 1933, as amended, and each transferee, by taking delivery of this Bond, is deemed to have represented that it qualifies as a "qualified institutional buyer" or an "accredited investor." No transfer of this Bond shall be effective unless the Issuer shall have received either (a) evidence that the transferee is a "qualified institutional buyer" or "accredited investor," or (b) if the transfer is to a Person that is not a "qualified institutional buyer" or "accredited investor," then an Opinion of Counsel addressed to Issuer that the transfer of this Bond or any interest therein will not result in a violation of, or require registration or qualification of this Bond under, any federal or state securities laws.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Purchase Agreement, and the issuance of this Bond, do exist, have happened and have been performed in the time, form and manner as required by law, and that the issuance of the Bonds does not violate any constitutional or statutory limitation.

**IN WITNESS WHEREOF**, the Buffalo and Erie County Industrial Land Development Corporation has caused this Bond to be duly executed in its name by the manual or facsimile signature of its Authorized Representative, as of the Dated Date identified above.

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

By: \_\_\_\_\_  
Karen Fiala  
Authorized Representative

**SCHEDULE A**

**Principal Payments**

**[Form of Assignment for Transfer]**

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers unto (please insert name, address and social security or tax identification number of assignee):

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the said Bond on the books kept for registration thereof, with full power of substitution in the premises.

**DATED:** \_\_\_\_\_

**NOTICE:** The signature(s) on this assignment must correspond with the name(s) as it (they) appear(s) on the face of the within Bond in every particular.

In the presence of:

\_\_\_\_\_

**EXHIBIT B**

**FORM OF REQUISITION FOR PAYMENT AND  
DISBURSEMENT UPON WRITTEN REQUEST OF COMPANY**

**To:** First Niagara Bank, N.A.

\_\_\_\_\_  
\_\_\_\_\_

**Re:** [\$\_\_\_\_\_ Tax-Exempt Revenue Bonds (Buffalo Academy of  
Science Charter School Project), Series 2015]

Requisition Number: \_\_\_\_\_

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

Gentlemen:

You are hereby requested to make a disbursement on \_\_\_\_\_ from the Project Fund to, or for the benefit of, the Institution in the amount of \$\_\_\_\_\_, in accordance with Section 4.01 of that certain Bond Purchase Agreement, dated \_\_\_\_\_, 2015 (the "*Bond Purchase Agreement*"), by and among the Buffalo and Erie County Industrial Land Development Corporation (the "*Issuer*"), Buffalo Academy of Science Charter School (the "*Institution*") and First Niagara Bank, N.A. (the "*Holder*").

(i) Name(s) and address(es) of the person(s) to whom payment is to be made, and the amount to be paid to each:

<b>Payee</b>	<b>Amount</b>	<b>Fund</b>
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With respect to the obligation(s) referred to above, the undersigned, an Authorized Representative of the Institution, hereby certifies that:

(A) Item (i) has been completed correctly and accurately;

(B) The disbursement hereby requested is for a proper expenditure of Bond Proceeds pursuant to the Bond Purchase Agreement and the Tax Compliance Agreement;

(C) None of the items for which this requisition is made has been the basis for any prior disbursement of Bond Proceeds;

(D) The amount hereby requested has been paid or is to be paid or shall be paid from the moneys requested and that, insofar as the payment is for work, the work has been performed; and

(E) There exists no Event of Default under any of the Bond Documents.

The capitalized terms herein, unless otherwise defined, will have the meaning provided in the Bond Purchase Agreement.

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT C

### FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “*Assignment and Assumption*”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “*Assignor*”) and [Insert name of Assignee] (the “*Assignee*”). Capitalized terms used but not defined herein shall have the meanings given to them in the Bond Purchase Agreement identified below (as amended, the “*Bond Purchase Agreement*”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Bond Purchase Agreement, as of the Effective Date as contemplated below: (i) all of the Assignor’s rights and obligations in its capacity as a Holder under the Bond Purchase Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any guarantees included in such facilities); and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Holder) against any Person, whether known or unknown, arising under or in connection with the Bond Purchase Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity, related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “*Assigned Interest*”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
[and is an Affiliate of [identify Lender]]
3. Institution: Buffalo Academy of Science Charter School
4. Issuer: Buffalo and Erie County Industrial Land Development Corporation
5. Bond Purchase Agreement: The Bond Purchase Agreement dated as of November 2, 2015, among the Issuer, the Institution and First Niagara Bank, N.A..

6. Assigned Interest: [Principal Amount of Bonds Transferred]

Effective Date: \_\_\_\_\_, 20\_\_ [to be inserted by Institution and which shall be the Effective Date of recordation of transfer in the Register therefor.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

**ASSIGNOR:**

**[NAME OF ASSIGNOR]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

**[NAME OF ASSIGNEE]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ANNEX 1

### BOND PURCHASE AGREEMENT, DATED AS OF NOVEMBER 1, 2015, AMONG BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL AND FIRST NIAGARA BANK, N.A.

#### STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

##### 1. Representations and Warranties.

1.1. *Assignor.* The Assignor (a) represents and warrants that: (i) it is the legal and beneficial owner of the Assigned Interest; (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim; and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to: (i) any statements, warranties or representations made in or in connection with the Bond Purchase Agreement or any other Bond Document; (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Bond Documents or any collateral thereunder; (iii) the financial condition of the Issuer, the Institution or any of their respective Subsidiaries or Affiliates or any other Person obligated in respect of any Bond Document; or (iv) the performance or observance by the Issuer, the Institution or any of their respective Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Bond Document.

1.2. *Assignee.* The Assignee (a) represents and warrants that: (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Holder under the Bond Purchase Agreement; (ii) it satisfies the requirements, if any, specified in the Bond Purchase Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Holder; (iii) from and after the Effective Date, it shall be bound by the provisions of the Bond Purchase Agreement as a Holder thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Holder thereunder; and (iv) it has received a copy of the Bond Purchase Agreement, together with copies of the most recent financial statements delivered pursuant to Section 2.04 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Assignor or any other Holder; and (b) agrees that: (i) it will, independently and without reliance on any administrative agent, the Assignor or any other Holder, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Bond Documents; and (ii) it will perform in accordance

with their terms all of the obligations which by the terms of the Bond Documents are required to be performed by it as a Holder.

**2. Payments.** From and after the Effective Date, the Institution shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

**3. General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without regard or reference to its conflict of laws principles.



County Clerk's Recording Page

Return to:

BARCLAY DAMON LLP  
ONE PARK PL  
300 S STATE ST  
SYRACUSE, NY 13202

**Book Type: D Book: 11287 Page: 6277**  
Page Count: 9  
Doc Type: ASGN&PLEDGE  
Rec Date: 11/04/2015  
Rec Time: 03:28:26 PM  
Control #: 2015226426  
UserID: Eileen  
Trans #: 15179382  
Document Sequence Number

Party 1:

BUFFALO&ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

Party 2:

BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL

Consideration Amount:

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

Recording Fees:

RECORDING	\$65.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75

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**Total: \$85.00**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

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

Christopher L. Jacobs  
County Clerk

Record and Return to:  
Susan R. Katzoff, Esq.  
Barclay Damon, LLP  
One Park Place  
300 South State Street  
Syracuse, New York 13202

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**~~PLEDGE AND ASSIGNMENT~~**

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

to

**FIRST NIAGARA BANK, N.A., as Purchaser**

with acknowledgment thereof by

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

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Dated as of November 1, 2015

---

relating to

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

**\$3,250,000 TAX-EXEMPT REVENUE BONDS  
(BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
PROJECT), SERIES 2015**

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## PLEDGE AND ASSIGNMENT

**THIS PLEDGE AND ASSIGNMENT** dated as of November 1, 2015 (as amended, modified and supplemented from time to time, the "***Pledge and Assignment***") is from Buffalo and Erie County Industrial Land Development Corporation, a not-for-profit corporation constituting a local development corporation organized under the laws of the State of New York, having an office for the transaction of business located at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "***Issuer***") to **FIRST NIAGARA BANK, N.A.**, a national banking association organized and existing under the laws of the United States of America, having an address of 726 Exchange Street, Buffalo, New York 14210 (together with its successors and permitted assigns, "***Purchaser***") in connection with the issuance of the Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "***Bonds***") issued pursuant to and in accordance with a resolution adopted by the Issuer on October 21, 2015 and a Bond Purchase Agreement dated November 2, 2015 (the "***Bond Purchase Agreement***"), by and among the Issuer, the Institution, and acknowledged by Buffalo Academy of Science Charter School (the "***Institution***"), a charter school organized under and existing by virtue of the New York State Education Law, having an office at 190 Franklin Street, Buffalo, New York 14202.

All capitalized terms used herein, unless otherwise defined, shall have the meaning ascribed to such terms in the Bond Purchase Agreement.

For value received, the receipt of which is hereby acknowledged, the Issuer hereby grants to the Purchaser a security interest in and pledges, assigns, transfers and sets over to the Purchaser any and all moneys due or to become due and any and all other rights and remedies of the Issuer under or arising out of a Loan Agreement, dated as of November 1, 2015, as amended, restated, supplemented or otherwise modified from time to time (the "***Loan Agreement***"), between the Issuer and the Institution covering the Project (except for Unassigned Rights and except for moneys and investments from time to time in the Rebate Fund).

The Purchaser shall not have any obligation, duty or liability under the Loan Agreement except as specifically set forth therein and accepted pursuant to the Acceptance herewith, nor shall the Purchaser be required or obligated in any manner to fulfill or perform any obligation, covenant, term or condition of the Issuer thereunder or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any other action to collect or enforce the payment of any amounts that may have been assigned to it or to which it may be entitled hereunder at any time or times.

The Issuer hereby irrevocably constitutes and appoints the Purchaser, its true and lawful attorney, with power of substitution for the Issuer and in the name of the Issuer or in the name of the Purchaser, as the case may be, or otherwise, for the use and benefit of the Purchaser, as the case may be, to ask, demand, require, receive, collect, compound and give discharges and releases of all claims for any and all moneys due or to become due under or arising out of the Loan Agreement (except for Unassigned Rights and any Rebate Amount), and to endorse any

checks and other instruments or orders in connection therewith, and, if any Event of Default specified in the Bond Purchase Agreement shall occur, on and subject to the Bond Purchase Agreement and Loan Agreement (a) to settle, compromise, compound and adjust any such claims, except for claims arising pursuant to the Unassigned Rights, (b) to exercise and enforce any and all claims, rights, powers and remedies of the Issuer under or arising out of the Loan Agreement (except for Unassigned Rights and except for moneys and investments from time to time in the Rebate Fund), (c) to file, commence and prosecute any suits, actions and proceedings at law or in equity in any court of competent jurisdiction to collect any such sums assigned to the Purchaser hereunder and to enforce any rights in respect thereto and all other claims, rights, powers and remedies of the Issuer under or arising out of the Loan Agreement (except for Unassigned Rights and any Rebate Amount), and (d) generally to sell, assign, transfer, pledge, make any agreement with respect to and otherwise deal with any of such claims, rights, powers and remedies as fully and completely as though the Purchaser were the absolute owner thereof for all purposes, and at such times and in such manner as may seem to the Purchaser to be necessary or advisable in its absolute discretion.

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

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

All moneys due and to become due to the Purchaser under or pursuant to the Loan Agreement shall be paid directly to the Purchaser.

All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Pledge and Assignment, the Bond Purchase Agreement, the Bonds, the Loan Agreement and the other documents to which the Issuer is a party (the "**Issuer Documents**") shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, agent (other than the Institution), servant or employee of the Issuer in his individual capacity, and no recourse under or upon any covenant, stipulation, promise, agreement or obligation in the Issuer Documents contained or otherwise based upon or in respect of the Issuer Documents, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent (other than the Institution), servant or employee, as such, of the Issuer or of any successor public benefit corporation or political subdivision or any Person executing the Issuer Documents on behalf of the Issuer, either directly or through the Issuer or any successor public benefit corporation or political subdivision or any Person executing the Issuer Documents on behalf of the Issuer, it being expressly understood that the Issuer Documents are solely corporate obligations, and that

no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent (other than the Institution), servant or employee of the Issuer or of any successor public benefit corporation or political subdivision or any person executing the Issuer Documents on behalf of the Issuer because of the creation of the indebtedness thereby authorized, or under or by reason of the covenants, stipulations, promises, agreements or obligations contained in the Issuer Documents or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, director, ~~officer, agent (other than the Institution), servant or employee~~ because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in the Issuer Documents or implied therefrom, are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of the Issuer Documents and the issuance of the Bonds.

The obligations and agreements of the Issuer contained herein shall not constitute or give rise to an obligation of the State or Erie County, New York, or any political subdivision thereof, and neither the State nor Erie County, New York, or any political subdivision thereof, shall be liable thereon, and further such obligations and agreements shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute limited obligations of the Issuer payable solely from the payments made pursuant to the Loan Agreement (except for Revenues derived by the Issuer with respect to the Unassigned Rights).

Notwithstanding any provision of this Pledge and Assignment to the contrary, the Issuer shall not be obligated to take any action pursuant to any provision hereof unless: (a) the Issuer shall have been requested to do so in writing by the Institution or the Purchaser; and (b) if compliance with such request is reasonably expected to result in the incurrence by the Issuer (or any member, director, officer, agent (other than the Institution), servant or employee of the Issuer) in any liability, fees, expenses or other costs, the Issuer shall have received from the Institution or the Purchaser, as the case may be, security or indemnity satisfactory to the Issuer for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

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

IN WITNESS WHEREOF, the Issuer has duly executed this Pledge and Assignment as of November 1, 2015.

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

By: *Karen Fiala*  
Karen Fiala, Assistant Treasurer

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

On the 30<sup>th</sup> day of October in the year 2015, before me, the undersigned, personally appeared **KAREN FIALA**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L McRobbie*  
**NOTARY PUBLIC**  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co No 01MC5055591  
Commission Expires on Feb 12, 20 18



**ACKNOWLEDGMENT OF ASSIGNMENT OF  
ISSUER'S RIGHTS UNDER LOAN AGREEMENT**

The undersigned hereby acknowledges receipt of notice of the Pledge and Assignment by Buffalo and Erie County Industrial Land Development Corporation (the "**Issuer**") to First Niagara Bank, N.A. (the "**Purchaser**"), of all its respective rights and remedies under a Loan Agreement, dated as of November 1, 2015 (the "**Loan Agreement**"), by and between the Issuer and the undersigned, including the right to collect and receive all amounts payable by the undersigned thereunder (except for Unassigned Rights and any Rebate Amount). The undersigned, intending to be legally bound, hereby agrees with the Purchaser (i) to pay or cause to be paid directly to the Purchaser all sums due and to become due to the Purchaser from the undersigned under the Loan Agreement (except for moneys payable pursuant to Unassigned Rights and any Rebate Amount), without setoff, counterclaim or deduction for any reason whatsoever, except as otherwise provided in the Loan Agreement, (ii) except as otherwise provided in the Loan Agreement, not to seek to recover from the Purchaser any moneys paid to it pursuant to the Loan Agreement, (iii) to perform for the benefit of the Purchaser all of the duties, undertakings and obligations of the undersigned under the Loan Agreement (except for duties, undertakings and obligations relating to the Unassigned Rights), and (iv) that the Purchaser shall not be obligated by reason of such assignment or otherwise to perform or be responsible for the performance of any of the duties, undertakings or obligations of the Issuer under the Loan Agreement. The foregoing shall not be construed, however, as a waiver or release of any claims or rights that the undersigned may at any time have against the Purchaser or the Issuer, and the undersigned expressly reserves any such claims or rights and the right to pursue the same at law or in equity.

**IN WITNESS WHEREOF**, the undersigned has caused this Acknowledgment to be duly executed as of November 1, 2015.

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By:

  
\_\_\_\_\_  
Yusuf Akyar, Authorized Representative



114096

2015 NOV -5 AM 9:00

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A NAME & PHONE OF CONTACT AT FILER [optional]  
**Susan R. Katzoff, Esq.**

B SEND ACKNOWLEDGMENT TO (Name and Address)

**Susan R. Katzoff, Esq.  
 Barclay Damon, LLP  
 One Park Place  
 300 South State Street  
 Syracuse, NY 13202**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1 DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a ORGANIZATION'S NAME  
**Buffalo and Erie County Industrial Land Development Corporation**

OR 1b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**95 Perry Street, Suite 403 Buffalo NY 14203 USA**

1d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e TYPE OF ORGANIZATION 1f JURISDICTION OF ORGANIZATION 1g ORGANIZATIONAL ID #, if any  
 Not Applicable not-for-profit New York  NONE

2 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME

OR 2b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e TYPE OF ORGANIZATION 2f JURISDICTION OF ORGANIZATION 2g ORGANIZATIONAL ID #, if any  
 Not Applicable  NONE

3 SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME  
**First Niagara Bank, N.A.**

OR 3b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**726 Exchange Street Buffalo NY 14210 USA**

4 This FINANCING STATEMENT covers the following collateral

The right, title and interest of the Debtor granted to Secured Party under the Pledge and Assignment dated as of November 1, 2015, in the property described in Schedule "A" attached hereto.

5. ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG LIEN NON-UCC FILING

6 This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS Attach Addendum (if applicable) 7 Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) (ADDITIONAL FEE) All Debtors Debtor 1 Debtor 2

8 OPTIONAL FILER REFERENCE DATA

Buffalo Charter School - Pledge and Assignment (State)

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

FILING NUMBER: 201511050573504

114096

2015 MAR -5 AM 9:00

### UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9 NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

9a ORGANIZATION'S NAME		
OR <b>Buffalo and Erie County Industrial Land Development Corporation</b>		
9b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

**10 MISCELLANEOUS**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names**

11a ORGANIZATION'S NAME				
OR				
11b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
11d SEE INSTRUCTIONS Not Applicable	ADD'L INFO RE ORGANIZATION DEBTOR	11e TYPE OF ORGANIZATION	11f JURISDICTION OF ORGANIZATION	11g ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

**12 ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a ORGANIZATION'S NAME				
OR				
12b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
12c MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY

13 This FINANCING STATEMENT covers  timber to be cut or  es-extracted collateral or is filed as a  future filing

14 Description of real estate

16 Additional collateral description  
**Schedule "A" attached hereto.**

15 Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest)

17 Check only if applicable and check only one box  
Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18 Check only if applicable and check only one box  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction — effective 30 years  
 Filed in connection with a Public-Finance Transaction — effective 30 years

**SCHEDULE "A"**  
**TO UCC-1 FINANCING STATEMENT**  
**FROM BUFFALO AND ERIE COUNTY INDUSTRIAL LAND**  
**DEVELOPMENT CORPORATION**  
**TO FIRST NIAGARA BANK, N.A.**  
**RELATING TO PLEDGE AND ASSIGNMENT**

The **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION** (the "*Issuer*") has entered into a Pledge and Assignment dated as of November 1, 2015 (as the same may be amended, modified or supplemented from time to time, the "*Pledge and Assignment*") in favor of **FIRST NIAGARA BANK, N.A.** (the "*Purchaser*") relating to the Issuer's Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "*Bonds*"). Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Pledge and Assignment.

Pursuant to the Pledge and Assignment, the Issuer grants to the Purchaser a security interest in and pledges, assigns, transfers and sets over to the Trustee any and all moneys due or to become due and any and all other rights and remedies of the Issuer under or arising out of a Loan Agreement, dated as of November 1, 2015, as amended, restated, supplemented or otherwise modified from time to time (the "*Loan Agreement*"), between the Issuer and the Institution covering the Project, as more fully described in Schedule 1 hereto, (except for Unassigned Rights and except for moneys and investments from time to time in the Rebate Fund).

SCHEDULE "1"

114096

2015 NOV -5 AM 9:00

**DESCRIPTION OF PROJECT**

The project (the "*Project*") consists of: the issuance and sale of the Issuer's Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "*Bonds*") for the benefit of the Institution to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 (the "*Land*") to be used to operate a charter school for grades 7-12 (the "*Facility*"); (b) to pay costs incidental to the issuance of the Bonds; and (c) to fund a debt service reserve fund, if any, required with respect to the Bonds.

**THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF WITHOUT REGISTRATION UNDER SAID ACT OR EXEMPTION THEREFROM. ANY SALE, TRANSFER OR DISPOSITION OF THE BONDS SHALL COMPLY WITH THE TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE BOND.**

**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION  
TAX-EXEMPT REVENUE BONDS  
(BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
PROJECT), SERIES 2015**

**NO.:** RA-1

**MATURITY DATE:** April 30, 2023

**INTEREST RATE:** LIBOR-Based Rate

**DATED DATE:** November 3, 2015

**REGISTERED OWNER:** First Niagara Bank, N.A.

**PRINCIPAL AMOUNT:** Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000)

The Buffalo and Erie County Industrial Land Development Corporation, a not for profit corporation constituting a local development corporation duly organized and existing under the laws of the State of New York, having its principal office at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Issuer"), for value received, hereby promises to pay, solely from the sources hereinafter described, to the Registered Owner identified above or registered assigns, on the Maturity Date identified above (subject to any right of prior redemption hereinafter provided for), the Principal Sum set forth above (subject to reduction as hereinafter provided) and interest thereon from the Dated Date set forth above, to the Maturity Date identified above (or such earlier date on which the principal hereof has been paid or duly provided for). Interest shall be payable at the Interest Rate identified above on the last day of each month, commencing November 30, 2015. Principal shall be payable monthly in the amounts set forth at Schedule A attached hereto and made a part hereof on: (a) the last day of each month, commencing November 30, 2015; and (h) the Maturity Date or optional or extraordinary redemption date; provided that, if any such date shall not be a Business Day, as defined herein, then such payment shall be made on the immediately preceding Business Day (with interest payable through the stated Maturity Date, purchase date or redemption date). In no event shall the interest rate payable hereon exceed the maximum permitted by, or enforceable under, applicable law.

The principal of, and LIBOR Breakage Fee (as defined below), if applicable, and interest on this Bond are payable in coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts. Any payment required hereunder prior to the final payment of this Bond, including partial redemption of principal, may be made for the account of the Issuer by check delivered or mailed by BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL, a charter school (the "*Institution*"), to FIRST NIAGARA BANK, N. A., or its registered assigns (the "*Bondholder*") at 726 Exchange Street, Buffalo, New York 14210 or such other location as may be designated by the Bondholder to the Institution in writing. The final payment of this Bond upon maturity, acceleration, purchase or redemption shall be made upon surrender of this Bond to the Institution.

This Bond is one of the duly issued bonds of the Issuer, designated "Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015" and issued in the original aggregate principal amount of \$3,250,000 (the "*Series 2015 Bonds*" or the "*Bonds*"). The Bonds were issued for the purpose of financing a project to provide funds to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 to be used to operate a charter school for grades 7-12 (the "*Facility*"); (b) to pay costs incidental to the issuance of the Bonds; and (c) to fund a debt service reserve fund, if any, required with respect to the Bonds (the "*Project*").

This Bond is secured by: (i) a Pledge and Assignment from the Issuer to the Bondholder; and (ii) the Mortgage and Security Agreement granted in favor of the Issuer and the Bondholder, with the Issuer's interest being assigned to the Bondholder; and (iii) certain Collateral Documents. The Pledge and Assignment assigns to the Bondholder certain of the rights and remedies of the Issuer under the Loan Agreement, including the right to collect and receive certain amounts payable thereunder. The Mortgage grants to the Issuer for the benefit of the Bondholder, and the Bondholder a first priority mortgage and a security interest in the interest of the Institution in and to the Facility. The Issuer has assigned its interest in the Mortgage to the Bondholder. The Assignment of Rents assigns to the Issuer and the Bondholder a first priority Lien in the leases relating to and rents from the Project. The Issuer has assigned its interest in the Assignment of Rents to the Bondholder. The Security Agreement grants to the Bondholder a first priority security interest in the Collateral (as defined therein) of the Institution. Reference is hereby made to the Loan Agreement, the Pledge and Assignment, the Mortgage, the Assignment of Rents and the Security Agreement and to all amendments and supplements thereto for a description of the property mortgaged, pledged and assigned, the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Bondholder and the terms upon which this Bond is issued and secured.

Reference is made to the Bond Purchase Agreement dated November 2, 2015 (the "*Bond Purchase Agreement*"), among the Issuer, the Institution and the Bondholder for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for this Bond, the rights, duties and obligations of the Issuer, the Institution and the Bondholder, and the terms and conditions upon which this Bond is issued and secured. All terms used herein with initial capitalization and which are not expressly defined herein, and

where the rules of grammar or context do not otherwise require, shall have the meanings as set forth in the Bond Purchase Agreement. The Bondholder assents, by its acceptance hereof, to all of the provisions of the Bond Purchase Agreement.

Determination of Interest Rate.

“*Business Day*” means a day that is both a New York Business Day and a London Business Day.

“*Closing Date*” means the date of issuance, sale and delivery of the Bonds.

“*Interest Payment Date*” means the last day of each month commencing November 30, 2015; provided however, if in any month the last day is not a Business Day, the Interest Payment Date shall be the immediately preceding Business Day, so as to, in all instances, coincide with the end of the applicable Interest Period.

“*Interest Period*” means one (1) month.

“*LIBOR-Based Rate*” means (a) prior to an Event of Taxability, a rate per annum equal to sixty-seven percent (67%) of the sum of (i) the LIBOR Rate for the Interest Period and (ii) 2.75%; and (b) after an Event of Taxability, a rate per annum equal to the LIBOR Rate for the Interest Period plus 2.75%.

“*LIBOR Rate*” means a variable interest rate per annum (rounded upwards, if necessary) determined by Lender by dividing (a) the LIBOR rate which is published on Bloomberg Screen, BBAM1 (or any successor as may replace such page in said service for the purposes of display of the interbank interest rates offered on the London market) at 11:00 a.m. London time two (2) Business Days prior to the commencement of the Interest Period; provided, however, if such rate is not available, “*LIBOR Rate*” shall mean either (i) the rate of interest per annum determined by Holder to be the average rate per annum at which United States dollar deposits in a similar amount are offered for such Interest Period by major banks in the London interbank deposit market at approximately 11:00 a.m. London time two (2) Business Days prior to the commencement of the Interest Period or (ii) a similar rate based upon a comparable index chosen by Lender in its sole discretion, by (b) a number equal to 1.00 less the Reserve Requirement.

“*LIBOR Breakage Fee*” means (i) the accrued interest on the principal being prepaid and (ii) a prepayment premium in an amount computed as follows: the current rate for United States Treasury securities with a maturity date closest to the maturity of the applicable Interest Period (the “*Reinvestment Rate*”) shall be subtracted from the LIBOR Rate at the time of prepayment. If the LIBOR Rate is less than or equal to the Reinvestment Rate, no prepayment premium shall be due. If the Reinvestment Rate is less than the LIBOR Rate, then the excess percentage shall be multiplied by the amount of the principal balance being prepaid. The resulting amount shall be divided by 360 and multiplied by the number of days remaining until maturity of the applicable Interest Period, and the amount shall be reduced to present value calculated by using the number of days remaining in the designated term and using the above-referenced United States Treasury security rate and the number of days remaining until maturity

of the applicable Interest Period. The resulting amount shall be the prepayment premium due to the Holder upon prepayment.

*"Prime Rate"* shall mean the variable rate of interest announced by Holder from time to time as its prime rate for calculating interest on certain loans. The Prime Rate may or may not be the most favorable rate charged by Holder to its customers from time to time.

*"Reserve Requirement"* means the percentage which Bondholder determines to be the maximum reserve requirement (including, without limitation, any emergency, marginal, special or supplemental reserve requirement) prescribed for so-called "Eurocurrency liabilities" (or any other category of Eurocurrency funding) prescribed by the Board of Governors of the Federal Reserve System (or under any successor regulation which Bondholder determines to be applicable) with each change in such maximum reserve requirement automatically, immediately and without notice changing the LIBOR thereafter applicable.

*"Variable Rate"* shall mean: (a) prior to an Event of Taxability, sixty-seven percent (67%) of the Prime Rate; and (b) after an Event of Taxability, the Prime Rate. The Variable Rate shall change simultaneously with changes to the Prime Rate.

The Institution shall also pay the LIBOR Breakage Fee, determined as described below, upon any acceleration of this Bond, any purchase or redemption of this Bond from the Bondholder on any payment date, or redemption date that is not the last day of the relevant Interest Period.

Upon: (i) any redemption of all or any portion of the principal of this Bond (including, for the purposes of this paragraph, any purchase of this Bond from the Bondholder or acceleration) on any day that is not the last day of the relevant Interest Period (regardless of the source of such redemption and whether voluntary, by acceleration or otherwise); or (ii) the occurrence of an Event of Default, as defined in the Bond Purchase Agreement, the Institution shall pay the LIBOR Breakage Fee. The Institution understands, agrees and acknowledges that: (i) the Bondholder has no obligation to purchase, sell and/or match funds in connection with the use of the LIBOR-Based Rate as a basis for calculating the rate of interest on this Bond; (ii) the LIBOR-Based Rate may be used merely as a reference in determining such rate; and (iii) the Institution has accepted such losses, expenses, costs, funding losses and liabilities as a reasonable and fair basis for calculating the LIBOR Breakage Fee and other funding losses incurred by the Bondholder. The Institution further agrees to pay the LIBOR Breakage Fee and other funding losses, if any, whether or not the Bondholder or the Bondholder elects to purchase, sell and/or match funds.

If pursuant to the terms of this Bond, the Institution is at any time obligated to pay interest on the principal balance of this Bond at a rate in excess of the maximum interest rate permitted by applicable law, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder.

In case any Event of Default (as defined in the Bond Purchase Agreement) occurs and is continuing, the principal amount of this Bond, together with LIBOR Breakage Fee, if applicable, and accrued interest, may be declared due and payable in the manner and with the effect provided in the Bond Purchase Agreement. After the occurrence and during the continuance of any such Event of Default, this Bond will, at the option of the Bondholder, bear interest at a rate per annum which at all times shall be equal to the sum of: (i) six percent (6%) per annum plus; (ii) the LIBOR-Based Rate then payable with respect thereto (but in no event in excess of the maximum rate from time to time permitted by then applicable law). In addition, if the entire amount of any required principal and/or interest payment is not paid within ten (10) days after the same is due, the Institution shall pay to the Bondholder a late fee equal to six percent (6%) of such overdue payment.

If the adoption of, any change in or any change in the interpretation of, any law, regulation or guideline applicable to financial institutions by any governmental authority (a "Governmental Rule") exercising control over the Bondholder or the compliance by the Bondholder with the Governmental Rule (including, without limitation, Regulation D of the Board of Governors of the Federal Reserve System and regulations of the Securities Exchange Commission relating to financial instruments), imposes any reserve, deposit, allocation of capital or similar requirement or any tax (other than taxes on the Bondholder's income) the Bondholder which reduces the rate of return on the Bondholder's capital then, and in each such case, the Bondholder may require the Institution to pay the amount necessary to compensate the Bondholder for such reduced rate of return. The Bondholder will deliver to the Institution a statement of the justification for the payment(s), and the determination by the Bondholder shall be conclusive absent obvious error and shall be payable by the Institution to the Bondholder upon the Bondholder's demand. In determining any such amount, the Bondholder may use reasonable averaging and attribution methods. Notwithstanding the foregoing, a Governmental Rule referred to above will not be deemed to include any change the result of which is an Event of Taxability. Upon the occurrence of an Event of Taxability, the Interest Rate shall be the applicable LIBOR-Based Rate.

The Company will promptly reimburse the Bondholder of this Bond subject to an Event of Taxability an amount which (after deduction of all federal, state and local taxes required to be paid by such owner in respect of the receipt of such amount less any tax benefit resulting from the deductibility of such amount for purposes of such taxes) is equal to all interest and penalties, if any, paid to the United States as a consequence of the failure to include the interest on this Bond in the federal gross income of such owner prior to notice of the determination or the failure of this Bond to constitute a "qualified tax-exempt obligation" under the Code, provided that any amounts paid as reimbursement under this sentence shall be repaid by the owner to the extent of any recovery thereof from the United States. Upon notice of the determination of the failure of this Bond to constitute a "qualified tax-exempt obligation" under the Code, the interest rate on this Bond shall equal the applicable LIBOR-Based Rate.

If the Bondholder determines (which determination shall be conclusive and binding upon the Issuer and the Institution, absent manifest error):

(i) that dollar deposits in an amount approximately equal to the aggregate unpaid principal amount of the Bonds for the designated Interest Period are not generally available at such time in the London InterBank Eurodollar Market for deposits in dollars;

(ii) that the rate at which such deposits are being offered will not adequately and fairly reflect the cost to the Bondholder of maintaining the LIBOR-Based Rate on the aggregate unpaid principal amount of the Bonds or of funding the same for such Interest Period due to circumstances affecting the London InterBank Eurodollar Market generally;

(iii) that reasonable means do not exist for ascertaining a LIBOR;

(iv) that any applicable law, treaty, regulation, guideline or directive, or any change therein or in the interpretation or application thereof, shall make it unlawful or impossible for Bondholder to maintain a LIBOR; or

(v) that the LIBOR-Based Rate would be in excess of the maximum interest rate which the Institution may by law pay,

then, in any such event, the Bondholder shall so notify the Issuer and the Institution and all portions of the aggregate unpaid principal amount of the Bonds shall, as of the date of such notification with respect to an event described in clause (ii) or (v) above, or as of the expiration of the applicable Interest Period with respect to an event described in clause (i), (iii) or (iv) above, bear interest at a LIBOR-Based Rate equal to the Variable Rate until such time as the situations described above are no longer in effect.

Interest on this Bond shall be calculated on the basis of a 360-day year for the actual number of days elapsed. All payments shall be made absolutely net of, without deduction or offset and free and clear of taxes, deductions, charges or withholding of any kind. Bondholder shall apply all payments received on this Bond to any accrued and unpaid interest then due and owing, then to the reduction of principal of this Bond, then to other sums due hereunder in such order and in such amounts as Bondholder may determine from time to time. The sum or sums shown on Bondholder's records shall be evidence of the correct unpaid balances of principal and interest on this Bond, absent manifest error. If any payment comes due on a day that is not a Business Day, as defined above, Institution shall make the payment on the Business Day immediately preceding the payment date.

Optional Redemption. This Bond is subject to redemption, in whole or in part, prior to maturity at the election of the Issuer upon the direction of the Institution, at a price equal to one hundred percent (100%) of the principal amount of this Bond to be redeemed, together with the LIBOR Breakage Fee, if any, and interest accrued thereon to the redemption date. The Institution shall notify the Issuer and the Bondholder of the date and amount of principal directed to be redeemed in writing at least thirty (30) days in advance thereof.

Extraordinary Redemption. This Bond shall be redeemed on any Interest Payment Date in whole or in part prior to maturity:

(i) in the event and to the extent excess moneys on deposit in the Project Fund after the completion of the Project, or from excess title insurance or property insurance proceeds or condemnation awards remaining after the application thereof pursuant to the Loan Agreement and the Bond Purchase Agreement, in each case at a redemption price equal to one hundred percent (100%) of the principal amount of the Bonds to be redeemed, together with the LIBOR Breakage Fee, if applicable, and interest accrued thereon to the redemption date; or

(ii) in the event the Project shall have been damaged or destroyed or title to, or the temporary use of, all or substantially all of the Project shall have been taken or condemned by a competent authority and the Institution elects not to repair, replace or restore the same, or the affected portion thereof, as set forth in the Loan Agreement, or fails to obtain Bondholder's consent therefor, all of property casualty insurance, condemnation or eminent domain proceeds shall be applied to the redemption of this Bond on an Interest Payment Date next following such transfer in each case at a redemption price equal to one hundred percent (100%) of the principal amount of this Bond to be redeemed, together with the LIBOR Breakage Fee, if applicable, and interest accrued thereon to the redemption date.

Any partial redemption of this Bond will reduce principal payments due hereunder in the inverse order of maturity.

If an Event of Default as defined in the Bond Purchase Agreement occurs, the principal of this Bond may become due and payable upon the conditions and in the manner and with the effect provided in the Bond Purchase Agreement.

This Bond is transferable by the registered Owner hereof or its duly authorized attorney upon surrender of this Bond to the Institution as Registrar, accompanied by a duly executed instrument of transfer in form and with guaranty of signature satisfactory to the Registrar, subject to such reasonable regulations as the Institution, the Issuer or the Registrar may prescribe. Upon any such transfer, a new Bond or Bonds in the same aggregate principal amount will be issued to the transferee. No service charge shall be made for any transfer or exchange of Bonds, but the Issuer or the Institution may make a charge for transfer or exchange of Bonds sufficient to reimburse them for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and such charge shall be paid before any new Bond shall be delivered.

Except as set forth in this Bond and as otherwise provided in the Bond Purchase Agreement, the person in whose name this Bond is registered shall be deemed the Owner hereof for all purposes, and payment or on account of the principal of, or LIBOR Breakage Fee, if applicable, and interest on, this Bond shall be made only to or upon the order of the registered Owner thereof or his duly authorized legal representative, and the Issuer and the Institution shall not be affected by any notice to the contrary. Such registration may be changed only as provided in this Bond and in the Bond Purchase Agreement, and no other notice to the Issuer or the Institution shall affect the rights or obligations with respect to the transfer of any Bond or be effective to transfer any Bond. All payments to the Person in whose name any Bond shall be

registered shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM PAYMENTS MADE BY THE INSTITUTION UNDER THE LOAN AGREEMENT, MONEYS AND SECURITIES HELD BY THE BONDHOLDER UNDER THE BOND PURCHASE AGREEMENT, AND THE SECURITY PROVIDED BY THE PLEDGE AND ASSIGNMENT, THE MORTGAGE, THE SECURITY AGREEMENT.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR REDEMPTION PRICE OF OR THE INTEREST ON THIS BOND OR FOR ANY CLAIM BASED HEREON OR ON THE BOND PURCHASE AGREEMENT, AGAINST ANY PAST, PRESENT OR FUTURE MEMBER, OFFICER, DIRECTOR, EMPLOYEE OR AGENT (EXCEPT THE INSTITUTION), AS SUCH, OF THE ISSUER OR OF ANY PREDECESSOR OR SUCCESSOR ENTITY, EITHER DIRECTLY OR THROUGH THE ISSUER OR OTHERWISE, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY, OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE HEREOF, EXPRESSLY WAIVED AND RELEASED.

THE BONDS DO NOT CONSTITUTE AND SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING ERIE COUNTY, NEW YORK, THE CITY OF BUFFALO, NEW YORK AND NEITHER THE STATE OF NEW YORK NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING ERIE COUNTY, NEW YORK AND THE CITY OF BUFFALO, NEW YORK, SHALL BE LIABLE THEREON. THE BONDS DO NOT GIVE RISE TO A PECUNIARY LIABILITY OR CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING ERIE COUNTY, NEW YORK.

This Bond shall not be entitled to any benefit under the Bond Purchase Agreement or become valid or obligatory for any purpose until executed by an Authorized Representative of the Issuer.

Any transfer of this Bond shall be made only to "qualified institutional buyers" or "accredited investors," as such terms are used in the Securities Act of 1933, as amended, and each transferee, by taking delivery of this Bond, is deemed to have represented that it qualifies as a "qualified institutional buyer" or an "accredited investor." No transfer of this Bond shall be effective unless the Issuer shall have received either (a) evidence that the transferee is a "qualified institutional buyer" or "accredited investor," or (b) if the transfer is to a Person that is not a "qualified institutional buyer" or "accredited investor," then an Opinion of Counsel addressed to Issuer that the transfer of this Bond or any interest therein will not result in a violation of, or require registration or qualification of this Bond under, any federal or state securities laws.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Purchase Agreement, and the issuance of this Bond, do exist, have happened and have been performed in the time, form and manner as required by law, and that the issuance of the Bonds does not violate any constitutional or statutory limitation.

**SPECIMEN**

**IN WITNESS WHEREOF**, the Buffalo and Erie County Industrial Land Development Corporation has caused this Bond to be duly executed in its name by the manual or facsimile signature of its Authorized Representative, as of the Dated Date identified above.

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

By: \_\_\_\_\_  
Karen Fiala  
Authorized Representative

**SPECIMEN**

SCHEDULE A

Principal Payments

**SPECIMEN**

SCHEDULE A

Principal Payments

<u>Due Date (last day of indicated month)</u>	<u>Amount</u>
November 2015	\$36,111.11
December 2015	\$36,111.11
January 2016	\$36,111.11
February 2016	\$36,111.11
March 2016	\$36,111.11
April 2016	\$36,111.11
May 2016	\$36,111.11
June 2016	\$36,111.11
July 2016	\$36,111.11
August 2016	\$36,111.11
September 2016	\$36,111.11
October 2016	\$36,111.11
November 2016	\$36,111.11
December 2016	\$36,111.11
January 2017	\$36,111.11
February 2017	\$36,111.11
March 2017	\$36,111.11
April 2017	\$36,111.11
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July 2017	\$36,111.11
August 2017	\$36,111.11
September 2017	\$36,111.11
October 2017	\$36,111.11
November 2017	\$36,111.11
December 2017	\$36,111.11
January 2018	\$36,111.11
February 2018	\$36,111.11
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November 2018	\$36,111.11
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January 2019	\$36,111.11
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March 2019	\$36,111.11
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May 2019	\$36,111.11
June 2019	\$36,111.11
July 2019	\$36,111.11
August 2019	\$36,111.11
September 2019	\$36,111.11

October 2019	\$36,111.11
November 2019	\$36,111.11
December 2019	\$36,111.11
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July 2021	\$36,111.11
August 2021	\$36,111.11
September 2021	\$36,111.11
October 2021	\$36,111.11
November 2021	\$36,111.11
December 2021	\$36,111.11
January 2022	\$36,111.11
February 2022	\$36,111.11
March 2022	\$36,111.11
April 2022	\$36,111.11
May 2022	\$36,111.11
June 2022	\$36,111.11
July 2022	\$36,111.11
August 2022	\$36,111.11
September 2022	\$36,111.11
October 2022	\$36,111.11
November 2022	\$36,111.11
December 2022	\$36,111.11
January 2023	\$36,111.11
February 2023	\$36,111.11
March 2023	\$36,111.11
April 2023	\$36,111.11

[Form of Assignment for Transfer]

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers unto (please insert name, address and social security or tax identification number of assignee):

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the said Bond on the books kept for registration thereof, with full power of substitution in the premises.

**DATED:** \_\_\_\_\_

**NOTICE:** The signature(s) on this assignment must correspond with the name(s) as it (they) appear(s) on the face of the within Bond in every particular.

In the presence of:

\_\_\_\_\_

**SPECIMEN**

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:

BARCLAY DAMON LLP  
ONE PARK PL  
300 S STATE ST  
SYRACUSE, NY 13202

**Book Type: M Book: 13744 Page: 1107**

Page Count: 30  
Doc-Type: MORTGAGE  
Rec Date: 11/04/2015  
Rec Time: 03:28:26 PM  
Control #: 2015226427  
UserID: Eileen  
Trans #: 15179382  
Document Sequence Number  
MTDG2015018598

Party 1:

BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL

Party 2:

BUFFALO&ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

**Consideration Amount: 3250000.00**

Recording Fees:

RECORDING	\$170.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
MTG AFF \$5	\$5.00

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

**Total: \$195.00**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

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

Christopher L. Jacobs  
County Clerk

Record and Return to:  
Barclay Damon, LLP  
One Park Place  
300 South State Street  
Syracuse, NY 13202  
Attn: Susan R. Katzoff, Esq.

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~~BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL~~

To

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

and

**FIRST NIAGARA BANK, N.A.**

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**MORTGAGE  
AND SECURITY AGREEMENT**

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Dated as of November 1, 2015

---

relating to

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

**\$3,250,000.00**

**TAX-EXEMPT REVENUE BONDS**

**(BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL PROJECT), SERIES 2015**

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

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and is for convenience of reference only).

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**EXHIBIT A                    DESCRIPTION OF THE LAND**

**EXHIBIT B                    DESCRIPTION OF EQUIPMENT**

## MORTGAGE AND SECURITY AGREEMENT

**THIS MORTGAGE AND SECURITY AGREEMENT** dated November 1, 2015 (the "*Mortgage*") from **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**, a charter school organized under and existing by virtue of the New York State Education Law, having an office at 190 Franklin Street, Buffalo, New York (the "*Mortgagor*") to **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit corporation constituting a local development corporation, duly organized, existing and in good standing under the laws of the State of New York, having an office for the transaction of business at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "*Mortgagee*") and **FIRST NIAGARA BANK, N.A.**, a national banking association organized and existing under the laws of the United States of America, having an address of 726 Exchange Street, Buffalo, New York 14210 (the "*Purchaser*").

### WITNESSETH:

ALL CAPITALIZED TERMS USED IN THIS MORTGAGE AND NOT OTHERWISE DEFINED SHALL HAVE THE MEANINGS ASSIGNED THERETO IN THE BOND PURCHASE AGREEMENT AND IF NOT DEFINED IN THE BOND PURCHASE AGREEMENT THEN IN THE LOAN AGREEMENT, AS THE CASE MAY BE.

**WHEREAS**, at the request of the Mortgagor, the Mortgagee has determined to issue up to \$3,250,000.00 Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 ("*Bonds*") pursuant to a resolution adopted by the Mortgagee on October 21, 2015 and a Bond Purchase Agreement dated as of November 2, 2015 by and among First Niagara Bank, N.A., as purchaser (the "*Purchaser*"), the Mortgagee and the Mortgagor (the "*Bond Purchase Agreement*") and to lend the proceeds of the Bonds to the Mortgagor for the purpose of acquiring improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 to be used to operate a charter school for grades 7-12; (b) to pay costs incidental to the issuance of the Bonds; and (c) to fund a debt service reserve fund, if any, required with respect to the Bonds ((a) through (c) collectively referred to as the "*Project*"). At the request of the Mortgagor, the Issuer has granted certain other financial assistance to the Project in the form of exemption from mortgage recording tax (together with the Bonds, the "*Financial Assistance*"); and

**WHEREAS**, this Mortgage shall cover the Mortgaged Property as defined herein below; and

**WHEREAS**, the Mortgagor is the owner of the Land and Improvements as defined herein below; and

**WHEREAS**, the Mortgagee and the Mortgagor are entering into a Loan Agreement, dated as of November 1, 2015 (the "*Loan Agreement*"), pursuant to which the Mortgagee will make a loan of the Bond proceeds to the Mortgagor to finance a portion of the costs of the Project and pay capitalized interest and costs of issuance of the Bonds; and

**WHEREAS**, all things necessary to constitute this Mortgage a valid first priority lien on and pledge of the Mortgaged Property herein described in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Mortgage, as security for the payment of the principal of, and premium, if any, and interest on, the Bonds, the payment of all other sums required to be paid hereunder and under the Loan Agreement and the other Bond Documents (as defined in the Bond Purchase Agreement) and the performance and observance by the Mortgagor under the Loan Agreement and the other Bond Documents.

---

**NOW, THEREFORE, THIS MORTGAGE FURTHER WITNESSETH:**

**KNOW BY THESE PRESENTS**, that the Mortgagor, in order to secure: (a) the payments of the principal of, premium, if any, redemption price, if any, and interest on the Bonds, according to the tenor and effect of the Bonds; (b) payment of all other sums required to be paid under any Bond Document; (c) the performance and observance by the Mortgagor of all of the covenants, agreements, representations and warranties herein and in the other Bond Documents; (d) payment by the Mortgagor to the Mortgagee of all sums expended or advanced by the Mortgagee pursuant to any term, covenant or provision of this Mortgage; (e) payment and performance of all obligations of the Mortgagor arising from any Hedging Contract now or hereafter entered into by the Mortgagor in connection with the Bonds (and any such obligations under the derivatives or hedging products shall be: (i) deemed additional interest or related expense (to be determined in the sole discretion of the Holder) due in connection with the principal amount of the Indebtedness secured by this Mortgage; (ii) included (in the manner described above) as part of the Indebtedness secured by this Mortgage, and secured by this Mortgage to the full extent thereof; and (iii) included in any judgment in any proceeding instituted by the Mortgagee, the Purchaser or their agents against the Mortgagor for foreclosure of this Mortgage or otherwise); (f) the payment and performance of all obligations of the Mortgagor arising from any agreements now or hereafter entered into by the Mortgagor in connection with the Bonds; and (g) amounts that the Mortgagee expends under this 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 this Mortgage, including expenses of any litigation to prosecute or defend the rights and Lien created by this Mortgage or any other Bond Document, (all of the above clauses (a) – (g) being collectively referred to herein as the “*Mortgage Indebtedness*”), and provided that the maximum aggregate principal indebtedness secured hereby shall never exceed Three Million Two Five Hundred Fifty Thousand and 00/100 Dollars (\$3,250,000.00), does hereby covenant and agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Bond Purchase Agreement and if not defined in the Bond Purchase Agreement then in the Loan Agreement, as the case may be.

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**Section 1.01 Definitions and Interpretation.** In this Mortgage, unless the context otherwise requires:

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

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

(c) Words importing the singular number shall mean and include the plural number, and vice versa; and

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

**ARTICLE II**

**GRANTING CLAUSES; SECURITY AGREEMENT; GENERAL COVENANTS**

**Section 2.01 Granting Clauses.** The Mortgagor, in consideration of the issuance of Mortgagee’s Bonds, the execution and delivery by the Mortgagee of the Loan Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, and in order to secure the Mortgage Indebtedness, hereby warrants, assigns, mortgages, hypothecates, pledges, grants a lien on and security interest in, set over and confirm unto the Mortgagee, and its successors and assigns forever, subject to the Permitted Encumbrances, all of the estate, right, title and interest of the Mortgagor in, to and under any and all of the following described property (collectively the “*Mortgaged Property*”), whether now owned or held or hereafter acquired:

(a) (i) the fee interest in the real property more particularly described on Exhibit A attached hereto, together with the appurtenances thereto and any portion of the land lying in the streets and roads in front of and adjoining said land (the “*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 Mortgagor in and to all building materials and supplies 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 (the “*Improvements*”);

(b) the furniture, furnishings, equipment, machinery and other tangible personal property currently used in connection with the operation of the Mortgaged Property, together with, the Equipment (as more particularly described in Exhibit B attached hereto), 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 uncured Event of Default or event which with the passage of time or giving of notice would constitute an Event of Default, the Mortgagor 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 Mortgagor’s right to use such insurance proceeds or condemnation award for restoration of the Mortgaged Property as provided in the Loan Agreement;

(f) all consents, licenses, building permits, certificates of occupancy and other governmental approvals required from any Governmental Authority (individually and collectively “*Governmental Requirements*”) relating to occupancy, use or operation of the Mortgaged Property or any part thereof;

(g) 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; and

(h) all extensions, additions, substitutions and accessions with respect to any of the foregoing.

**TO HAVE AND TO HOLD** the foregoing Mortgaged Property unto the Mortgagee and its successors and assigns forever;

**SUBJECT, HOWEVER,** to the Permitted Encumbrances;

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

The original maximum aggregate principal balance of the Bonds is \$3,250,000.00 ("Loan Proceeds").

**Section 2.02 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 Mortgagor in the Mortgaged Property, including personal property used in connection with the operation of the Mortgaged Property and described in Section 2.01(b). This Mortgage shall also constitute a security agreement under the Uniform Commercial Code of the State of New York (the "State") and any Mortgaged Property which is defined pursuant to the Uniform Commercial Code shall have the meaning set forth therein, so that the Mortgagee 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 Mortgagor 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. Pursuant to the Uniform Commercial Code of the State, the Mortgagor hereby authorizes the Mortgagee to file or cause to be filed, continuation statements as shall be necessary or advisable in order to perfect or continue the perfection of Mortgagee's security interests in any of the Mortgaged Property covered by this Mortgage, and the Mortgagor shall pay to the Mortgagee, on demand, any reasonable expenses incurred by the Mortgagee in connection with the preparation and filing of such statements and any continuation statements that may be filed by the Mortgagee. Notwithstanding anything herein to the contrary, the Mortgagor, and not the Mortgagee, shall be responsible for taking any and all action as shall be required by law to fully protect and perfect the security interest of the Mortgagee in the Mortgaged Property, including, but not limited to, recording of this Mortgage

and filing of all Uniform Commercial Code financing and continuation statements with respect to the security interests granted by this Mortgage.

**Section 2.03 Information Under the Uniform Commercial Code.** The following information is stated in order to facilitate filings under the Uniform Commercial Code of the State: The Secured Party is Buffalo and Erie County Industrial Land Development Corporation, a not-for-profit corporation having an office for the transaction of business at 95 Perry Street, Suite 403, Buffalo, New York 14203. The Debtor is Buffalo Academy of Science Charter School, a charter school having an office at 190 Franklin Street, Buffalo, New York 14202.

**Section 2.04 Performance of Covenants.** The Mortgagor 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 this Mortgage, the Loan Agreement and the other Bond Documents executed by the Mortgagor.

**Section 2.05 Priority of Lien of Mortgage; Discharge of Liens and Encumbrances.**

(a) - The Mortgagor hereby represents and warrants that, except for Permitted Encumbrances, the Mortgagor 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.

(b) The Mortgagor 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 Mortgagee or the Purchaser, which consent shall not be unreasonably withheld.

(c) Notwithstanding the provisions of Section 2.05(b), the Mortgagor may in good faith contest any such Lien, *provided that* the Mortgagor: (1) first shall have notified the Mortgagee 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 Mortgagee; and (4) demonstrates to the reasonable satisfaction of the Mortgagee that the failure to discharge any such Lien will not impair or adversely affect the Lien of this Mortgage or the Mortgaged Property or any part thereof or subject the Bond proceeds or any funds of the Mortgagee applicable to the acquisition, reconstruction, construction or equipping of the Mortgaged Property to loss or forfeiture.

**Section 2.06 Payment of Principal and Interest on the Bonds; Payment of Amounts Due under the Loan Agreement and other Bond Documents.** The Mortgagor 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 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 this Mortgage to the same extent and with the same force as if fully set forth herein

**Section 2.07 Delegation to Mortgagee.** The Mortgagor irrevocably designates the Mortgagee as the Mortgagor's agent and attorney-in-fact, in accordance with this Mortgage, and irrevocably authorizes the Mortgagee to perform or observe on the Mortgagor's behalf any obligation that the Mortgagor fails to perform hereunder, under the Loan Agreement or under any Bond Document. Such appointment of the Mortgagee as the Mortgagor's attorney-in-fact is coupled with an interest and hence irrevocable. The Mortgagor shall reimburse the Mortgagee for any and all advances or expenditures that the Mortgagee makes or incurs in performing any such obligation or exercising any such right of the Mortgagor. In performing any such obligation or right, the Mortgagee may enter the Mortgaged Property. Nothing in this section imposes any obligation or duty on the Mortgagee.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

**Section 3.01 Representations, Warranties and Covenants of the Mortgagor.** The Mortgagor represents, warrants and covenants to the Mortgagee and the Purchaser as follows:

(a) The Mortgagor is the fee owner of the Land. The Mortgagor has good and insurable title to the Land and the Improvements thereon free and clear of all Liens, subject only to Permitted Encumbrances. The Mortgagor owns the existing building(s), if any, and will own any additions thereto, and all fixtures and articles of personal property now or hereafter constituting the Equipment, including any substitutions or replacements thereof, free and clear of all liens and claims, other than the Permitted Encumbrances, and this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property.

(b) The Mortgagor is a charter school organized under and existing by virtue of the New York State Education Law and has the power to enter into and perform this Mortgage and the other Bond Documents executed by the Mortgagor and to mortgage and pledge the Mortgaged Property in the manner and to the extent herein set forth.

(c) This Mortgage and the other Bond Documents executed by the Mortgagor constitute valid and enforceable obligations according to their respective terms.

(d) Neither the execution and delivery of this Mortgage or the Bond Documents executed by the Mortgagor, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the provisions hereof or thereof will violate any provision of the Mortgagor's organizational documents, or conflict with or result in a violation of any federal, state or local law or ordinances, as such laws and ordinances may be amended from time to time ("*Legal Requirements*") or material breach of or default under of the terms, conditions or provisions of any order, judgment, restriction, agreement or instrument to which the Mortgagor is a party to or by which the Mortgagor or any of its Mortgaged Property is

or may be bound, or result in the creation or imposition of any Lien of any nature upon any of the Mortgaged Property of the Mortgagor under the terms of any such instrument or agreement.

(e) The execution and delivery of this Mortgage by the Mortgagor 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 Mortgagor.

(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 representations and warranties of the Mortgagor set forth in the Loan Agreement and the Bond Documents to which it is a party are true and correct in all material respects when made, and such representations and warranties are incorporated herein by reference and made a part hereof.

(i) Within ten (10) days of receipt of Mortgagee's request, Mortgagor shall furnish a written statement duly acknowledged of the amount due on this Mortgage and whether any offsets or defenses exist against the Indebtedness.

## ARTICLE IV

### MAINTENANCE AND MODIFICATION, TAXES, AND INSURANCE

**Section 4.01 Maintenance of and Modifications to the Mortgaged Property by the Mortgagor.** The Mortgagor shall, at all times during the term of this 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 Mortgagee or the Purchaser, except as permitted in the Bond Purchase Agreement and 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 4.02 Insurance Required.** At all times throughout the term of this Mortgage, the Mortgagor shall maintain or cause to be maintained the insurance described in Section 24 of the Loan Agreement, regardless of whether the Loan Agreement shall be terminated or shall be for any reason not in full force and effect, and shall within thirty (30) days of request therefor by the Mortgagee or Purchaser deliver proof to the Mortgagee that such insurance has been and is being maintained.

### **Section 4.03 Real Estate Taxes and Impositions.**

(a) The Mortgagor shall pay or cause to be paid, as the same respectively become due, all taxes (including, but not limited to, *ad valorem* taxes), assessments, water and sewer rents and charges and all license or permit fees, levies and governmental charges, payments in lieu of any of the foregoing, several or special, ordinary or extraordinary, foreseen or unforeseen, of any kind or nature whatsoever, which are or may be charged, assessed, levied, confirmed or imposed upon, against or with respect to the Mortgaged Property (*“Real Estate Taxes and Impositions”*), *provided that*, with respect to any such Real Estate Taxes and Impositions that may lawfully be paid in installments over a period of years, the Mortgagor shall be obligated under this Mortgage to pay or cause to be paid only such installments as are required to be paid during the term of this Mortgage. The Purchaser may engage a real property tax monitoring service at the Mortgagor’s expense with respect to Real Estate Taxes and Impositions.

(b) The Mortgagor shall pay immediately all taxes, if required by law, imposed pursuant to Article 11 of the New York Tax Law or any other statute, order or regulation, whether said tax is imposed at time of recording hereof or subsequent thereto. This obligation shall survive the satisfaction or termination of the Mortgage.

(c) None of the foregoing shall prevent the Mortgagor from contesting in good faith the validity, existence or applicability of any Real Estate Taxes and Impositions if (1) such contest shall not result in the Project or any part thereof or interest therein being in any danger of being sold, forfeited or lost; (2) such contest shall not result in the Mortgagor, the Mortgagee or the Purchaser being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith; and (3) the Mortgagor shall have furnished such security, if any, as may be requested by the Mortgagee or the Purchaser to protect the security intended to be offered by this Mortgage.

(d) To the extent that the Project is not exempt from the payment of real estate taxes at any point while the Bonds remain outstanding, the Institution shall pay (a) monthly to the Holder on or before the first day of each and every calendar month a sum equal to one-twelfth (1/12th) of the known or estimated yearly taxes, assessments, sewer rents, water rates and other liens and charges with respect to the Project and (b) an initial payment such that, when such monthly payments are added thereto, the total of such payments will be sufficient to pay such taxes, assessments, sewer rents, water rates and other liens and charges and, if applicable, such insurance premiums on or before the date when they become due. Such payments will be calculated in accordance with the Holder’s standard practices. The Holder shall hold such payments in trust without obligation to pay interest thereon, except such interest as may be mandatory by any applicable statute, regulation or other law, to pay such taxes, assessments, sewer rents, water rates and other liens and charges and, if applicable, such insurance premiums within a reasonable time after they become due. If the total of such payments made by the Institution shall exceed the amount of such payments made by the Holder, such excess shall be held or credited by the Holder for the benefit of the Institution. If the total of such payments made by the Institution shall be less than the amount of such taxes, assessments, sewer rents, water rates and other liens and charges and, if applicable, such insurance premiums, then the Institution shall pay to the Holder any amount necessary to make up the deficiency on or before the date when any such amount shall be due.

**ARTICLE V**  
**SPECIAL COVENANTS**

**Section 5.01 Right of Access to the Mortgaged Property.** The Mortgagor agrees that the Mortgagee, the Purchaser and their respective duly authorized agents shall have the right at all times during normal business hours upon prior notice to enter upon and to examine and inspect the Mortgaged Property, subject to all Laws and Governmental Requirements.

**Section 5.02 Inspection of Books.** The Mortgagor hereby covenants that all books and documents in its possession relating to the Mortgaged Property and the revenues derived from the Mortgaged Property shall at all times during normal business hours upon prior notice be open to inspection by such accountants or other agents as the Mortgagee or the Purchaser may from time to time designate.

**Section 5.03 Agreement to Provide Information.** The Mortgagor agrees, whenever requested by the Mortgagee or the Purchaser, to provide and certify, or cause to be provided and certified, such information concerning the Mortgagor, as required by the Bond Documents and such other information as to enable the Mortgagee to make any reports required by applicable Laws.

**Section 5.04 Books of Record and Account.** The Mortgagor agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Mortgagor.

**Section 5.05 Compliance with Governmental Requirements.**

(a) The Mortgagor agrees that it will, at all times prior to the termination of this Mortgage, promptly and fully comply in all material respects with all: (1) Legal Requirements; (2) any covenants, conditions and restrictions of record relating to the ownership, use, operation or leasing of the Mortgaged Property, as applicable; (3) covenants, conditions and restrictions set forth in any document or instrument creating a lien or charge upon all or any portion of the Mortgaged Property; and (4) policies of insurance at any time in force with respect to the Mortgaged Property.

(b) None of the foregoing shall prevent the Mortgagor from contesting in good faith the validity, existence or applicability of any of the foregoing if (1) such contest shall not result in the Project or any part thereof or interest therein being in any danger of being sold, forfeited or lost; (2) such contest shall not result in the Mortgagor, the Mortgagee or the Purchaser being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith; and (3) the Mortgagor shall have furnished such security, if any, as may be reasonably requested by the Mortgagee to protect the security intended to be offered by this Mortgage. This Section 5.05(b) shall not be deemed to apply to the payment of Real Estate Taxes and Impositions, as to which Section 4.03 of this Mortgage shall govern or to liens, as to which Section 2.05 of this Mortgage shall govern.

**Section 5.06 Recordation of Mortgage and Filing of Security Instruments.**

(a) The Mortgagor hereby covenants that it will, at its sole cost and expense, cause this Mortgage and the Pledge and Assignment (as defined in the Bond Purchase Agreement) and all supplements hereto and thereto, together with all other security instruments and financing statements, to be recorded and filed, as the case may be, in such manner and in such places as may be requested by the Mortgagee or the Purchaser in order to perfect the liens created by the Bond Documents. ~~The Mortgagor covenants that it will cause to be filed all documents,~~ including, without limitation, continuation statements, amendments and/or assignments under the Uniform Commercial Code of the State, in such manner and in such places as may be required by law and the Purchaser, from time to time, in order to protect and maintain in force the liens of the Bond Documents.

(b) Without limiting the foregoing, the Mortgagor hereby irrevocably appoints the Mortgagee as attorney-in-fact for the Mortgagor to, or cause to, execute, deliver and file at the Mortgagor's sole cost and expense such instruments as are described in Section 5.06(a) hereof for and on behalf of the Mortgagor without the necessity of the signature of the Mortgagor or anyone claiming under or through the Mortgagor.

**Section 5.07 Indemnification Provisions.** The Mortgagor shall, and does hereby agree to, indemnify, defend and hold the Mortgagee and the Purchaser harmless of and from any and all liability, loss or damage which it may or might incur under any lease or under or by reason of this Mortgage, and the assignment thereof, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained herein. Should the Mortgagee and/or the Purchaser incur any such liability, loss or damage hereunder or under or by reason of this Mortgage or the assignment thereof, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured hereby, and the Mortgagor shall reimburse the Mortgagee and/or the Purchaser therefor immediately upon demand.

**Section 5.08 Transfer of The Mortgaged Property.** In the event of the sale, conveyance or transfer, by deed, any other voluntary or involuntary act or by operation of law or otherwise of any interest in the Mortgagor or of the Mortgaged Property or any part thereof, while this Mortgage shall remain a lien thereon, the full balance of the indebtedness then remaining unpaid, with interest, shall, at the option of the Mortgagee, or its assigns, be immediately due and payable without notice or demand unless the prior written consent of the Mortgagor to such sale, conveyance, or transfer shall have been obtained. A mortgage of the Mortgaged Property to any mortgagee other than the Mortgagee or Purchaser shall be deemed a conveyance for the purpose of this Section.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

**Section 6.01 Events of Default Defined.** The following shall each be an “*Event of Default*” under this Mortgage and the terms “Event of Default” or “default” shall mean, whenever they are used in or with respect to this Mortgage, any one or more of the following events:

(a) the Institution shall default in the timely payment of any amount payable pursuant to Section 7 (a) hereof; or a default in the payment of any other amounts required to be delivered or paid by or on behalf of the Institution in accordance herewith and such default continues for a period in excess of ten (10) days after written notice requiring the same to be remedied shall have been given to the Institution by the Issuer or the Holder;

(b) failure of the Mortgagor to observe or perform any of the other covenants or conditions of or by the Mortgagor to be performed under the terms of this Mortgage, the Bonds, the Loan Agreement, the Hedging Contracts or any other Bond Document for a period of thirty (30) days after written notice from the Mortgagee or the Purchaser, as may be applicable, to observe or perform any non-monetary covenant or condition contained in this Agreement, the 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 thirty (30) day period, then the Mortgagor 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 Mortgagor commences such cure within the initial sixty (60) day period and diligently and in good faith pursues such cure to completion within such resulting sixty (60) day period from the date of the Mortgagee’s or the Purchaser’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;

(c) the occurrence of an Event of Default under any of the Bonds, the Loan Agreement, Hedging Contract or any Bond Documents, which continues beyond any applicable grace or cure period;

(d) if any warranty, representation, certification, financial statement or other information made or furnished to induce the Mortgagee to issue the Bonds, or made or furnished, at any time, in or pursuant to the terms of this Mortgage or otherwise by the Mortgagor, shall prove to have been false or misleading in any material respect when made;

(e) the Mortgagor shall: (i) apply for or consent to the appointment of a receiver, trustee or liquidator of any of its assets; (ii) admit in writing its inability to pay its debts as they mature; (iii) make a general assignment for the benefit of creditors; (iv) be adjudicated bankrupt or insolvent; or (v) file a voluntary petition in bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation by law or statute, or an answer admitting the material allegations of a petition filed against the Mortgagor in any

proceeding under any such law or the filing of an involuntary bankruptcy against the Mortgagor, or if corporate action shall be taken by the Mortgagor for the purpose of effecting any of the foregoing;

(f) an order, judgment or decree shall be entered, without the application, approval or consent of the Mortgagor, by any court of competent jurisdiction, approving a petition seeking reorganization of the Mortgagor or of all or a substantial part of any of its properties or assets or appointing a receiver, trustee or liquidator of the Mortgagor and such order, judgment or decree shall continue undismissed or un-stayed and in effect for a period of sixty (60) days;

(g) the Mortgagor 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 forty-five (45) days from the date thereof;

(h) 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 Mortgagor threatens to encumber, assign, lease, sublease, sell, transfer or convey, the Mortgaged Property, or any part thereof, to any person or entity, other than under the Permitted Encumbrances or otherwise permitted by the Bond Documents;

(i) the imposition of a lien on the Mortgaged Property other than a lien being contested as provided herein or a Permitted Encumbrance;

(j) if legal or equitable title to, or any interest (other than a lease for less than five years) in, the Mortgaged Property is directly or indirectly sold or transferred in whole or in part, or if any rentals from the Mortgaged Property are assigned to anyone other than the Purchaser while this Mortgage shall remain a lien thereon;

(k) failure of Mortgagor to perform or comply with the terms of any lease of the Mortgaged Property or any part thereof;

(l) a Material Adverse Effect in the Mortgaged Property; or

(m) Mortgagor fails within ten (10) days of receipt of Mortgagee's request, to furnish a written statement duly acknowledged of the amount due on this Mortgage and whether any offsets or defenses exist against the Indebtedness.

#### **Section 6.02 Acceleration; Annulment of Acceleration.**

(a) Upon the occurrence of an Event of Default hereunder, the Mortgagee or the Purchaser may, by notice in writing delivered to the Mortgagor, declare the whole of the Mortgage Indebtedness immediately due and payable, whereupon the same shall become and be immediately due and payable, anything in this Mortgage or any other 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 Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Mortgage, the Mortgagee with the prior written consent of the Purchaser 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 6.03 Enforcement of Remedies.**

(a) Upon the occurrence of any Event of Default, the Mortgagee or the Purchaser may proceed forthwith to protect and enforce its rights under this Mortgage and the other Bond Documents by such suits, actions or proceedings as the Mortgagee shall deem appropriate, including, without limitation, an action to foreclose the Lien of this Mortgage, in which case the Mortgaged Property or any interest therein may be sold for cash or credit in one or more interests and in any order or manner, (including the power of sale in effect from time to time under applicable State law) and obtain the appointment of a receiver.

(b) Upon the occurrence of any Event of Default, the Mortgagee or the Purchaser may, (but shall have no obligation to) perform such covenant, condition, agreement or provision in its own name or in the Mortgagor's name, and each are hereby irrevocably appointed the Mortgagor's attorney-in-fact for such purpose.

(c) Upon the occurrence of any Event of Default, the Mortgagee or the Purchaser may sue for, enforce payment of and receive any amounts due or becoming due from the Mortgagor for principal, premium, interest or otherwise under any of the provisions of this Mortgage, or the other Bond Documents, without prejudice to any other right or remedy of the Mortgagee or the Purchaser. The Mortgagee or the Purchaser may also declare the entire indebtedness secured hereby immediately due and payable without presentment, demand, protest or notice of any kind and the Mortgagee or Purchaser 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 Mortgagor and the Mortgaged Property

(d) Regardless of the happening of an Event of Default, the Mortgagee or the Purchaser may institute and maintain such suits and proceedings as the Mortgagee or the Purchaser may be advised shall be necessary or expedient to prevent any impairment of the security under this Mortgage by any acts which may be unlawful or in violation of this Mortgage, or to preserve or protect the interests of the Mortgagee or the Purchaser.

(e) The Mortgagee or the Purchaser 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 Mortgagor, which the Mortgagee or the Purchaser, in its discretion, feels should be brought to protect its interests in the Mortgaged Property.

(f) Upon the occurrence of any Event of Default hereunder, the Mortgagor, upon demand of the Mortgagee or the Purchaser, shall forthwith surrender the possession of, and it shall be lawful for the Mortgagee or the Purchaser, 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 Mortgagor pertaining thereto, and to hold, operate and manage the same, and from time to time to make all needed repairs and improvements as the Mortgagee or the Purchaser shall deem wise and the Mortgagee or the Purchaser 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 Mortgagor, collect, receive and sequester the rents, revenues, earnings, income, products and profits therefrom, and pay out of the same: (i) all proper costs and expenses of taking, holding, leasing, selling and managing the Mortgaged Property, including reasonable compensation to the Mortgagee and its agents and counsel, and any charges of the Mortgagee hereunder; (ii) any taxes and other charges prior to the lien of this Mortgage which the Mortgagee or the Purchaser may deem it wise to pay, including all expenses of such repairs and improvements; (iii) the payment of all interest then due on the 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; (iv) 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; (v) any payments necessary to implement the rights and remedies available to Mortgagee under the Loan Agreement or any other Bond Document; (vi) the payment of Holder's (as defined in the Bond Purchase Agreement) expenses, including counsel fees, incurred in connection with an Event of Default; and (viii) to the payment of any amounts due the Mortgagee or any other Person under the Loan Agreement or any other Bond Document. The surplus, if any, shall be paid to the Mortgagor or the Person lawfully entitled to receive the same as a court of competent jurisdiction may direct.

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

(g) Notwithstanding anything herein contained to the contrary, to the extent permitted by law, the Mortgagor and anyone claiming through or under the Mortgagor: (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 this 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) hereby expressly waive all benefit or advantage of any such law or laws; and (3) covenant not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee or the Purchaser, but to suffer and permit the

execution of every power as though no such law or laws had been made or enacted. The Mortgagor, 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 hereof.

(h) the Mortgagee and the Purchaser shall have the rights and remedies of a secured party under the Uniform Commercial Code of the State.

**Section 6.04 Appointment of Receivers.** Upon the occurrence of an Event of Default hereunder, the Mortgagee shall be entitled, as a matter of right, without notice and without regard to the adequacy of any security for the debt secured hereby, to the appointment of a receiver or receivers of the Mortgaged Property and of the revenues and receipts thereof, pending the conclusion of such proceedings and any appeal therefrom, with such powers as the court making such appointment shall confer. The receiver shall be entitled to occupational rent from an owner/occupant and may upon non-payment of said rent evict the owner/occupant, and the proceeds derived by the receiver shall be applied in accordance with §6.03(e) hereof and the applicable Bond Documents.

**Section 6.05 Application of Moneys.** The net proceeds received by the Mortgagee pursuant to any right given or action taken under the provisions of this Article VI shall, during the continuance of an Event of Default hereunder, be applied in accordance with §6.03(f) hereof and the applicable Bond Documents.

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

**Section 6.07 Termination of Proceedings.** In case any proceeding taken by the Mortgagee or the Purchaser on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Mortgagee or the Purchaser, as the case may be, then the Mortgagee, the Purchaser and the Mortgagor shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Mortgagee and the Purchaser shall continue as if no such proceeding had been taken.

**Section 6.08 Waiver and Non-Waiver of Event of Default.**

(a) The Mortgagee may, in its discretion, with the consent of the Purchaser, agree to waive any Event of Default hereunder and its consequences and annul any acceleration in

accordance with Section 6.02 hereof. No such waiver shall extend to or affect any other existing or any subsequent Event of Default.

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

**Section 6.09 Repayment and Securing of Expenses Paid by the Mortgagee.** In the event the Mortgagee or the Purchaser shall pay any premiums on any policies of insurance required to be maintained or procured by Section 4.02 hereof, or in the event the Mortgagee or the Purchaser shall expend any funds for the payment of any unpaid Real Estate Taxes and Impositions upon the Mortgaged Property, or expend any funds in payment of any unpaid installments under any applicable agreement for payments in lieu of taxes with any taxing entity, or pay or perform any other obligation of the Mortgagor under any of the Bond Documents, then in any such event such payment shall be deemed to be secured by this Mortgage and shall be payable in accordance with §6.03(f) hereof and the applicable Bond Documents to the Mortgagee or the Purchaser in the manner provided and with interest as provided herein or, if not so provided herein, shall be payable on demand with interest at the Default Rate in effect from time to time.

**Section 6.10 Other Actions by the Mortgagee.** Regardless of the happening of an Event of Default, the Mortgagee or the Purchaser may institute and maintain such suits and proceedings as it shall deem necessary or expedient to prevent any impairment of the security under this Mortgage by any acts which may be unlawful or in violation of this Mortgage or to preserve or protect the interests of the Mortgagee and the Purchaser. The Mortgagee may take, but is not obligated to take, such action as the Mortgagee deems appropriate to protect the Mortgaged Property or the status or priority of the Lien of this Mortgage, including, but not limited to: (a) entry upon the Mortgaged Property to protect the Mortgaged Property from deterioration or damage, or to cause the Mortgaged Property to be put in compliance with any governmental, insurance rating or contract requirements; (b) payment of amounts due on Liens having priority over this Mortgage; (c) payment of any tax or charge for purposes of assuring the priority or enforceability of this Mortgage; (d) obtaining insurance on the Mortgaged Property; (e)

commencement or defense of any legal action or proceeding to assert or protect the validity or priority of the Lien of this Mortgage; (f) enforcement of this Mortgage; or (g) reappraisal of the Mortgaged Property, if required by Mortgagee's policies, at Mortgagor's expense. On demand, Mortgagor shall reimburse the Mortgagee for all such amounts spent in taking any such action, with interest, and the amount thereof shall be Indebtedness secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the Indebtedness heretofore stated.

**Section 6.11 Repayment and Securing of Collection Costs Incurred by the Mortgagee.**

(a) In the event this Mortgage, the Bonds, the Loan Agreement or any of the other Bond Documents or all of the foregoing are placed in the hands of an attorney: (1) for collection of any sum payable hereunder or thereunder; (2) for the foreclosure of this Mortgage; or (3) for the enforcement of any of the terms, conditions and obligations of this Mortgage, the Mortgagor agrees to pay all costs of collection (including reasonable attorneys' fees and expenses) incurred by the Mortgagee, together with interest thereon at the "Default Rate." The "Default Rate" shall be equal to the sum of: (i) six percent (6%) per annum plus (ii) the Interest Rate (as defined in the Bonds) then payable with respect thereto (but in no event in excess of the maximum rate from time to time permitted by then applicable law). All such costs as incurred shall be deemed to be secured by this Mortgage and collectible out of the proceeds of this Mortgage in any manner permitted by law or by this Mortgage.

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

**ARTICLE VII**

**MISCELLANEOUS**

**Section 7.01 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Mortgage or the other Bond Documents is intended or shall be construed to give to any Person, other than the parties hereto or thereto and the Holder, and their successors and assigns, any right, remedy or claim under or with respect to this Mortgage or any covenants, conditions and provisions herein contained. This Mortgage and all of the covenants, conditions and provisions hereof are intended to be for the

sole and exclusive benefit of the parties hereto, the Holder and their successors and assigns as provided herein and in the Bond Purchase Agreement.

**Section 7.02 Notices.**

(a) Any notice, request, direction, designation, consent, acknowledgment, certification, ~~appointment, waiver or other communication~~ required or permitted by this Mortgage must be in writing. Any notice or other communication shall be sufficiently given and deemed given (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified below and the appropriate answer back or confirmation of receipt is received and (ii) if given by hand or reputable overnight delivery service or first-class mail, postage prepaid, addressed as specified below, when delivered.

(b) The addresses to which notice, request, direction, designation, consent, acknowledgment, certification, appointment, waiver or other communication hereunder shall be delivered are as follows:

To the Mortgagee: Buffalo and Erie County Industrial Land  
Development Corporation  
95 Perry Street  
Suite 403  
Buffalo, New York 14203  
Attention: Chief Operating Officer

To the Purchaser: First Niagara Bank, N.A.  
726 Exchange Street  
Buffalo, New York 14210  
Attention: Commercial Loan Administration

To the Mortgagor: Buffalo Academy Of Science Charter School  
190 Franklin Street, Buffalo  
New York 14202  
Attention: Yusuf Akyar, Financial Analyst

(c) The Mortgagee, the Purchaser and the Mortgagor may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates and other communications shall be sent.

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

**Section 7.03 Counterparts.** This Mortgage may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 7.04 Applicable Law.** This Mortgage shall be governed exclusively by the laws of the State.

**Section 7.05 Table of Contents and Section Headings not Controlling.** The table of contents and the headings of the several articles and sections of this Mortgage have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Mortgage.

**Section 7.06 Severability.**

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

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

**Section 7.07 Covenants Run with the Land.** All of the grants, covenants, terms, provisions and conditions herein shall run with the Land and shall apply to, bind and inure to the benefit of the parties hereto and their successors and assigns.

**Section 7.08 Amendment.** Neither this Mortgage nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Mortgagee, the Purchaser and the Mortgagor upon compliance with the Bond Purchase Agreement.

**Section 7.09 Usury.** Notwithstanding anything to the contrary contained herein, in no event shall the total of all charges payable hereunder or under any of the Bond Documents which are or could be held to be in the nature of interest exceed the maximum rate permitted to be charged under applicable law. Should the Mortgagee receive any payment which is or would be in excess of that permitted to be charged under any applicable law, such payment shall have been, and shall be deemed to have been, made in error and shall automatically be applied to reduce the Mortgage Indebtedness.

**Section 7.10 Special Obligation.** Notwithstanding any other term or condition contained in this Mortgage:

(a) No order or decree of specific performance with respect to any of the obligations of the Mortgagee hereunder shall be sought or enforced against the Mortgagee unless the party seeking such order or decree shall first have requested the Mortgagee in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Mortgagee shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have

failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period. If the Mortgagee refuses to comply with such request and the Mortgagee's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree may, at its option, place in an account with the Mortgagee an amount, as determined by Mortgagee in its sole discretion, or undertaking sufficient to cover such fees and expenses whereupon the Mortgagee shall agree to comply with such request. If the Mortgagee refuses to comply with such request and the Mortgagee's refusal to comply is based on its reasonable expectation that it or any of its members, officers, directors, servants, agents or employees shall be subject to potential liability, the party seeking such order or decree may, at its option: (i) agree to protect, defend, indemnify and hold harmless the Mortgagee and its members, officers, directors, servants, agents and employees against any liability incurred as a result of its compliance with such request; and (ii) if requested by the Mortgagee, furnish to the Mortgagee satisfactory security, as determined by the Mortgagee in its sole discretion, to protect the Mortgagee and its members, officers, directors, servants, agents and employees against all liability reasonably expected to be incurred as a result of compliance with such request, whereupon the Mortgagee shall agree to comply with such request. This agreement on the part of the Mortgagee shall not be construed in any way so as to affect or impair the lien of this Mortgage or the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings.

**Section 7.11 Tax Laws.** If any law or ordinance is enacted or adopted which imposes a tax, either directly or indirectly, on this Mortgage, the Mortgagor will pay, or cause to be paid, such tax, with interest and penalties thereon, if any.

**Section 7.12 Revenue Stamps.** If at any time any Governmental Authority shall require revenue or other stamps to be affixed to this Mortgage or any of the Bond Documents, the Mortgagor will pay, or cause to be paid, the same, with interest and penalties thereon, if any.

**Section 7.13 Further Assurance.** The Mortgagor will execute and the Mortgagee will procure for the Mortgagee and cause to be done any further conveyances, instruments or acts of further assurance as the Mortgagee and the Purchaser shall reasonably require to perfect the security of the Mortgage in the Mortgaged Property intended now or hereafter to be covered by this Mortgage or otherwise for carrying out the intention of facilitating the performance of the terms of this Mortgage.

**Section 7.14 Satisfaction of Mortgage.** Upon the payment in full of all of the amounts due under the Bonds and under any Bond Document, if: (a) there is no Event of Default under the Loan Agreement; (b) the Mortgagor has performed and observed all the covenants to be performed and observed hereunder and has performed all obligations under the other Bond Documents to which it is a party; and (c) the Mortgagor has paid or caused to be paid to the Mortgagee and the Purchaser all sums of money due or to become due to it in accordance with the terms and provisions hereof and of the other Bond Documents to which it is a party, including, without limitation, all amounts owed under all indemnification provisions, the Mortgagee, by acceptance of this Mortgage, agrees at the sole cost and expense of the Mortgagor to execute and deliver any and all instruments necessary and/or appropriate to discharge the Lien

of this Mortgage of record and to terminate the UCC-1 Financing Statements filed in connection with this Mortgage and the other Bond Documents.

**Section 7.16 Assignment of Leases and Rents.**

(a) The Mortgagor hereby assigns to the Mortgagee the rents, issues and profits of the Mortgaged Property as further security for the payment of the Mortgage Indebtedness, and the Mortgagor grants to the Mortgagee the right to enter upon and take possession of the Mortgaged Property for the purpose of collecting the same and to let the Mortgaged Property or any part thereof, and to apply the rents, issues and profits, after payment of all necessary charges and expenses on account of the Mortgage Indebtedness. This assignment and grant shall continue in effect until the Mortgage Indebtedness is paid. The Mortgagee hereby waives the right to enter upon and to take possession of the Mortgaged Property for the purpose of collecting said rents, issues and profits, and the Mortgagor shall be entitled to collect and receive said rents, issues and profits and apply same in payment of the amounts becoming due on the Mortgage Indebtedness and operating expenses related to the Mortgaged Property until the occurrence of an Event of Default hereunder. The Mortgagor will not, without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, receive or collect rent from any tenant of the Mortgaged Property or any part thereof for a period of more than one month in advance. Upon the occurrence of an Event of Default hereunder, the Mortgagor will pay monthly in advance to the Mortgagee or any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or of such part thereof as may be in the possession of the Mortgagor and upon default may be evicted by summary proceeding.

(b) The Mortgagor shall not, without prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, make or suffer to be made, any leases or cancel or modify any leases, accept prepayments of installments of rent for a period of more than one month in advance, or further assign the whole or any part of the rents. No lease or contract covering all or any part of the Mortgaged Property shall be valid or effective without the prior written approval of the Mortgagee which consent shall not be unreasonably withheld, conditioned or delayed. The Mortgagee shall have all of the rights against lessees of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of the State. In respect of any lease, the Mortgagor will fulfill or perform each and every provision thereof on its part to be fulfilled or performed; promptly send copies of all notices of default which it shall send or receive therefrom to the Mortgagee; and enforce the performance or observance of the provisions thereof. Nothing contained in this Mortgage shall be deemed to impose upon the Mortgagee any of the obligations of the lessor or lessee under any lease of the Mortgaged Property.

(c) Subject to Section 7.16(a) hereof, all leases entered into subsequent to the date hereof, must provide that the tenant thereunder shall pay to the Mortgagee upon an uncured Event of Default hereunder all sums due under the lease upon notice to the tenant from the Mortgagee, and that the Mortgagor and any tenant shall, at the Mortgagee's option, furnish the Mortgagee with an estoppel and attornment letter as to the leases in form and substance acceptable to the Mortgagee.

(d) The Mortgagor will not waive, release, reduce or otherwise discharge or assign to any person, other than the Mortgagee, the rents, issues and profits of the Mortgaged Property. In addition, the Mortgagor will observe and comply with all of its obligations as lessor under any lease, license or occupancy agreement, will promptly notify the Mortgagee if it receives any default notice thereunder and forward a copy of the default notice to the Mortgagee and enforce any default thereunder by a tenant under a lease, license or occupancy agreement. The Mortgagor shall not, however, terminate any such lease, license or occupancy agreement without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld.

**Section 7.17 Unassigned Rights of Mortgagee.** Notwithstanding anything herein to the contrary or in any assignment of this Mortgage, the Mortgagee reserves all of its Unassigned Rights, and such Unassigned Rights shall be deemed to and shall remain the rights of the Mortgagee and the Mortgagee may commence an action to enforce the Mortgagee's Unassigned Rights reserved herein and hereby.

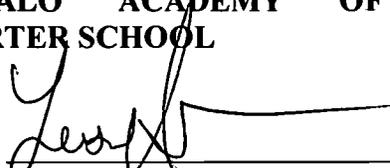
**Section 7.18 Jurisdiction and Venue.** Mortgagor knowingly, voluntarily, intentionally and irrevocably: (a) consents in each action and other legal proceeding commenced by Mortgagee or any Mortgagee affiliate and arising out of or otherwise relating to this Mortgage, or any Bond Documents to the nonexclusive personal jurisdiction of any court that is either a court of record of the State or a court of the United States located in the State; (b) waives each objection to the laying of venue of any such action or other legal proceeding; (c) waives personal service of process in each such action and other legal proceeding; and (d) consents to the making of service of process in each such action and other legal proceeding by registered mail directed to Mortgagor at the last address of Mortgagor shown in the records relating to this Mortgage maintained by Mortgagee, with such service of process to be deemed completed five (5) days after the mailing thereof.

**Section 7.19 Waiver of Jury Trial.** Mortgagor: (a) knowingly, voluntarily, intentionally and irrevocably waives each right Mortgagor may have to a trial by jury with respect to, and in, any action or other legal proceeding, of any nature relating to: (i) this Mortgage or any Bond Documents; (ii) any transaction contemplated in any such documents; or (iii) any negotiation, administration, performance or enforcement of this Mortgage or any of the obligations, any of the Bond Documents or collateral or any other Collateral; and (b) certifies that: (i) neither Mortgagee, any Mortgagee affiliate nor any representative of Mortgagee or any Mortgagee affiliate has represented to Mortgagor that Mortgagee or any Mortgagee affiliate will not seek to enforce the waiver made by Mortgagor in this Section; and (ii) it has been represented (or has had the opportunity to be represented) in the signing of this Mortgage as necessary and appropriate by independent legal counsel.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed in its name by its duly-authorized officer, all dated as of November 1, 2015.

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By:

  
\_\_\_\_\_  
Yusuf Akyar, Authorized Representative

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

On the 30<sup>th</sup> day of October, in the year 2015 before me, personally appeared **Yusuf Akyar**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
**NOTARY PUBLIC**

LORI L McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

~~ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:~~

BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.

## **EXHIBIT B**

### **DESCRIPTION OF EQUIPMENT**

All personal property and fixtures, including and all equipment, inventory, furniture, fixtures, equipment and improvements specific to the Mortgaged Property and other items of tangible personal property and all appurtenances now or hereafter attached to, contained in or used in connection with the Land and/or Improvements or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, maintenance equipment and other accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, desks, computers and, together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor.



STATE OF NEW YORK  
DEPARTMENT OF STATE  
ONE COMMERCE PLAZA, 99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

ANDREW M. CUOMO  
GOVERNOR

CESAR A. PERALES  
SECRETARY OF STATE

**FILING ACKNOWLEDGMENT**

November 9, 2015

BARCLAY DAMON, LLP  
ONE PARK PLACE  
SYRACUSE NY 13202

Attached is the acknowledgment copy of your recently submitted filing. This filing consists of a total of 6 pages; however, only the first page of the filed document is returned as part of this acknowledgment. This document has been filed with the New York State Department of State, Uniform Commercial Code Division

The Financing Statement has been assigned Filing Number: 201511050573554, Filing Date: 11/05/2015 and is currently reflected in our automated database as follows:

**Debtor's Name & Address**

BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
190 FRANKLIN STREET  
BUFFALO NY 14202

**Secured Party's Name & Address**

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION  
95 PERRY STREET, SUITE 403  
BUFFALO NY 14203  
(See attached for additional Secured Parties)

This filing will lapse on 11/05/2020, unless continued. We encourage filers to take full advantage of the six-month window of opportunity in which to file a Financing Statement Amendment (Continuation). Submission of your documents at the onset of the six-month window will allow ample time to rectify potential filing errors and help to assure timely recording of your filing.

If you have any concerns regarding the way this document is recorded, please contact one of our Customer Service Representatives at (518) 473-2492, or respond in writing to the UCC Data Processing Unit at the address indicated above

Sincerely,

Uniform Commercial Code Division  
Data Processing Unit

REF #: 114099

Secured Party's Name & Address (continued)

FIRST NIAGARA BANK, N.A.  
726 EXCHANGE STREET  
BUFFALO NY 14210

114099

2015 NOV -5 AM 9:00

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A NAME & PHONE OF CONTACT AT FILER [optional]  
**Susan R. Katzoff - (315) 425-2880**

B SEND ACKNOWLEDGMENT TO. (Name and Address)

**Susan R. Katzoff, Esq.  
 Barclay Damon, LLP  
 One Park Place  
 300 South State Street  
 Syracuse, New York 13202**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1 DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a ORGANIZATION'S NAME  
**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

OR  
 1b INDIVIDUAL'S LASTNAME FIRST NAME MIDDLE NAME SUFFIX

1c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**190 Franklin Street Buffalo NY 14202 USA**

1d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e TYPE OF ORGANIZATION 1f JURISDICTION OF ORGANIZATION 1g ORGANIZATIONAL ID # if any  
**Not Applicable education corporation New York**  NONE

2 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME

OR  
 2b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e TYPE OF ORGANIZATION 2f JURISDICTION OF ORGANIZATION 2g ORGANIZATIONAL ID #, if any  
**Not Applicable**  NONE

3 SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME  
**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**

OR  
 3b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**95 Perry Street, Suite 403 Buffalo NY 14203 USA**

4 This FINANCING STATEMENT covers the following collateral

The right, title and interest of Debtor granted to the Secured Party pursuant to the Mortgage and Security Agreement dated as of November 1, 2015 and as more fully described in Schedule A attached hereto and made a part hereof.

5. ALTERNATIVE DESIGNATION (if applicable)  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOBR  SELLER/BUYER  AG LIEN  NON-UCC FILING

6  This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)  Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)  All Debtors  Debtor 1  Debtor 2

8 OPTIONAL FILER REFERENCE DATA

Mortgage/BASCS (State)

114099

2015 Jul -5 AM 9:00

### UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9 NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

9a ORGANIZATION'S NAME			
<b>BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL</b>			
OR	9b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

**10 MISCELLANEOUS**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names**

11a ORGANIZATION'S NAME					
OR	11b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
11d SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	11e TYPE OF ORGANIZATION	11f JURISDICTION OF ORGANIZATION	11g ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE
Not Applicable					

**12  ADDITIONAL SECURED PARTY'S or  ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a ORGANIZATION'S NAME					
OR	<b>FIRST NIAGARA BANK, N.A.</b>				
	12b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
12c MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
<b>726 Exchange Street, Buffalo</b>		<b>Buffalo</b>	<b>NY</b>	<b>14210</b>	<b>USA</b>

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  future filing

14 Description of real estate  
**See Exhibit A**

16. Additional collateral description

**See Schedule A attached hereto and made a part hereof.**

15 Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest)

17 Check only if applicable and check only one box

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18 Check only if applicable and check only one box

- Debtor is a TRANSMITTING UTILITY
- Filed in connection with a Manufactured-Home Transaction — effective 30 years
- Filed in connection with a Public-Finance Transaction — effective 30 years

## SCHEDULE "A"

TO UCC-1 FINANCING STATEMENT (FIXTURE FILING)  
FROM BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL TO BUFFALO AND  
ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT AGENCY AND AS ASSIGNED TO  
FIRST NIAGARA BANK, N.A.,  
RELATING TO MORTGAGE AND SECURITY AGREEMENT

BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL (the "*Institution*") and BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT AGENCY ("*Issuer*") have entered into a Mortgage and Security Agreement dated as of November 1, 2015 (as amended, modified, restated or supplemented from time to time, the "*Mortgage*") as assigned to FIRST NIAGARA BANK, N.A., as purchaser (the "*Purchaser*") for the holders of the Issuer's Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000.

Under the Mortgage, the Institution granted a security interest in, set over and confirmed unto the Mortgagee, and its successors and assigns forever, subject to the Permitted Encumbrances, all of the estate, right, title and interest of the Mortgagor in, to and under any and all of the following described property (collectively the "*Mortgaged Property*"), whether now owned or held or hereafter acquired:

(a) (i) the fee interest in the real property more particularly described on Exhibit A attached hereto, together with the appurtenances thereto and any portion of the land lying in the streets and roads in front of and adjoining said land (the "*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 Mortgagor in and to all building materials and supplies 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 (the "*Improvements*");

(b) the furniture, furnishings, equipment, machinery and other tangible personal property currently used in connection with the operation of the Mortgaged Property, together with, the Equipment (as more particularly described in Exhibit B attached hereto), 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 uncured Event of Default or event which with the passage of time or giving of notice would constitute an Event of Default, the Mortgagor 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 Mortgagor's right to use such insurance proceeds or condemnation award for restoration of the Mortgaged Property as provided in the Loan Agreement;

(f) all consents, licenses, building permits, certificates of occupancy and other governmental approvals required from any Governmental Authority (individually and collectively "*Governmental Requirements*") relating to occupancy, use or operation of the Mortgaged Property or any part thereof;

(g) 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; and

(h) all extensions, additions, substitutions and accessions with respect to any of the foregoing.

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:**

**BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.**

**DESCRIPTION OF EQUIPMENT**

All personal property and fixtures, including and all equipment, inventory, furniture, fixtures, equipment and improvements specific to the Mortgaged Property and other items of tangible personal property and all appurtenances now or hereafter attached to, contained in or used in connection with the Land and/or Improvements or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, maintenance equipment and other accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, desks, computers and, together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor.



**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**FILED**  
NOV 04 2015  
ERIE COUNTY  
CLERK'S OFFICE

<b>A NAME &amp; PHONE OF CONTACT AT FILER</b> [optional] Susan R. Katzoff - (315) 425-2880
<b>B SEND ACKNOWLEDGMENT TO</b> (Name and Address)  Susan R. Katzoff, Esq. Barclay Damon, LLP One Park Place 300 South State Street Syracuse, New York 13202

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1 DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

<b>1a ORGANIZATION'S NAME</b> BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL			
<b>OR</b>	<b>1b INDIVIDUAL'S LAST NAME</b>	<b>FIRST NAME</b>	<b>MIDDLE NAME</b> / <b>SUFFIX</b>
<b>1c MAILING ADDRESS</b> 190 Franklin Street		<b>CITY</b> Buffalo	<b>STATE</b> / <b>POSTAL CODE</b> / <b>COUNTRY</b> NY / 14202 / USA
<b>1d SEE INSTRUCTIONS</b> Not Applicable	<b>ADD'L INFO RE ORGANIZATION DEBTOR</b>	<b>1e TYPE OF ORGANIZATION</b> education corporation	<b>1f JURISDICTION OF ORGANIZATION</b> New York
			<b>1g ORGANIZATIONAL ID #, if any</b> <input checked="" type="checkbox"/> NONE

**2 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

<b>2a ORGANIZATION'S NAME</b>			
<b>OR</b>	<b>2b INDIVIDUAL'S LAST NAME</b>	<b>FIRST NAME</b>	<b>MIDDLE NAME</b> / <b>SUFFIX</b>
<b>2c MAILING ADDRESS</b>		<b>CITY</b>	<b>STATE</b> / <b>POSTAL CODE</b> / <b>COUNTRY</b>
<b>2d SEE INSTRUCTIONS</b> Not Applicable	<b>ADD'L INFO RE ORGANIZATION DEBTOR</b>	<b>2e TYPE OF ORGANIZATION</b>	<b>2f JURISDICTION OF ORGANIZATION</b>
			<b>2g ORGANIZATIONAL ID #, if any</b> <input type="checkbox"/> NONE

**3 SECURED PARTY'S NAME** (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

<b>3a ORGANIZATION'S NAME</b> BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION			
<b>OR</b>	<b>3b INDIVIDUAL'S LAST NAME</b>	<b>FIRST NAME</b>	<b>MIDDLE NAME</b> / <b>SUFFIX</b>
<b>3c MAILING ADDRESS</b> 95 Perry Street, Suite 403		<b>CITY</b> Buffalo	<b>STATE</b> / <b>POSTAL CODE</b> / <b>COUNTRY</b> NY / 14203 / USA

**4 This FINANCING STATEMENT covers the following collateral**  
**The right, title and interest of Debtor granted to the Secured Party pursuant to the Mortgage and Security Agreement dated as of November 1, 2015 and as more fully described in Schedule A attached hereto and made a part hereof.**

<b>5 ALTERNATIVE DESIGNATION</b> [if applicable]	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG LIEN	<input type="checkbox"/> NON-UCC FILING
<b>6</b> <input checked="" type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum.	<input type="checkbox"/> If applicable	<b>7</b> Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)	<input type="checkbox"/> All Debtors	<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2	

**8 OPTIONAL FILER REFERENCE DATA**  
Mortgage/BASCS (County)

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9 NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

9a ORGANIZATION'S NAME  
**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

OR

9b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME, SUFFIX

**10 MISCELLANEOUS.**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names**

11a ORGANIZATION'S NAME

OR

11b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 11e TYPE OF ORGANIZATION 11f JURISDICTION OF ORGANIZATION 11g ORGANIZATIONAL ID #, if any  NONE

Not Applicable

**12 ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a ORGANIZATION'S NAME  
**FIRST NIAGARA BANK, N.A.**

OR

12b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

**726 Exchange Street, Buffalo Buffalo NY 14210 USA**

**13. This FINANCING STATEMENT covers**  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing

**14. Description of real estate**  
**See Exhibit A.**

**15 Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest)**

**16. Additional collateral description**  
**See Schedule A attached hereto and made a part hereof.**

**17 Check only if applicable and check only one box**  
 Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

**18 Check only if applicable and check only one box**  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction — effective 30 years  
 Filed in connection with a Public-Finance Transaction — effective 30 years

## SCHEDULE "A"

TO UCC-1 FINANCING STATEMENT (FIXTURE FILING)  
FROM BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL TO BUFFALO AND  
ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT AGENCY AND AS ASSIGNED TO  
FIRST NIAGARA BANK, N.A.,  
RELATING TO MORTGAGE AND SECURITY AGREEMENT

BUFFALO ACADEMY SCIENCE CHARTER SCHOOL (the "*Institution*") and BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT AGENCY ("*Issuer*") have entered into a Mortgage and Security Agreement dated as of November 1, 2015 (as amended, modified, restated or supplemented from time to time, the "*Mortgage*") as assigned to FIRST NIAGARA BANK, N.A., as purchaser (the "*Purchaser*") for the holders of the Issuer's Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000.

Under the Mortgage, the Institution granted a security interest in, set over and confirmed unto the Mortgagee, and its successors and assigns forever, subject to the Permitted Encumbrances, all of the estate, right, title and interest of the Mortgagor in, to and under any and all of the following described property (collectively the "*Mortgaged Property*"), whether now owned or held or hereafter acquired:

(a) (i) the fee interest in the real property more particularly described on Exhibit A attached hereto, together with the appurtenances thereto and any portion of the land lying in the streets and roads in front of and adjoining said land (the "*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 Mortgagor in and to all building materials and supplies 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 (the "*Improvements*");

(b) the furniture, furnishings, equipment, machinery and other tangible personal property currently used in connection with the operation of the Mortgaged Property, together with, the Equipment (as more particularly described in Exhibit B attached hereto), 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 uncured Event of Default or event which with the passage of time or giving of notice would constitute an Event of Default, the Mortgagor 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 Mortgagor's right to use such insurance proceeds or condemnation award for restoration of the Mortgaged Property as provided in the Loan Agreement;

(f) all consents, licenses, building permits, certificates of occupancy and other governmental approvals required from any Governmental Authority (individually and collectively "*Governmental Requirements*") relating to occupancy, use or operation of the Mortgaged Property or any part thereof;

(g) 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; and

(h) all extensions, additions, substitutions and accessions with respect to any of the foregoing.

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:

BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.

## **EXHIBIT B**

### **DESCRIPTION OF EQUIPMENT**

All personal property and fixtures, including and all equipment, inventory, furniture, fixtures, equipment and improvements specific to the Mortgaged Property and other items of tangible personal property and all appurtenances now or hereafter attached to, contained in or used in connection with the Land and/or Improvements or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, maintenance equipment and other accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, desks, computers and, together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor.

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:

BARCLAY DAMON LLP  
ONE PARK PL  
300 S STATE ST  
SYRACUSE, NY 13202

**Book Type: M Book: 13744 Page: 1137**

Page Count: 5

Doc Type: ASSIGN-MTG

Rec Date: 11/04/2015

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UserID: Eileen

Trans #: 15179382

Document Sequence Number

Party 1:

BUFFALO&ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

Party 2:

FIRST NIAGARA BANK NA

**Consideration Amount:**

**Recording Fees:**

RECORDING	\$45.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
MARKOFF FEE	\$0.50

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

**Total: \$65.50**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

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

Christopher L. Jacobs  
County Clerk

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

To

**FIRST NIAGARA BANK, N.A.**

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**ASSIGNMENT OF MORTGAGE**

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Dated as of November 1, 2015

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relating to

**\$3,250,000.00  
TAX-EXEMPT REVENUE BONDS  
(BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL PROJECT), SERIES 2015**

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**Record and Return to:**

**Barclay Damon, LLP  
300 South State Street  
Syracuse, NY 13202  
Attention: Susan R. Katzoff, Esq.**

**ASSIGNMENT OF MORTGAGE**

This Assignment of Mortgage ("*Assignment of Mortgage*") dated as of November 1, 2015 is from **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit corporation constituting a local development corporation organized under the laws of the State of New York having an office at 95 Perry Street, Suite 403, Buffalo, New York 14203 ("*Assignor*"), to **FIRST NIAGARA BANK, N.A.**, a national banking association duly organized under the laws of the United States, and having an office at 726 Exchange Street, Buffalo, New York 14210 (the "*Assignee*").

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**, a charter school organized under and existing by virtue of the New York State Education Law, as mortgagor, entered into a certain Mortgage and Security Agreement, dated November 1, 2015 ("*Mortgage*"), granting Assignor, as mortgagee, a mortgage and security interest in the Mortgaged Property, as defined therein, and covering the real property more particularly described on Exhibit A, annexed hereto and made a part hereof which Mortgage was recorded in the Erie County Clerk's office on November 4, 2015, in Liber 13746 of Mortgages at page 1107. ✓

**NOW THEREFORE**, For value received, the receipt and sufficiency of which is hereby acknowledged, the Assignor hereby assigns, transfers and sets over to the Assignee all of Assignor's right, title and interest in and to that certain Mortgage.

**TO HAVE AND TO HOLD** the same unto the Assignee and to the successors, legal representatives and assigns of Assignee forever, **WITHOUT RECOURSE, REPRESENTATION OR WARRANTY OF ANY KIND BY ASSIGNOR OR ANY RESPONSIBILITY OR LIABILITY WHATSOEVER ON BEHALF OF ASSIGNOR.**

[Remainder of Page Intentionally Left Blank]



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:

BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.

ERIE COUNTY CLERK'S OFFICE



County Clerk's Recording Page

Return to:

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ONE PARK PL  
300 S STATE ST  
SYRACUSE, NY 13202

**Book Type: M Book: 13744 Page: 1142**

Page Count: 10  
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Rec Date: 11/04/2015  
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UserID: Eileen  
Trans #: 15179382  
Document Sequence Number

Party 1:

BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL

Party 2:

BUFFALO&ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

**Consideration Amount:**

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

**Recording Fees:**

RECORDING	\$70.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75

**Total: \$90.00**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

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

Christopher L. Jacobs  
County Clerk



County Clerk's Recording Page

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BARCLAY DAMON LLP  
ONE PARK PL  
300 S STATE ST  
SYRACUSE, NY 13202

**Book Type: D Book: 11287 Page: 6286**

Page Count: 10

Doc Type: ASGN-LSE-NO-TT

Rec Date: 11/04/2015

Rec Time: 03:28:26 PM

Control #: 2015226430

UserID: Eileen

Trans #: 15179382

Document Sequence Number

Party 1:

BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL

Party 2:

BUFFALO&ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

Consideration Amount:

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

Recording Fees:

RECORDING	\$70.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75

**Total: \$90.00**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

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

Christopher L. Jacobs  
County Clerk

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**ASSIGNMENT OF LEASES AND RENTS**

by

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**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

to

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

and

**FIRST NIAGARA BANK, N.A.**

---

Dated as of November 1, 2015

---

relating to

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

**\$3,250,000.00**

**TAX-EXEMPT REVENUE BONDS**

**(BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL PROJECT), SERIES 2015**

**Record and Return to:**

**Barclay Damon, LLP  
300 South State Street  
Syracuse, NY 13202  
Attention: Susan R. Katzoff, Esq.**

226429 2R-9  
226430 72L-9

## GENERAL ASSIGNMENT OF LEASES AND RENTS

**THIS GENERAL ASSIGNMENT OF LEASES AND RENTS** made and entered into as of November 1, 2015 (the "*Assignment of Rents*"), from **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**, a charter school organized under and existing by virtue of the New York State Education Law, having an office at 190 Franklin Street, Buffalo, New York 14202 (the "*Institution*") to **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit corporation constituting a local development corporation and having an office for the transaction of business located at 95 Perry Street, Suite 403, Buffalo, New York 14203, (the "*Issuer*") and **FIRST NIAGARA BANK, N.A.**, a national banking association duly organized under the laws of the United States, and having an office at 726 Exchange Street, Buffalo, New York 14210 (the "*Purchaser*").

THE MEANING OF CAPITALIZED TERMS (NOT OTHERWISE DEFINED HEREIN)  
SHALL HAVE THE MEANING ASCRIBED TO THEM IN THE BOND PURCHASE AGREEMENT

### WITNESSETH:

**WHEREAS**, Issuer has determined to issue up to \$3,250,000.00 Tax-Exempt Revenue Bonds (Buffalo Academy Of Science Charter School Project), Series 2015 (the "*Bonds*") to lend the proceeds of the Bonds to the Institution for the purpose of acquiring improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 to be used to operate a charter school for grades 7-12; (b) to pay costs incidental to the issuance of the Bonds; and (c) to fund a debt service reserve fund, if any, required with respect to the Bonds ((a) through (c) collectively referred to as the "*Project*"). At the request of the Institution, the Issuer has granted certain other financial assistance to the Project in the form of exemption from mortgage recording tax (together with the Bonds, the "*Financial Assistance*"); and

**WHEREAS**, the Institution is the owner of the Land and Improvements herein described; and

**WHEREAS**, the Bonds will be issued under and in accordance with a resolution adopted by the Issuer on October 21, 2015 and a Bond Purchase Agreement dated as of November 2, 2015 (the "*Bond Purchase Agreement*"), by and among the Issuer, the Institution and Purchaser; and

**WHEREAS**, the Issuer and the Institution are entering into a Loan Agreement, dated as of November 1, 2015 (the "*Loan Agreement*"), pursuant to which the Issuer will make a loan of the Bond proceeds to the Institution to finance a portion of the costs of the Project and pay capitalized interest and costs of issuance of the Bonds; and

**WHEREAS**, all things necessary to constitute this General Assignment of Rents a valid assignment of the Rents and Leases, as herein defined, in accordance with the terms hereof have

been done and performed, and the creation, execution and delivery of this General Assignment of Rents, as security for the payment of the principal of, and premium, if any, and interest on, the Bonds, the payment of all other sums required to be paid hereunder and under the Bond Purchase Agreement, the Loan Agreement and the other Bond Documents and the performance and observance by the Institution under the Loan Agreement and the other Bond Documents (as defined in the Bond Purchase Agreement) have in all respects been duly authorized; and

**WHEREAS**, the Issuer will not agree to issue the Bonds or enter into the Loan Agreement and the other Bond Documents, unless the Institution agrees to grant the assignment of the Rents and Leases as set forth below to the Issuer as security for the payment of the principal of, and premium, if any, and interest on, the Bonds and as security for the Institution's obligations under the Loan Agreement and the other Bond Documents; and

**WHEREAS**, the Institution has agreed to make the assignment of the Rents and Leases, as set forth below, to the Issuer as security for the payment of the principal of, and premium, if any, and interest on, the Bonds and as security for the Institution's obligations under the Loan Agreement and the other Bond Documents (hereinafter referred to collectively as the "*Indebtedness*").

**NOW THEREFORE, FOR VALUE RECEIVED**, and in order to secure the payment and performance of the Obligations, the Institution hereby grants, transfers, assigns, and sets over to the Issuer and grants a security interest in all of its right, title and interest: (1) in and to all the rents, issues, fees, sums, amount, profits and, to the extent permitted by applicable law, security deposits (hereinafter referred to collectively as the "*Rents*") of and from the premises described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as "*Improvements*"); and (2) in and to all leases, subleases, licenses, or occupancy agreements (hereinafter referred to collectively as "*Leases*"), now or hereafter existing, of all or any part of the Improvements.

Without limiting the generality of the foregoing, it is agreed as follows:

(1) The Institution grants, transfers and assigns to the Issuer all of its right, title and interest in and to the said Leases and in and to the right to use and possess the Improvements, including any and all of the Rents now due or which may hereafter become due under and by virtue of any Lease, whether written or oral, or any letting or any agreement for the use or occupancy of any part of the Improvements which may heretofore have been or which may hereafter be made or agreed to between the Institution or any other present, prior or subsequent owner of the Improvements, or any interest therein, or which may be made or agreed to by the Issuer, its successors or assigns, under the powers herein granted and any tenant or occupant of all or any part of the Improvements for the purposes of securing the payment of the principal of, redemption premium, if any, and interest on the Indebtedness and the performance by the Institution of each and all of the Institution's payments, obligations, covenants and agreements as set forth in the Loan Agreement and other Bond Documents.

(2) The Institution represents and warrants that it is a charter school organized under and existing by virtue of the New York State Education Law, and has power to enter into and

perform this Assignment and to own its property and assets, has duly authorized the execution and delivery of this Assignment by proper action, and neither this Assignment, the authorization, execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or Governmental Authority or any agreement, indenture or other instrument to which the Institution is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or any provision of its organizational documents, or any other requirement of law.

(3) The Institution shall not, without prior written consent of the Issuer which consent shall not be unreasonably withheld, conditioned or delayed, make or suffer to be made, any leases or cancel or modify any leases, accept prepayments of installments of rent for a period of more than one month in advance, or further assign the whole or any part of the rents. The Institution shall not enter into any Lease or other occupancy agreement covering all or any part of the Improvements, and such other uses as do not constitute a "change in the use" of the Improvements under the Code, and provided further that such Lease does not violate any of the terms, conditions or covenants applicable to the Issuer, the Institution or the Improvements in the Tax Compliance Agreement, or any other Bond Documents. The Institution will, from time to time, execute or obtain any and all instruments requested by the Issuer in order to effectuate this Assignment and to accomplish any of the purposes that are necessary or appropriate in connection with this Assignment or the Improvements, including, without limitation, any agreements of subordination, estoppel or attornment, as well as specific assignments of any lease or agreement relating to the use and occupancy of the Improvements or to any part thereof now or hereafter in effect, as may be necessary or desirable in the opinion of the Issuer or the Purchaser in order to subject the same to this Assignment.

(4) This Assignment shall in no way operate to restrict or prevent the Issuer from pursuing any remedy which it may now or hereafter have because of any present or future breach of the terms and conditions of the Mortgage, the Loan Agreement or any other Bond Document.

(5) The Issuer shall not in any way be responsible for any failure to do any or all the things for which the rights, interests, power and/or authority are herein granted, and shall not be responsible for or liable under any of the agreements undertaken or obligations imposed upon the lessor under said Leases or other agreements with respect to the Improvements.

(6) The Issuer shall be accountable only for such cash as it receives under the terms of this Assignment.

(7) The failure of the Issuer to do any of the things or exercise any of the rights, interests, powers and/or authorities granted hereunder shall not be construed as a waiver of any of the rights, interests, powers or authorities assigned and granted to the Issuer under this Assignment.

(8) The parties agree that this Assignment is an actual assignment effective as of the date hereof, and that upon demand made by the Issuer on the lessee after the occurrence and

continuation of an Event of Default under any of said Leases or on any person liable for any of the Rents of and from the Improvements or any part thereof, such lessee or person liable for any of such Rents shall, and is hereby authorized and directed to, pay to or upon the order of the Issuer and without any inquiry of any nature, all Rents then or thereafter accruing under said Leases or any other instrument or agreement, oral or written, granting rights to, and creating an obligation to pay, Rents in connection with the Improvements.

(9) As long as no Event of Default has occurred and is continuing, the Issuer agrees not to demand from any lessee under said Leases or from any other persons liable therefor, any of the Rents hereby assigned, but shall permit the Institution to collect all such Rents from the Improvements and the said Leases on but not prior to accrual and to retain and enjoy the same; provided, however, that notwithstanding the provisions of this paragraph, all lessees under said Leases and all persons liable for Rents of and from the Improvements shall comply with any demands for Rents made by the Issuer pursuant to the provisions of this Assignment upon assertion by the Issuer that such default has occurred.

(10) Upon or at any time after the occurrence and continuation of an Event of Default, the Issuer may declare all sums secured hereby immediately due and payable and may, at the declaring party's option, without notice, either in person or by agent and with or without bringing any action or proceeding, or by any receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Improvements and each and every part thereof, and in connection therewith, the Issuer may make, cancel, enforce and modify Leases; fix or modify Rents; repair, maintain and improve the Improvements; employ contractors, subcontractors and workmen in and about the Improvements; obtain and evict tenants; in its own name, sue for or otherwise collect or reserve any and all Rents, including those past due and unpaid; employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of the rights of the Issuer hereunder and pay the reasonable fees and expenses thereof; and otherwise do and perform any and all acts which the Issuer may deem necessary and appropriate in and about the Improvements for the protection thereof and of the rights of the Issuer hereunder or under the Mortgage, the Loan Agreement or any other Bond Document, and any and all amounts reasonably expended by the Issuer in connection with the foregoing shall constitute so much additional Indebtedness secured hereby. The Issuer shall apply any moneys collected as aforesaid, less costs and expenses incurred, as aforesaid, upon any Indebtedness secured hereby in such order and manner as the Issuer may determine. The entering upon and taking possession of the Improvements; the collection of Rents; the exercise of any rights hereinabove specified; and the application of collections, as aforesaid, shall not cure, waive, modify or otherwise affect any default hereunder or under the Mortgage, the Loan Agreement or any other Bond Document.

(11) All tenants or occupants of any part of the Improvements are hereby authorized to recognize the claims and demands of the Issuer upon assertion of an uncured Event of Default described in paragraph 10 hereof, without investigation as to the reason for any action taken by the Issuer or the validity or the amount of Indebtedness owing to the Issuer or the existence of any default hereunder, or under the Mortgage, the Loan Agreement or any other Bond Document or the application to be made by the Issuer, of any amounts to be paid to the Issuer. The signature of the Issuer shall be sufficient for the exercise of any right under this Assignment and the Issuer's receipt given for any sums received shall be a full discharge and release therefor to

any such tenant or occupant of the Improvements. Checks for all or any part of the rental collected under this Assignment shall be made to the exclusive order of the Issuer.

(12) The Issuer shall not be obligated to perform or discharge any obligation, duty or liability under the said Leases, nor shall this Assignment operate to place upon the Issuer any responsibility for the control, operation, management, or repair of the Improvements or the carrying out of any of the terms and conditions of said Leases, nor shall this Assignment operate to make the Issuer liable for any waste committed on the Improvements by the lessee under any Lease or any other party, or for any dangerous or defective condition of the Improvements, or for any negligence in the management, upkeep, repair or control of the Improvements, resulting in loss, injury or death to any tenant, licensee, employee, invitee or stranger or any property thereof.

(13) The Institution shall, and does hereby agree to, indemnify and hold the Issuer and the Purchaser harmless of and from any and all liability, loss or damage which it may or might incur under any of said Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of said Leases; provided, however, that such indemnification shall not apply to liability, loss, damage or claims arising from the Issuer's or the Purchaser's gross negligence or willful misconduct. Should the Issuer or the Purchaser incur any such liability, loss or damage under any of said Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and the Institution shall reimburse the Issuer therefor immediately upon demand.

(14) The Issuer has not received any securities deposited by any lessee with the lessor under the terms of existing Leases, nor have any such securities been transferred to the Issuer; and the Issuer assumes no responsibility or liability for any securities so deposited.

(15) The Institution has not and will not, without the prior written consent of the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed, accept Rents in advance under any Leases or other agreements or leases of all or any part of the Improvements except only one month's Rent for the immediately succeeding month which may be paid in advance or Rents not to exceed one month's Rent paid upon execution of any of said Leases.

(16) The Institution shall cause this Assignment to be recorded and filed and re-recorded and refiled in each and every public office in which said filing and recording may be necessary to constitute record notice of this Assignment and the terms and provisions hereof as applicable to the Improvements, and any of said Leases hereafter made will contain a provision expressly subordinating such Leases to the Mortgage and this Assignment.

(17) The Institution shall notify the Issuer and the Purchaser of any Event of Default or any event which with notice and/or lapse of time, would constitute an Event of Default under any Bond Documents. Any notice required to be given pursuant to this section shall be signed by the Institution, and set forth a description of default and the steps, if any, being taken to cure said default. If no steps have been taken to cure a default, the notice should plainly state this fact.

(18) The following shall constitute an "Event of Default" hereunder.

(a) The Institution fails to observe and perform any covenant, condition or agreement of this Assignment and continuance of such failure for more than thirty (30) days after written notice (which shall be deemed given when sent by registered or certified mailing) of such failure has been given to the Institution by the Issuer; or

~~(b) An Event of Default under the Mortgage, the Loan Agreement or any other Bond Document shall occur and be continuing.~~

(19) Upon payment in full of all Indebtedness and on the performance of all the obligations secured hereby, this Assignment shall become null and void and of no effect.

(20) This Assignment is binding on and inures to the benefit of the parties hereto and their respective successors, and assigns.

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

(22) The Institution knowingly, voluntarily, intentionally and irrevocably: (a) consents in each action and other legal proceeding commenced by the Purchaser or any Holder affiliate of the Purchaser and arising out of or otherwise relating to this Agreement, or any Bond Documents to the nonexclusive personal jurisdiction of any court that is either a court of record of the State or a court of the United States located in the State; (b) waives each objection to the laying of venue of any such action or other legal proceeding; (c) waives personal service of process in each such action and other legal proceeding; and (d) consents to the making of service of process in each such action and other legal proceeding by registered mail directed to Institution at the last address of Institution shown in the records relating to this Agreement maintained by Purchaser, with such service of process to be deemed completed five (5) days after the mailing thereof.

(23) The Institution: (a) knowingly, voluntarily, intentionally and irrevocably waives each right Institution may have to a trial by jury with respect to, and in, any action or other legal proceeding, of any nature relating to: (i) this Agreement or any Bond Documents; (ii) any transaction contemplated in any such documents; or (iii) any negotiation, administration, performance or enforcement of this Agreement or any of the Obligations, any of the Bond Documents or collateral or any other Collateral; and (b) certifies that: (i) neither the Purchaser, any affiliate of the Purchaser nor any representative of Purchase or any affiliate of the Purchaser has represented to Institution that Holder or any Holder affiliate will not seek to enforce the waiver made by Institution in this section; and (ii) it has been represented (or has had the opportunity to be represented) in the signing of this Agreement as necessary and appropriate by independent legal counsel.

IN WITNESS WHEREOF, the Institution has executed this Assignment as of the date first above written.

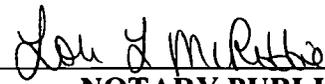
**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By:

  
\_\_\_\_\_  
Yusuf Akyar, Authorized Representative

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

On the 30<sup>th</sup> day of October, in the year 2015 before me, personally appeared **Yusuf Akyar**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
**NOTARY PUBLIC**

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

~~ALL THAT TRACT OR PARCEL OF LAND; situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:~~

BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.



STATE OF NEW YORK  
DEPARTMENT OF STATE  
ONE COMMERCE PLAZA, 99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

ANDREW M. CUOMO  
GOVERNOR

CESAR A. PERALES  
SECRETARY OF STATE

**FILING ACKNOWLEDGMENT**

November 9, 2015

BARCLAY DAMON, LLP  
ONE PARK PLACE  
SYRACUSE NY 13202

Attached is the acknowledgment copy of your recently submitted filing. This filing consists of a total of 4 pages, however, only the first page of the filed document is returned as part of this acknowledgment. This document has been filed with the New York State Department of State, Uniform Commercial Code Division

The Financing Statement has been assigned Filing Number: 201511050573530, Filing Date: 11/05/2015 and is currently reflected in our automated database as follows:

**Debtor's Name & Address**

BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
190 FRANKLIN STREET  
BUFFALO NY 14202

**Secured Party's Name & Address**

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION  
95 PERRY STREET, SUITE 403  
BUFFALO NY 14203  
(See attached for additional Secured Parties)

This filing will lapse on 11/05/2020, unless continued. We encourage filers to take full advantage of the six-month window of opportunity in which to file a Financing Statement Amendment (Continuation). Submission of your documents at the onset of the six-month window will allow ample time to rectify potential filing errors and help to assure timely recording of your filing.

If you have any concerns regarding the way this document is recorded, please contact one of our Customer Service Representatives at (518) 473-2492, or respond in writing to the UCC Data Processing Unit at the address indicated above.

Sincerely,

Uniform Commercial Code Division  
Data Processing Unit

REF #: 114098

Secured Party's Name & Address (continued)

FIRST NIAGARA BANK, N.A  
726 EXCHANGE STREET  
BUFFALO NY 14210

114098

2015 NOV -5 AM 9:00

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

<b>A NAME &amp; PHONE OF CONTACT AT FILER [optional]</b> Susan R. Katzoff - (315) 425-2880
<b>B SEND ACKNOWLEDGMENT TO. (Name and Address)</b>  Susan R. Katzoff, Esq. Barclay Damon, LLP One Park Place 300 South State Street Syracuse, New York 13202

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1 DEBTOR'S EXACT FULL LEGAL NAME** insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a ORGANIZATION'S NAME <b>BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL</b>						
OR	1b INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c MAILING ADDRESS <b>190 Franklin Street</b>			CITY <b>Buffalo</b>	STATE <b>NY</b>	POSTAL CODE <b>14202</b>	COUNTRY <b>USA</b>
1d SEE INSTRUCTIONS Not Applicable	ADD'L INFO RE ORGANIZATION DEBTOR	1e TYPE OF ORGANIZATION <b>education corporation</b>	1f JURISDICTION OF ORGANIZATION <b>New York</b>	1g ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE		

**2 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME** - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME						
OR	2b INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
2d SEE INSTRUCTIONS Not Applicable	ADD'L INFO RE ORGANIZATION DEBTOR	2e TYPE OF ORGANIZATION	2f JURISDICTION OF ORGANIZATION	2g ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE		

**3 SECURED PARTY'S NAME** (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME <b>BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION</b>						
OR	3b INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c MAILING ADDRESS <b>95 Perry Street, Suite 403</b>			CITY <b>Buffalo</b>	STATE <b>NY</b>	POSTAL CODE <b>14203</b>	COUNTRY <b>USA</b>

4 This FINANCING STATEMENT covers the following collateral  
**The right, title and interest of Debtor granted to the Secured Party pursuant to the Assignment of Leases and Rents Agreement dated as of November 1, 2015 and as more fully described in Schedule A attached hereto and made a part hereof.**

5 ALTERNATIVE DESIGNATION [if applicable]	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG LIEN	<input type="checkbox"/> NON-UCC FILING
6 This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]	7 Check to REQUEST SEARCH REPORT(S) on Debtor(s) [optional]		All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2 <input type="checkbox"/>			

8 OPTIONAL FILER REFERENCE DATA  
**Assignment of Leases/BASCS (State)**

**FILING NUMBER: 201511050573530**

114098

2015 NOV -5 AM 9:00

### UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9 NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

9a. ORGANIZATION'S NAME		
<b>BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL</b>		
OR	9b. INDIVIDUAL'S LAST NAME	
	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names**

11a. ORGANIZATION'S NAME			
OR	11b. INDIVIDUAL'S LAST NAME		FIRST NAME
			MIDDLE NAME
			SUFFIX
11c. MAILING ADDRESS		CITY	STATE
			POSTAL CODE
			COUNTRY
11d. <u>SEE INSTRUCTIONS</u> Not Applicable	ADD'L INFO RE: ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION
			11g. ORGANIZATIONAL ID #, if any
			<input type="checkbox"/> NONE

**12.  ADDITIONAL SECURED PARTY'S or  ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a. ORGANIZATION'S NAME			
<b>FIRST NIAGARA BANK, N.A.</b>			
OR	12b. INDIVIDUAL'S LAST NAME		FIRST NAME
			MIDDLE NAME
			SUFFIX
12c. MAILING ADDRESS		CITY	STATE
<b>726 EXCHANGE STREET</b>		<b>BUFFALO</b>	<b>NY</b>
			POSTAL CODE
			<b>14210</b>
			COUNTRY
			<b>USA</b>

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing

14. Description of real estate

16. Additional collateral description.  
**See Schedule A attached hereto and made a part hereof.**

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest)

17. Check only if applicable and check only one box  
Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction — effective 30 years  
 Filed in connection with a Public-Finance Transaction — effective 30 years

SCHEDULE "A"  
TO UCC-1 FINANCING STATEMENT (FIXTURE FILING)  
FROM BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
TO THE BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT AGENCY, AS ISSUER  
AND AS ASSIGNED TO FIRST NIAGARA BANK, N.A. AS PURCHASER  
RELATING TO THE ASSIGNMENT OF LEASES AND RENTS

BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL (the "*Institution*") has executed and delivered the Assignment of Leases and Rents dated as of November 1, 2015 (as amended, modified, restated or supplemented from time to time, the "*Assignment*"), in favor of BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (the "*Issuer*") and as assigned to FIRST NIAGARA BANK, N.A., as purchaser (the "*Purchaser*") for benefit of the holders of the Issuer's Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project) Series 2015 (the "*Bonds*") in the aggregate principal amount of \$3,250,000. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Assignment.

Under the Assignment, the Institution granted, transferred, assigned, and set over to the Issuer and granted a security interest in all of its right, title and interest: (1) in and to all the rents, issues, fees, sums, amount, profits and, to the extent permitted by applicable law, security deposits (hereinafter referred to collectively as the "*Rents*") of and from the premises described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as "*Improvements*"); and (2) in and to all leases, subleases, licenses, or occupancy agreements (hereinafter referred to collectively as "*Leases*"), now or hereafter existing, of all or any part of the Improvements.

Without limiting the generality of the foregoing, it is agreed as follows:

(1) The Institution grants, transfers and assigns to the Issuer all of its right, title and interest in and to the said Leases and in and to the right to use and possess the Improvements, including any and all of the Rents now due or which may hereafter become due under and by virtue of any Lease, whether written or oral, or any letting or any agreement for the use or occupancy of any part of the Improvements which may heretofore have been or which may hereafter be made or agreed to between the Institution or any other present, prior or subsequent owner of the Improvements, or any interest therein, or which may be made or agreed to by the Issuer, its successors or assigns, under the powers herein granted and any tenant or occupant of all or any part of the Improvements for the purposes of securing the payment of the principal of, redemption premium, if any, and interest on the Indebtedness and the performance by the Institution of each and all of the Institution's payments, obligations, covenants and agreements as set forth in the Loan Agreement and other Bond Documents.

**EXHIBIT "A"**

**114098**

**2015 NOV -5 AM 9:00**

**LEGAL DESCRIPTION**

**ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:**

**BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.**

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**A NAME & PHONE OF CONTACT AT FILER (optional)**  
**Susan R. Katzoff - (315) 425-2880**

**B SEND ACKNOWLEDGMENT TO (Name and Address)**

Susan R. Katzoff, Esq.  
 Barclay Damon, LLP  
 One Park Place  
 300 South State Street  
 Syracuse, New York 13202

**FILED**  
 NOV 04 2015  
**ERIE COUNTY CLERK'S OFFICE**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1 DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names**

**1a ORGANIZATION'S NAME**  
**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

OR

**1b INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**1c MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY  
 190 Franklin Street Buffalo NY 14202 USA

**1d SEE INSTRUCTIONS** ADD'L INFO RE ORGANIZATION DEBTOR **1e TYPE OF ORGANIZATION** **1f JURISDICTION OF ORGANIZATION** **1g ORGANIZATIONAL ID #, if any**  
 Not Applicable education corporation New York  NONE

**2 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

**2a ORGANIZATION'S NAME**

OR

**2b INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**2c MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

**2d SEE INSTRUCTIONS** ADD'L INFO RE ORGANIZATION DEBTOR **2e TYPE OF ORGANIZATION** **2f JURISDICTION OF ORGANIZATION** **2g ORGANIZATIONAL ID #, if any**  
 Not Applicable  NONE

**3 SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)**

**3a ORGANIZATION'S NAME**  
**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**

OR

**3b INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**3c MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY  
 95 Perry Street, Suite 403 Buffalo NY 14203 USA

**4 This FINANCING STATEMENT covers the following collateral**  
**The right, title and interest of Debtor granted to the Secured Party pursuant to the Assignment of Leases and Rents Agreement dated as of November 1, 2015 and as more fully described in Schedule A attached hereto and made a part hereof.**

**FILED**  
 NOV 04 2015  
**ERIE COUNTY CLERK'S OFFICE**

**5 ALTERNATIVE DESIGNATION (if applicable)**  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAIOLR  SELLER/BUYER  AG LIEN  NON-UCC FILING

**6**  This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) **7** Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) (ADDITIONAL FEE)  All Debtors  Debtor 1  Debtor 2

**8 OPTIONAL FILER REFERENCE DATA**

**Assignment of Leases/BASCS (County)**

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9 NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a ORGANIZATION'S NAME  
**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

OR

9b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10 MISCELLANEOUS

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a ORGANIZATION'S NAME

OR

11b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

11c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

11d **SEE INSTRUCTIONS** ADD'L INFO RE ORGANIZATION DEBTOR 11e TYPE OF ORGANIZATION 11f JURISDICTION OF ORGANIZATION 11g ORGANIZATIONAL ID #, if any  NONE

**Not Applicable**

12  ADDITIONAL SECURED PARTY'S or  ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a ORGANIZATION'S NAME  
**FIRST NIAGARA BANK, N.A.**

OR

12b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

12c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

**726 Exchange Street, Buffalo Buffalo NY 14210 USA**

13. This FINANCING STATEMENT covers  lumber to be cut or  es-extracted collateral, or is filed as a  fixture filing

14. Description of real estate  
**See Schedule B attached hereto and made a part hereof.**

16 Additional collateral description  
**See Schedule A attached hereto and made a part hereof.**

15 Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest)

17 Check only if applicable and check only one box  
 Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box  
 Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction — effective 30 years  
 Filed in connection with a Public-Finance Transaction — effective 30 years

SCHEDULE "A"  
TO UCC-1 FINANCING STATEMENT (FIXTURE FILING)  
FROM BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
TO THE BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT AGENCY, AS ISSUER  
AND AS ASSIGNED TO FIRST NIAGARA BANK, N.A. AS PURCHASER  
RELATING TO THE ASSIGNMENT OF LEASES AND RENTS

BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL (the "*Institution*") has executed and delivered the Assignment of Leases and Rents dated as of November 1, 2015 (as amended, modified, restated or supplemented from time to time, the "*Assignment*"), in favor of BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (the "*Issuer*") and as assigned to FIRST NIAGARA BANK, N.A., as purchaser (the "*Purchaser*") for benefit of the holders of the Issuer's Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project) Series 2015 (the "*Bonds*") in the aggregate principal amount of \$3,250,000. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Assignment.

Under the Assignment, the Institution granted, transferred, assigned, and set over to the Issuer and granted a security interest in all of its right, title and interest: (1) in and to all the rents, issues, fees, sums, amount, profits and, to the extent permitted by applicable law, security deposits (hereinafter referred to collectively as the "*Rents*") of and from the premises described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as "*Improvements*"); and (2) in and to all leases, subleases, licenses, or occupancy agreements (hereinafter referred to collectively as "*Leases*"), now or hereafter existing, of all or any part of the Improvements.

Without limiting the generality of the foregoing, it is agreed as follows:

(1) The Institution grants, transfers and assigns to the Issuer all of its right, title and interest in and to the said Leases and in and to the right to use and possess the Improvements, including any and all of the Rents now due or which may hereafter become due under and by virtue of any Lease, whether written or oral, or any letting or any agreement for the use or occupancy of any part of the Improvements which may heretofore have been or which may hereafter be made or agreed to between the Institution or any other present, prior or subsequent owner of the Improvements, or any interest therein, or which may be made or agreed to by the Issuer, its successors or assigns, under the powers herein granted and any tenant or occupant of all or any part of the Improvements for the purposes of securing the payment of the principal of, redemption premium, if any, and interest on the Indebtedness and the performance by the Institution of each and all of the Institution's payments, obligations, covenants and agreements as set forth in the Loan Agreement and other Bond Documents.

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:

BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.



County Clerk's Recording Page

Return to:

BARCLAY DAMON LLP  
ONE PARK PL  
300 S STATE ST  
SYRACUSE, NY 13202

x \

**Book Type: M Book: 13744 Page: 1152**

Page Count: 4  
Doc Type: ASGN/ASGN RENTS  
Rec Date: 11/04/2015  
Rec Time: 03:28:26 PM  
Control #: 2015226431  
UserID: Eileen  
Trans #: 15179382  
Document Sequence Number

Party 1:

BUFFALO&ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

Party 2:

FIRST NIAGARA BANK NA

**Consideration Amount:**

**Recording Fees:**

RECORDING	\$40.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
MARKOFF FEE	\$0.50

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

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**Total: \$60.50**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

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

Christopher L. Jacobs  
County Clerk



County Clerk's Recording Page

Return to:

BARCLAY DAMON LLP  
ONE PARK PL  
300 S STATE ST  
SYRACUSE, NY 13202

**Book Type: D Book: 11287 Page: 6296**

Page Count: 4  
Doc Type: ASSIGNMENT  
Rec Date: 11/04/2015  
Rec Time: 03:28:26 PM  
Control #: 2015226432  
UserID: Eileen  
Trans #: 15179382  
Document Sequence Number

Party 1:

BUFFALO&ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

Party 2:

FIRST NIAGARA BANK NA

Consideration Amount:

Recording Fees:

RECORDING	\$40.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
MARKOFF FEE	\$0.50

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

**Total: \$60.50**

STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE

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

Christopher L. Jacobs  
County Clerk

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

**To**

**FIRST NIAGARA BANK, N.A.**

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**ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS**

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Dated as of November 1, 2015

---

relating to

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

**\$3,250,000.00  
TAX-EXEMPT REVENUE BONDS  
(BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL PROJECT), SERIES 2015**

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**Record and Return to:**

**Barclay Damon, LLP  
300 South State Street  
Syracuse, NY 13202  
Attention: Susan R. Katzoff, Esq.**

226431  
226432

4R-3-1  
ASG-3-1

**ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS**

This Assignment of Assignment of Leases and Rents ("*Assignment of Assignment of Rents*") dated as of November 1, 2015 is from **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit corporation constituting a local development corporation organized under the laws of the State of New York, having an office at 95 Perry Street, Suite 403, Buffalo, New York 14203 ("*Assignor*"), to **FIRST NIAGARA BANK, N.A.**, a national banking association duly organized under the laws of the United States, and having an office at 726 Exchange Street, Buffalo, New York 14210 ("*Assignee*").

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**, a charter school organized under and existing by virtue of the New York State Education Law ("*Institution*") entered into a certain Assignment of Leases and Rents, dated as of November 1, 2015 ("*Assignment of Rents*"), granting Assignor a security interest in the Leases and Rents, as defined therein, which Assignment of Rents was recorded in the Erie County Clerk's Office on November 4, 2015 in Liber 13744 of Mortgages at page 1142 and in Liber 11287 of Deeds at Page 62810.

✓  
LR  
✓  
ASG

**NOW THEREFORE**, For value received, the receipt and sufficiency of which is hereby acknowledged, the Assignor hereby assigns, transfers and sets over to the Assignee all of Assignor's right, title and interest in and to that certain Assignment of Rents.

**TO HAVE AND TO HOLD** the same unto the Assignee and to the successors, legal representatives and assigns of Assignee forever, **WITHOUT RECOURSE, REPRESENTATION OR WARRANTY OF ANY KIND BY ASSIGNOR OR ANY RESPONSIBILITY OR LIABILITY WHATSOEVER ON BEHALF OF ASSIGNOR.**

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Assignor has duly executed this Assignment of Assignment of Rents and Leases as of the 1<sup>st</sup> day of November, 2015.

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

By: Karen Fiala  
Karen Fiala, Assistant Treasurer

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

On the 30<sup>th</sup> day of October, 2015, before me, the undersigned, personally appeared, Karen Fiala, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lori McRobbie  
Notary Public – State of New York

LORI L McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co No 01MC5055591  
Commission Expires on Feb. 12, 20 18



## SECURITY AGREEMENT

1 **SECURITY INTEREST.** BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL, a charter school organized under and existing by virtue of the New York State Education Law, whose address is 190 Franklin Street, Buffalo, New York 14202 (“Debtor”) hereby grants to **FIRST NIAGARA BANK, N.A., a national banking association** with a banking office at 726 Exchange Street, Buffalo, NY 14210, Attention: Commercial Loan Administration, and any of its affiliates (“Secured Party”) a continuing security interest (“Security Interest”) in all property of Debtor described in Schedule A annexed to this Security Agreement (together with all amendments, supplements or other modifications, the “Agreement”) hereto and made part hereof and on any separate schedule(s) at any time or from time to time furnished by Debtor to Secured Party, (all of which are hereby deemed part of this Agreement), in all supporting obligations thereof and in all increases or profits received therefrom, the software and books and records related thereto, and in all parts, accessories, special tools, attachments, additions, accessions, replacements and substitutions thereto or therefor, wherever located, whether now existing or hereafter acquired or created, and in all proceeds of all of the foregoing in any form (the “Collateral”).

2. **INDEBTEDNESS SECURED.** The Security Interest granted by Debtor secures the full payment of all loans, advances, debts, liabilities, indebtedness, obligations, and credit of any kind or character owing by Debtor to Secured Party of any kind or nature, present or future, whether as borrower or guarantor, however evidenced, whether arising under this Agreement or any other loan, note, letter of credit, guaranty, collateral or other agreement or by operation of law, and whether direct or indirect, absolute or contingent, due or to become due, now owing or existing or hereafter arising or created and however acquired, and any amendments, extensions, renewals or increases thereof, including, without limitation, all principal interest, charges, expenses, commitment or facility fees, collateral management or other fees, treasury management obligations, foreign exchange obligations, obligations due pursuant to any Interest Rate Protection Agreement entered into by Debtor, reasonable attorneys’ fees and expenses related to the collection of the foregoing, and any other amounts payable by Debtor under this Agreement or any other agreements between Debtor and Secured Party whether executed in connection herewith or otherwise (collectively, the “Indebtedness”). “Interest Rate Protection Agreement” shall mean any agreement, device or arrangement designed to protect such Debtor from fluctuations of interest rates, exchange rates or forward rates, including, but not limited to, dollar-denominated or cross-currency exchange agreements, forward currency exchange agreements, interest rate caps, collars or floors, forward rate currency or interest rate options, puts, warrants, swaps, swaptions, U.S. Treasury locks and U.S. Treasury options, and any and all cancellations, buybacks, reversals, terminations or assignments of any of the foregoing.

3. **REPRESENTATIONS AND WARRANTIES OF DEBTOR.** Debtor represents and warrants, and so long as any Indebtedness remains unpaid shall be deemed continuously to represent and warrant, that:

(a) Debtor is the owner of the Collateral free and clear of all security interests, liens or other encumbrances, except the Security Interest in favor of Secured Party and any Permitted Lien identified on Schedule B attached hereto;

(b) Debtor has the power and authority to own the Collateral, to grant the Security Interest and to enter into and perform this Agreement and any other document or instrument delivered in connection herewith; and

(c) Except as may hereafter be disclosed in writing by Debtor to Secured Party, the Collateral is located at and used in connection with Debtor’s business operations at the address(es) specified on Schedule B hereto, and Debtor’s records concerning the Collateral are kept only at such address(es).

## 4. **COVENANTS OF DEBTOR.**

(a) Debtor will defend the Collateral against the claims and demands of all other parties including, without limitation, defenses, setoffs, claims and counterclaims asserted by any obligor against Debtor and/or Secured Party, will keep the Collateral free from all security interests, liens or other encumbrances, except for Permitted

Liens, and will not sell, transfer, lease, assign, deliver or otherwise dispose of any Collateral or any interest therein without the prior written consent of Secured Party except for sales of Inventory in the ordinary course of Debtor's business and sales and other dispositions of items of Collateral that are obsolete, worn out or no longer useful in Debtor's business;

(b) Debtor will keep, in accordance with generally accepted accounting principles consistently applied, accurate and complete records concerning the Collateral, and at Secured Party's request, Debtor will mark any and all such records to indicate the Security Interest and will permit Secured Party or its agents to inspect the Collateral and to audit and make extracts from such records or any of Debtor's books, ledgers, financial reports, correspondence or other records;

(c) Except in connection with Permitted Liens, Debtor will deliver to Secured Party, upon demand, any instruments, documents and chattel paper constituting, representing or relating to the Collateral or any part thereof and any schedules, invoices, shipping documents, delivery receipts, purchase orders, contracts or other documents representing or relating to the Collateral or any part thereof;

(d) Without thirty (30) days prior written notice to Secured Party, Debtor will not (i) change its state of personal residence, business addresses or chief executive office, or (ii) make any change in Debtor's name (such as a change in name on Debtor's driver's license, if an individual), state of formation, identity or organizational status;

(e) Debtor will keep the Collateral in good condition, working order and repair and will not use the Collateral in violation of any provisions of this Agreement, any applicable law or governmental regulation or of any policy insuring the Collateral, unless the failure to so keep the Collateral will not have a material adverse effect on Debtor, the Collateral, or the business, operation, assets or affairs of Debtor;

(f) Debtor will (i) pay all taxes, assessments and other charges of every nature which may be levied or assessed against the Collateral other than taxes, assessments, fees and charges being contested in good faith by appropriate proceedings being diligently pursued and (ii) at all times keep the Collateral insured against loss, damage, theft and other risks, in such amounts, with such insurance carriers and under such form of policies as shall be reasonably acceptable to Secured Party, with appropriate endorsements designating Secured Party as lender loss payee and additional insured, as requested by Secured Party, and which policies of insurance shall provide that all losses thereunder shall be payable to Secured Party, as its interest may appear, and Secured Party may apply any proceeds of such insurance received by it toward payment of any of the Indebtedness, whether or not due, in such order of application as Secured Party may determine, and the original or duplicates of such policies of insurance or certificates thereof shall be delivered to Secured Party, on the date hereof, upon each renewal and upon its request; provided, however, so long as no Event of Default or event which with notice or lapse of time or both would become an Event of Default has occurred and is continuing and to the extent that the amount of such proceeds of any casualty insurance is less than \$50,000, such proceeds shall be disbursed to Debtor for direct application by Debtor solely to the repair or replacement of Debtor's property so damaged or destroyed;

(g) Debtor will not permit any part of the Collateral to be or become an accession to other goods not covered by this Agreement;

(h) If all or any part of the Collateral is located on property which is not owned by Debtor, Debtor will deliver to Secured Party for each such location a Landlord's Waiver; and

(i) Debtor will execute and deliver to Secured Party such certificates of title, assignments and other documents and will take such other actions relating to the Security Interest and the perfection thereof as Secured Party may reasonably request and will pay all costs of title searches and filing financing statements, certificates of title, assignments and other documents in all public offices requested by Secured Party.

5 **PROVISIONS RELATED TO ACCOUNTS.** Debtor irrevocably makes, constitutes and appoints Secured Party (and any of Secured Party's designated officers, employees or agents) as its true and lawful attorney in fact with power to sign its name and to take any of the following actions, in its name or in the name of Secured Party, as Secured Party may determine, at any time (except as expressly limited in this Section 5) without notice to Debtor and at Debtor's expense:

(a) Verify the validity and amount of, or any other matter relating to, the accounts with account debtors;

(b) Notify all account debtors that the accounts have been assigned to Secured Party and that Secured Party has a Security Interest in the accounts; and

(c) Upon demand for repayment of the Indebtedness or upon the occurrence of an Event of Default, as applicable, enforce payment of and collect any accounts, by legal proceedings or otherwise, and for such purpose Secured Party may:

(i) Demand payment of any accounts or instruct any account debtors to make payment of accounts directly to Secured Party (whether to a lockbox account or otherwise);

(ii) Receive and collect all monies due or to become due to Debtor;

(iii) Exercise all of Debtor's rights and remedies with respect to the collection of the accounts;

(iv) Settle, adjust, compromise, extend, renew, discharge or release the accounts;

(v) Endorse the name of Debtor upon any chattel papers, documents, instruments, invoices, freight bills, bills of lading or similar documents or agreements relating to accounts or goods pertaining to accounts or upon any checks or other medium of payment or evidence of security interest that may come into Secured Party's possession;

(vi) Sign the name of Debtor to verifications of accounts sent by account debtors to Debtor;

(vii) Take all other actions necessary or desirable to protect Debtor's interest(s) in the accounts;

(viii) Take control in any manner of any cash or noncash items of payment or proceeds of the accounts;

(ix) In any case and for any reason, notify the United States Postal Service to change the addresses for delivery of mail addressed to Debtor to such address as Secured Party may designate; or

(x) In any case and for any reason, receive, open and dispose of all mail addressed to Debtor.

Debtor irrevocably authorizes and directs each account debtor to honor any demand by Secured Party made at such time as an Event of Default exists that all payments in respect of the accounts thereafter be paid directly to Secured Party. In each such case account debtor may continue directing all such payments to Secured Party until account debtor shall have received written notice from Secured Party either that the Indebtedness has been paid in full or that Secured Party has released its security interest. No account debtor shall have any responsibility to inquire into Secured Party's right to make any such demand or to follow Secured Party's disposition of any moneys paid to Secured Party by account debtor.

Debtor further agrees to use its best efforts to assist Secured Party in the collection and enforcement of the accounts and will not hinder, delay or impede Secured Party in any manner in its collection and enforcement of the accounts.

Notwithstanding the foregoing, Secured Party shall have no rights with respect to any property of Debtor excluded from the definition of Collateral.

6. **VERIFICATION OF COLLATERAL.** Secured Party shall have the right to verify all or any Collateral in any manner and through any medium Secured Party may consider appropriate, and Debtor agrees to

furnish all assistance and information and perform any acts which Secured Party may reasonably require in connection therewith.

7. **NOTIFICATION AND PAYMENTS.** Secured Party may notify Debtor in writing, at any time after demand or the occurrence of an Event of Default, as applicable, and without waiving in any manner the Security Interest, that any payments on account of and from the Collateral received by Debtor (a) shall be held by Debtor in trust for Secured Party in the same medium in which received, (b) shall not be commingled with any assets of Debtor and (c) shall be turned over to Secured Party not later than the next business day following the day of their receipt.

8. **EVENTS OF DEFAULT.** This Agreement is executed and delivered subject to the terms of (a) a Loan Agreement dated on or about the date hereof between Debtor and Buffalo and Erie County Industrial Land Development Corporation and pledged to Secured Party (as the same may be amended or supplemented from time to time, the "Loan Agreement"), and (b) a Bond Purchase Agreement dated on or about the date hereof among Debtor, Pledgor and Buffalo and Erie County Industrial Land Development Corporation (as the same may be amended or supplemented from time to time, the "Bond Purchase Agreement"), and reference is hereby made to the Loan Agreement and the Bond Purchase Agreement for the provisions relating to the Events of Default (as defined in the Loan Agreement and in the Bond Purchase Agreement).

(a) Upon demand or the occurrence of an Event of Default, Secured Party's rights and remedies with respect to the Collateral shall be those of a secured party under the Uniform Commercial Code and under any other applicable law, as the same may from time to time be in effect, in addition to those rights granted herein and in any other agreement now or hereafter in effect between Debtor and Secured Party. Without in any way limiting the foregoing, Secured Party, upon demand or the occurrence and during the continuance of an Event of Default, may at any time and from time to time, with or without judicial process, enter upon any premises in which any Collateral may be located and, without resistance or interference by Debtor, take possession of the Collateral; and/or dispose of any Collateral on any such premises; and/or require Debtor to assemble and make available to Secured Party at the expense of Debtor any Collateral at any place or time designated by Secured Party; and/or remove any Collateral from any such premises for the purpose of effecting sale or other disposition thereof. Secured Party may apply the net proceeds actually received from any sale or other disposition to the reasonable expenses of retaking, holding, preparing for sale, selling, leasing and the like, to reasonable attorney's fees and all legal, travel and other expenses incurred by Secured Party in attempting to collect any part of the Indebtedness or enforcing this Agreement; and then to the Indebtedness in such order of application as Secured Party may elect; and Debtor shall remain liable and will pay to Secured Party on demand the amount of any deficiency remaining, together with interest thereon at the highest rate then payable on the Indebtedness.

(b) Without in any way requiring notice to be given in the following manner, Debtor agrees that any notice by Secured Party of sale, disposition or other intended action hereunder or in connection herewith, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to Debtor if such notice is mailed by regular mail, postage prepaid, at least ten (10) days prior to such action, to the address set forth above as the location of Debtor's chief executive office or to any other address which Debtor has specified in writing to Secured Party as the address to which notices hereunder shall be given to Debtor.

(c) Debtor agrees to pay on demand all reasonable costs and expenses incurred by Secured Party in enforcing this Agreement, in realizing upon or protecting any Collateral and in enforcing and collecting any Indebtedness or any guaranty thereof, including, without limitation, if Secured Party retains counsel for advice, suit, insolvency proceedings or any of the above purposes, the reasonable counsel's fees and expenses incurred by Secured Party.

9. **RESERVED.**

10. **MISCELLANEOUS.**

(a) Debtor hereby appoints Secured Party as attorney-in-fact of Debtor, irrevocably and with power of substitution, in the same manner, to the same extent and with the same effect as if Debtor were to do the same to file financing statements relating to the Collateral or to execute and file any such financing statement in Debtor's name, all as Secured Party may deem appropriate to perfect and continue the Security Interest; upon demand or the occurrence and during the continuance of an Event of Default (i) to make, adjust or settle and receive payment on any insurance claims with respect to the Collateral; (ii) to endorse the name of Debtor on any instruments, documents or

other evidences of the Collateral that may come into Secured Party's possession, (iii) to execute proofs of claim and loss or similar documents; (iv) to execute endorsements, assignments or other instruments of sale, conveyance or transfer for any Collateral; and (v) to perform all other acts which Secured Party deems appropriate to protect and preserve the Collateral and to enforce the terms of this Agreement. Debtor ratifies and approves all acts of said attorney-in-fact and agrees that said attorney shall not be liable for any acts of commission or omission, nor for any error of judgment or mistake of fact or law. This power, being coupled with an interest, is unconditional and irrevocable until the Indebtedness is paid in full and Debtor shall have performed all of its obligations under this Agreement.

(b) Upon Debtor's failure to perform any of its covenants or obligations hereunder, Secured Party may, but shall not be obligated to, perform any or all such covenants or obligations, and Debtor shall pay an amount equal to the expense thereof to Secured Party upon demand by Secured Party, and all such amounts shall become part of the Indebtedness secured hereby.

(c) No course of dealing and no delay or omission by Secured Party in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Secured Party may remedy any default by Debtor hereunder or with respect to any Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by Debtor. All rights and remedies of Secured Party hereunder are cumulative, and are in addition to any and all rights and remedies available to Secured Party under the Uniform Commercial Code and other applicable law in effect from time to time.

(d) Secured Party shall have no obligation to take, and Debtor shall have the sole responsibility for taking, any and all steps to preserve rights against any and all prior parties to any instrument or chattel paper constituting Collateral whether or not in Secured Party's possession. Secured Party shall not be responsible to Debtor for loss or damage resulting from Secured Party's failure to enforce or collect any Collateral or to collect any moneys due or to become due thereunder. Debtor waives protest of any instrument constituting Collateral at any time held by Secured Party on which Debtor is in any way liable and waives notice of any other action taken by Secured Party.

(e) Without limiting its rights of setoff under New York law generally, upon and at any time and from time to time after demand or any occurrence or existence of any Event of Default, Secured Party shall have the right to place an administrative hold on, and setoff against each obligation of Debtor pursuant to this Agreement, each obligation of Secured Party or any affiliate of Secured Party (in any capacity) owing to Debtor, whether now existing or hereafter arising or accruing, whether or not then due and whether pursuant to any Deposit Account or certificate of deposit or in any other manner. Such setoff shall become effective at the time Secured Party determines even though evidence thereof is not entered in the records of Secured Party until later.

(f) The rights and benefits of Secured Party hereunder shall, if Secured Party so agrees, inure to any party acquiring any interest in the Indebtedness or any part thereof. Secured Party and Debtor shall include the heirs, distributees, executors or administrators, or successors or assigns, of those parties.

(g) Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If, however, any such provision shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law, or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

(h) No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be binding except by a written agreement subscribed by Debtor and by a duly authorized officer of Secured Party.

(i) This Agreement and the transaction evidenced hereby shall be construed under the laws of New York State as the same may from time to time be in effect. All terms defined in the Uniform Commercial Code, unless otherwise defined in this Agreement or in any financing statement, shall have the definitions set forth in the Uniform Commercial Code adopted in New York State as in effect on the date of this Agreement and as the same may be amended, modified or supplemented from time to time. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby.

(j) This Agreement is and is intended to be a continuing Security Agreement and shall remain in full force and effect until all of the Indebtedness and any extensions or renewals thereof shall be paid in full.

(k) To the fullest extent permitted by applicable law, Debtor shall not assert, and hereby waives any claim against Secured Party, on any theory of liability, for special, indirect, consequential or punitive damages (but excluding direct or actual damages) arising out of, in connection with or as a result of, this Agreement, any related loan documents, the transactions contemplated hereby or thereby or any loan or the use of the proceeds.

(l) This Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same agreement. Debtor agrees that in any legal proceeding, a copy of this Agreement kept in Secured Party's course of business may be admitted into evidence as an original.

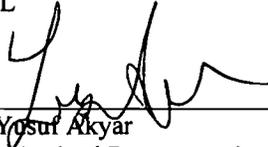
11. **CONSENTS AND WAIVERS RELATING TO LEGAL PROCEEDINGS.**

(a) DEBTOR KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY (i) CONSENTS IN EACH ACTION AND OTHER LEGAL PROCEEDING COMMENCED BY SECURED PARTY AND ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, ANY OF THE OBLIGATIONS, ANY OF THE COLLATERAL OR ANY OTHER COLLATERAL TO THE JURISDICTION OF ANY COURT THAT IS EITHER A COURT OF RECORD OF THE STATE OF NEW YORK OR A COURT OF THE UNITED STATES LOCATED IN ERIE COUNTY, NEW YORK OR THE WESTERN DISTRICT OF THE STATE OF NEW YORK AND (ii) WAIVES EACH OBJECTION TO THE LAYING OF VENUE OF ANY SUCH ACTION OR OTHER LEGAL PROCEEDING.

(b) DEBTOR KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES EACH RIGHT DEBTOR MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO, AND IN, ANY ACTION OR OTHER LEGAL PROCEEDING OF ANY NATURE, RELATING TO (i) THIS AGREEMENT, ANY RELATED LOAN DOCUMENT OR ANY COLLATERAL, (ii) ANY TRANSACTION CONTEMPLATED BY ANY SUCH DOCUMENT OR (iii) ANY NEGOTIATION, PERFORMANCE OR ENFORCEMENT OF THIS AGREEMENT, OR ANY COLLATERAL. DEBTOR CERTIFIES THAT NEITHER SECURED PARTY NOR ANY REPRESENTATIVE THEREOF HAS REPRESENTED TO DEBTOR THAT SECURED PARTY WILL NOT SEEK TO ENFORCE THE WAIVER MADE BY DEBTOR IN THIS SECTION. DEBTOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL AS NECESSARY AND APPROPRIATE.

Dated this \_\_\_\_ day of November, 2015.

BUFFALO ACADEMY OF SCIENCE CHARTER  
SCHOOL

By: 

Name: Yusuf Akyar

Title: Authorized Representative

---

Rev 11/04/2014

[SIGNATURE PAGE TO GENERAL SECURITY AGREEMENT]

## SCHEDULE A

All terms, unless otherwise defined in this Agreement or in any financing statement, shall have the definitions set forth in the Uniform Commercial Code adopted in New York State, as in effect on the date of this Agreement and as may be amended, modified or supplemented from time to time.

“Collateral” includes all of Debtor’s accounts (including, without limitation, health-care-insurance receivables), equipment, inventory, goods (excluding consumer goods), fixtures, general intangibles, chattel paper, instruments, documents, deposit accounts, investment property, letters of credit and letter-of-credit rights, supporting obligations, commercial tort claims (if any, as described), insurance proceeds, and property in Secured Party’s control or possession, software, books and records, all attachments, replacements, substitutions, and the proceeds of all the foregoing; provided, however, notwithstanding the foregoing, Collateral shall not include monies to the extent that the pledge or assignment of such monies is prohibited pursuant to subdivision 3(b) of Section 2853 of the New York Education Law.

Description of Commercial Tort Claims: NONE

**SCHEDULE B**

Locations at which Debtor's business is conducted and at which the Collateral and records concerning Collateral are located:

<u>Address</u>	<u>County</u>	<u>Record Owner of Location</u>
190 Franklin Street, Buffalo, NY 14202	Erie	Debtor

“Permitted Liens” as used in this Agreement means (a) liens securing the payment of taxes (other than payroll taxes), assessments and other governmental charges either not yet due or the validity of which is being contested in good faith by appropriate proceedings, and as to which Debtor shall, if appropriate under generally accepted accounting principles, have set aside on its books and records adequate reserves; (b) deposits under worker's compensation, unemployment insurance, social security and other similar laws, or to secure the performance of bids, tenders or contracts (other than for the repayment of borrowed money) or to secure indemnity, performance or other similar bonds for the performance of bids, tenders or contracts (other than the repayment of borrowed money) or to secure statutory obligations or surety or appeal bonds or to secure indemnity performance or other similar bonds, all only to the extent incurred in the ordinary course of business; (c) liens in favor of the Secured Party; (d) zoning restrictions, easements, licenses, covenants and other restrictions which do not substantially affect the value or use of Debtor's real property, (e) mechanics', landlords' and other like liens arising in the ordinary course of business securing obligations which are not overdue or which are being contested by Debtor in good faith and by appropriate proceedings, provided that the aggregate amount secured by such liens does not exceed \$10,000 at any one time outstanding; (f) the rights of collecting banks having a right of setoff, revocation, refund or chargeback with respect to money or instruments of Debtor on deposit with or in the possession of such bank; (g) attachments remaining undischarged for no longer than thirty (30) days after written or actual notice thereof has been received by Debtor or in connection with litigation which is being defended by Debtor in good faith and by appropriate proceedings, provided that the aggregate amount sought to be secured by such attachments does not exceed \$10,000 at any one time outstanding; and (h) liens in respect of judgments or awards relative to claims which have been in force for less than the applicable appeal period, provided execution is not levied thereunder, with respect to which an appeal or similar proceeding for review is being prosecuted in good faith by the Debtor and a stay of execution has been obtained pending such appeal or review; provided, however, that, in the case of Permitted Liens described under the foregoing clauses (a), (e), (g) or (h) of this definition of Permitted Liens, to the extent the same is permitted as a result of a contest, appeal, defense or similar action undertaken by Debtor in good faith, Secured Party may in its sole discretion, effective upon thirty (30) days notice to Debtor, determine the same to not constitute a Permitted Lien if it reasonably determines that, as a result thereof, the priority or realizable value of its lien on any Collateral is adversely affected.



STATE OF NEW YORK  
DEPARTMENT OF STATE  
ONE COMMERCE PLAZA, 99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

ANDREW M. CUOMO  
GOVERNOR

CESAR A. PERALES  
SECRETARY OF STATE

**FILING ACKNOWLEDGMENT**

November 5, 2015

**RETURN TO CUSTOMER SERVICE COUNTER**

CT LIEN SOLUTIONS  
187 WOLF ROAD, SUITE 101  
ALBANY NY 12205-0000

Attached is the acknowledgment copy of your recently submitted filing. This filing consists of a total of 2 pages; however, only the first page of the filed document is returned as part of this acknowledgment. This document has been filed with the New York State Department of State, Uniform Commercial Code Division.

The Financing Statement has been assigned Filing Number: 201511040567927, Filing Date: 11/04/2015 and is currently reflected in our automated database as follows:

**Debtor's Name & Address**

BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
190 FRANKLIN STREET  
BUFFALO NY 14202

**Secured Party's Name & Address**

FIRST NIAGARA BANK, N.A.  
726 EXCHANGE STREET  
BUFFALO NY 14210

This filing will lapse on 11/04/2020, unless continued. We encourage filers to take full advantage of the six-month window of opportunity in which to file a Financing Statement Amendment (Continuation). Submission of your documents at the onset of the six-month window will allow ample time to rectify potential filing errors and help to assure timely recording of your filing.

If you have any concerns regarding the way this document is recorded, please contact one of our Customer Service Representatives at (518) 473-2492, or respond in writing to the UCC Data Processing Unit at the address indicated above.

Sincerely,

Uniform Commercial Code Division  
Data Processing Unit

REF #: 222333

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

222333

2015 NOV -4 AM 10: 15

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**RETURN TO:**  
**CT CORPORATION**  
**4400 EASTON COMMONS WAY**  
**SUITE 125**  
**COLUMBUS, OH 43219**

*Drawdown Acct # 18*

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME  
**Buffalo Academy of Science Charter School**

OR

1b. INDIVIDUAL'S LAST NAME

1c. MAILING ADDRESS  
**190 Franklin Street**

CITY: **Buffalo** STATE: **NY** POSTAL CODE: **14202** COUNTRY: **USA**

1d. SEE INSTRUCTIONS  
 ADDL INFO RE ORGANIZATION DEBTOR: **Not Applicable**

1e. TYPE OF ORGANIZATION: **education corp**

1f. JURISDICTION OF ORGANIZATION: **New York**

1g. ORGANIZATIONAL ID #, if any

NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

2c. MAILING ADDRESS

CITY: STATE: POSTAL CODE: COUNTRY:

2d. SEE INSTRUCTIONS  
 ADDL INFO RE ORGANIZATION DEBTOR: **Not Applicable**

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

NONE

3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME  
**First Niagara Bank, N.A.**

OR

3b. INDIVIDUAL'S LAST NAME

3c. MAILING ADDRESS  
**726 Exchange Street**

CITY: **Buffalo** STATE: **NY** POSTAL CODE: **14210** COUNTRY: **USA**

4. THIS FINANCING STATEMENT covers the following collateral:

"Collateral" includes all of Debtor's accounts (including, without limitation, health-care insurance receivables), equipment, inventory, goods (excluding consumer goods), fixtures, general intangibles, chattel paper, instruments, documents, deposit accounts, investment property, letters of credit and letter-of-credit rights, supporting obligations, commercial tort claims (if any, as described), insurance proceeds, and property in Secured Party's control or possession, software, books and records, all attachments, replacements, substitutions, and the proceeds of all the foregoing; provided, however, notwithstanding the foregoing, Collateral shall not include monies to the extent that the pledge or assignment of such monies is prohibited pursuant to subdivision 3(b) of Section 2853 of the New York Education Law.

All terms, unless otherwise defined in this financing statement, shall have the definitions set forth in the Uniform Commercial Code adopted in New York State.

5. ALTERNATIVE DESIGNATION (if applicable):  LESSOR/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAIOR  SELLER/BUYER  A.G. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS. Attach Addendum.  Check to REQUEST SEARCH REPORT(S) on Debtor(s) (if requested)  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA  
 Doc No. 14379606 NYS

*CH-51048246*

FILING NUMBER: 201511040567927

COPY

FILED

NOV - 5 2015

ERIE COUNTY CLERK'S OFFICE

Q 286/2553

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A NAME & PHONE OF CONTACT AT FILER [optional]

B SEND ACKNOWLEDGMENT TO: (Name and Address)

1 DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a ORGANIZATION'S NAME  
Buffalo Academy of Science Charter School

OR 1b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
190 Franklin Street Buffalo NY 14202 USA

1d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 1e TYPE OF ORGANIZATION 1f JURISDICTION OF ORGANIZATION 1g ORGANIZATIONAL ID #, if any  
Not Applicable education corp New York  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a ORGANIZATION'S NAME

OR 2b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d SEE INSTRUCTIONS ADD'L INFO RE ORGANIZATION DEBTOR 2e TYPE OF ORGANIZATION 2f JURISDICTION OF ORGANIZATION 2g ORGANIZATIONAL ID #, if any  
Not Applicable NONE

3 SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME  
First Niagara Bank, N.A.

OR 3b INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
726 Exchange Street Buffalo NY 14210 USA

4. This FINANCING STATEMENT covers the following collateral:

"Collateral" includes all of Debtor's accounts (including, without limitation, health-care-insurance receivables), equipment, inventory, goods (excluding consumer goods), fixtures, general intangibles, chattel paper, instruments, documents, deposit accounts, investment property, letters of credit and letter-of-credit rights, supporting obligations, commercial tort claims (if any, as described), insurance proceeds, and property in Secured Party's control or possession, software, books and records, all attachments, replacements, substitutions, and the proceeds of all the foregoing; provided, however, notwithstanding the foregoing, Collateral shall not include monies to the extent that the pledge or assignment of such monies is prohibited pursuant to subdivision 3(b) of Section 2853 of the New York Education Law.

All terms, unless otherwise defined in this financing statement, shall have the definitions set forth in the Uniform Commercial Code adopted in New York State.

5. ALTERNATIVE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG LIEN NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

Doc No. 14391880 Erie County

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

9a ORGANIZATION'S NAME		
OR <b>Buffalo Academy of Science Charter School</b>		
9b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

**10. MISCELLANEOUS:**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names**

11a ORGANIZATION'S NAME				
OR				
11b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c MAILING ADDRESS		CITY	STATE	POSTAL CODE
11d SEE INSTRUCTIONS		11e TYPE OF ORGANIZATION	11f JURISDICTION OF ORGANIZATION	
ADD'L INFO RE ORGANIZATION DEBTOR		11g ORGANIZATIONAL ID #, if any		
		<input type="checkbox"/> NONE		

**12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a ORGANIZATION'S NAME				
OR				
12b INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
12c MAILING ADDRESS		CITY	STATE	POSTAL CODE

13. This FINANCING STATEMENT covers  lumber to be cut or  as-extracted collateral, or is filed as a  fixture filing

**14. Description of real estate**

**180 Franklin Street (aka 190 Franklin Street)  
Buffalo, New York**

**16. Additional collateral description**

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest)

**Debtor is record owner**

17. Check only if applicable and check only one box.

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.

- Debtor is a TRANSMITTING UTILITY
- Filed in connection with a Manufactured-Home Transaction — effective 30 years
- Filed in connection with a Public-Finance Transaction — effective 30 years

**ENVIRONMENTAL COMPLIANCE  
AND INDEMNIFICATION AGREEMENT**

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, dated as of November 1, 2015 (this "*Agreement*"), is given by **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**, a New York education corporation having an office at 190 Franklin Street, Buffalo, New York 14202 (the "*BASCS*" or "*Indemnitor*"), to the **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit local development corporation of the State of New York, having its offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "*Issuer*"), and **FIRST NIAGARA BANK, N.A.**, a national banking association having an office at 726 Exchange Street, Buffalo, New York 14210 (the "*Holder*" and, together with the Issuer, the "*Indemnitees*").

RECITALS

WHEREAS, the BASCS is the owner of certain real property located in the City of Buffalo, New York and described more fully in Exhibit A attached hereto and made a part hereof (the "*Premises*"); and

WHEREAS, the Indemnitor has requested that the Issuer provide an exemption from mortgage recording tax and issue its Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "*2015 Bonds*" or the "*Bonds*") for the benefit of the Indemnitor for the purpose of financing a project to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 (the "*Land*") to be used to operate a charter school for grades 7-12 (the "*Facility*"); and (b) to pay costs incidental to the issuance of the Bonds ((a) and (b) collectively, the "*Project*") and to fund a debt service reserve fund, if any, required with respect to the Bonds; and

WHEREAS, the 2015 Bonds will be purchased by First Niagara Bank, N.A., (the "*Purchaser*") pursuant to that certain Bond Purchase Agreement dated as of November 2, 2015, by and among the Issuer, the Indemnitor, and the Purchaser; and

WHEREAS, the BASCS has requested that the Issuer provide financial assistance (the "*Financial Assistance*") to the BASCS in the form of loaning the proceeds of the Bonds to the BASCS pursuant to that certain Loan Agreement, dated as of November 1, 2015, by and between the Issuer and the BASCS and providing an exemption from mortgage recording tax.

NOW, THEREFORE, in consideration of the foregoing and to consummate the Financial Assistance, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor hereby covenants and agrees with the Indemnitees as follows:

1. DEFINITIONS. All capitalized terms used in this Agreement and not heretofore defined shall have the meanings set forth below.

(a) Environment means any water, groundwater, water vapor, land (including land surface or subsurface), soil vapor, air, fish, wildlife, biota, and all other natural resources.

(b) Environmental Laws means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances (as defined below) and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

(c) Environmental Permits means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, use and/or operation of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Premises.

(d) Environmental Report means the RJS Environmental Consultants Phase I Environmental Site Assessment prepared with respect to the Project as described herein, dated August 6, 2015.

(e) Hazardous Substance means any substance (i) the presence of which requires investigation or remediation under any Environmental Law; or (ii) which is or becomes defined as a "hazardous waste", "hazardous substance", "toxic substance", "solid waste", pollutant and/or or contaminant under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. section 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. section 6901 *et seq.*), as amended, the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, *et seq.*), the Clean Water Act, as amended (33 U.S.C. Sections 1251 *et seq.*), the Occupational Safety and Health Act, as amended (29 U.S.C.A. Section 651 *et seq.*), Articles 15 or 27 of the New York State Environmental Conservation Law, and/or any other applicable Environmental Law or any regulations promulgated under any of the foregoing; or (iii) which is toxic (including, but not limited to, toxic mold), explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of New York or any political subdivision thereof; or (iv) the presence of which on the Premises causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or (v) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

(f) Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance).

2. REPRESENTATIONS AND WARRANTIES. The Indemnitor represents and warrants to the Indemnitees that to the best of the Indemnitor's knowledge, information and belief and based on its review of the Environmental Report and except as otherwise set forth in the Environmental Report:

(a) Neither the Premises nor any property adjacent to or within the immediate vicinity of the Premises is being or has been used for the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substance or as a landfill or other solid waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not and have not been located on the Premises, except as set forth in Exhibit B hereto.

(c) The soil, subsoil, bedrock, soil vapor, surface water and groundwater of the Premises are free of any Hazardous Substances.

(d) There has been no Release nor is there the threat of a Release of any Hazardous Substance on, at or from the Premises, or any property adjacent to or within the immediate vicinity of the Premises which through soil, subsoil, soil vapor, bedrock, surface water or groundwater migration could come to be located on the Premises, and the Indemnitor has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Premises or any property adjacent to or within the immediate vicinity of the Premises or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

(e) All Environmental Permits necessary for the acquisition, construction, equipping, use or operation of the Premises have been obtained and are in full force and effect.

(f) No event has occurred with respect to the Premises which, with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law or non-compliance with any Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, notices of violations, demand letters, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Premises which require any change in the present condition of the Premises or any work, repairs, construction, containment,

clean-up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Premises.

(h) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, investigations, remedial action or any other remedy that arise out of, relate to or result from (i) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, (ii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises or (iii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof.

3. COVENANTS OF INDEMNITOR. The Indemnitor covenants and agrees with the Indemnitees as follows:

(a) The Indemnitor shall keep, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to keep, the Premises free of all Hazardous Substances and shall not cause or permit the Premises or any part thereof to be used for the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substances.

(b) The Indemnitor shall comply with, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to comply with, all applicable Environmental Laws, and shall obtain and comply with, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to obtain and comply with, all Environmental Permits.

(c) The Indemnitor shall not cause or permit any change to be made in the present or intended use of the Premises which would (i) involve the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substance or the use of the Premises as a landfill or other solid waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, (ii) violate any applicable Environmental Law, (iii) constitute non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Indemnitor shall promptly provide the Indemnitees with a copy of all notifications which the Indemnitor gives or receives with respect to any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

(e) The Indemnitor shall undertake and complete all investigations, studies, sampling and testing and all removal and other remedial actions necessary to contain, remove

and clean up all Hazardous Substances that are determined to be present at the Premises in accordance with all applicable Environmental Laws and all Environmental Permits.

(f) The Indemnitor shall at all times, on reasonable notice, allow the Indemnitees and their respective officers, employees, agents, representatives, contractors and subcontractors reasonable access to the Premises for the purposes of ascertaining site conditions, including, but not limited to, subsurface conditions.

(g) If at any time either Indemnitee obtains any evidence or information which suggests that potential environmental problems may exist at the Premises, either Indemnitee may require that a full or supplemental environmental investigation and environmental assessment report (including a Phase II environmental investigation) with respect to the Premises of a scope and level of detail satisfactory to an Indemnitee to be prepared by an environmental engineer or other qualified person acceptable to the Indemnitees, at the Indemnitor's expense. Said investigation may include a physical inspection of the Premises, a visual inspection of any property adjacent to or within the immediate vicinity of the Premises, personnel interviews and a review of all Environmental Permits. If an Indemnitee requires, such inspection shall also include a records search and/or subsurface testing for the presence of Hazardous Substances in the soil, subsoil, soil vapor, bedrock, surface water and/or groundwater. If the investigations indicate the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, the Indemnitor, shall promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, and other remedial actions, using methods recommended by the engineer or other person who conducted the investigations and acceptable to the appropriate federal, state and local agencies or authorities.

(h) Attached hereto as Exhibit C is a complete list of all Environmental Permits presently required for the ownership, use or operation of the Premises and the businesses located thereon. The Indemnitor agrees to notify the Indemnitees of any additions, deletions, or modifications of any Environmental Permits and the list thereof. Upon written request of either Indemnitee, the Indemnitor shall furnish true and complete copies of all Environmental Permits.

4. INDEMNIFICATION PROVISIONS. The Indemnitor covenants and agrees, at its sole cost and expense, to indemnify, protect, defend, and save harmless each and every Indemnitee from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys' and experts' fees for attorneys and experts selected by an Indemnitee, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee relating to, resulting from or arising out of (a) the use of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, (b) the presence or claimed presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, or of any property

adjacent to or within the immediate vicinity of the Premises, (c) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, (d) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof, (e) a violation of any applicable Environmental Law, (f) non-compliance with any Environmental Permit, (g) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Indemnitor in this Agreement, and (h) the designation by the New York State Department of Environmental Conservation, the United States Environmental Protection Agency or any other governmental authority as a party responsible or potentially responsible for the remediation of any condition on the Premises (collectively, the "**Indemnified Matters**"). Notwithstanding the foregoing, the Indemnitors shall not be liable to an Indemnitee for any damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses arising from the gross negligence or willful misconduct of such Indemnitee.

The liability of the Indemnitor to each Indemnitee hereunder shall be perpetual and shall survive, and shall in no way be limited, abridged, impaired or otherwise affected, by (i) any amendment or modification of any of the documents (a) entered into in connection with any prospective indebtedness associated with the Premises as approved by an Indemnitee (the "**Loan Documents**") or (b) otherwise entered into in connection with the Financial Assistance (the "**Indemnitee Documents**") by or for the benefit of an Indemnitee, any lender, or any subsequent owner of the Premises, (ii) any extensions of time for payment or performance required by any of the Loan Documents or the Indemnitee Documents, (iii) the release of the Indemnitor, any Indemnitor, any guarantor of any of the indebtedness associated with the Financial Assistance, or any other person, from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents, the Indemnitee Documents or this Agreement by operation of law, the lender's or an Indemnitee's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Loan Documents or the Indemnitee Documents, (v) any exculpatory provision contained in any of the Loan Documents or the Indemnitee Documents limiting the lender's or an Indemnitee's recourse to property encumbered by a mortgage or to any other security, (vi) any applicable statute of limitations, (vii) any investigation or inquiry conducted by or on the behalf of an Indemnitee or any information which an Indemnitee may have or obtain with respect to the environmental or ecological condition of the Premises, (viii) the sale or assignment of any indebtedness associated with the Financial Assistance or the foreclosure of any mortgage, (ix) the sale, transfer or conveyance of all or part of the Premises, (x) the dissolution or liquidation of the Indemnitor, (xi) the death or legal incapacity of the Indemnitor, (xii) the release or discharge, in whole or in part, of the Indemnitor in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, (xiii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Indemnitor under any bond, note or mortgage entered into in connection with the Financial Assistance or of the Indemnitor under this Agreement, (xiv) the expiration or termination of any

lease between an Indemnitee and the Indemnitor or any other person with respect to the Financial Assistance (the "*Lease*"), or (xv) the reconveyance of title to the Premises by an Indemnitee to the Indemnitor or any other person, whether in accordance with the terms of the Lease, by foreclosure or deed in lieu of foreclosure, sale or otherwise.

The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement heretofore given to the Indemnitees, as part of the application process for the Financial Assistance or otherwise.

5. INDEMNITEES' LIMITED ROLE. Under no circumstances shall the Indemnitees' limited involvement herein be deemed to be (because it is not) participating in the management or development of the Premises as those terms are used in Title 13, Section 27-1323 of the Environmental Conservation Law of the State of New York ("*ECL*"), nor has decision-making control, day-to-day management of environmental compliance or responsibility for hazardous waste handling or disposal practices at the Premises been transferred to any Indemnitee. The Indemnitees' limited involvement herein results from its acquiring a nominal security interest in the Premises in exercise of its statutory purposes, and for no other reason, and such acquisition was undertaken under circumstances where it amounts to an involuntary acquisition as that term is defined under ECL Section 27-1323.

6. GOVERNING LAW. This Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of New York.

7. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned as fully and completely as if all had signed the same instrument.

8. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon the Indemnitor, its successors and assigns, all subsequent owners of the Premises, and their respective successors, assigns, executors, administrators, legal representatives, distributees and fiduciaries and shall inure to the benefit of each Indemnitee.

9. WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS AGREEMENT OR THE PREMISES, OR ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

[Signature Page to Environmental Compliance and Indemnification Agreement]

IN WITNESS WHEREOF, the Indemnitor has caused this Agreement to be duly executed as of the day and year first above written.

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By:   
Name: Yusuf Akyar  
Title: Financial Analyst

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

On the 30<sup>th</sup> day of ~~November~~ <sup>October</sup>, 2015, before me, the undersigned, personally appeared **YUSUF AKYAR**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

GEORGE F. BELLOWS  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 04/14/20 15

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

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ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:

BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.

**EXHIBIT B**

**Underground Storage Tanks**

None

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**EXHIBIT C**

**Environmental Permits**

None

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CLOSING ITEM NO.: A-16

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

**and**

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

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**TAX COMPLIANCE AGREEMENT**

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**DATED: NOVEMBER 3, 2015**

**\$3,250,000**  
**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT  
CORPORATION**  
**TAX-EXEMPT REVENUE BONDS**  
**(BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL PROJECT), SERIES 2015**

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## **EXHIBITS AND SCHEDULES TO AGREEMENT**

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<b>SCHEDULE A</b>	<b>USE OF PROCEEDS OF THE SERIES 2015 BONDS</b>
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<b>SCHEDULE C</b>	<b>BOND REPORT</b>

## TAX COMPLIANCE AGREEMENT

**THIS TAX COMPLIANCE AGREEMENT**, dated November 3, 2015 (this "*Tax Compliance Agreement*"), is by and between the **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**, a not-for-profit corporation constituting a local development corporation duly organized and existing under the laws of the State of New York (the "*Issuer*"), and **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**, education corporation, incorporated and existing under the Education Law of the State of New York (the "*State*") (the "*Institution*").

**WHEREAS**, the Issuer was created pursuant to and in accordance with the provisions of Section 1411 of the Not for Profit Corporation Law of the State of New York, as amended to date and is empowered thereunder and under Resolution Nos. 218 and 295 of 2009, Resolution 5-3 of 2010 of the Erie County Legislature and Resolution No. 110 of 2011, to undertake the providing of projects and the issuance of its revenue bonds on behalf of Erie County (the "*County*") for the public purposes of the County and the State; and;

**WHEREAS**, to accomplish the foregoing purposes, the Issuer entered into negotiations with the Institution for the Issuer to issue its revenue bonds to finance a portion of the costs of a project (the "*Project*") consisting of the acquisition of improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 to be used to operate a charter school for grades 7-12 and the financing of all or a portion of the costs of the foregoing; and

**WHEREAS**, in furtherance of said purpose, at the request of the Institution, the Issuer adopted a resolution on August 20, 2015 (the "*Resolution*"), authorizing the issuance of the Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 (the "*Series 2015 Bonds*") and the loan of the proceeds thereof to the Institution to finance a portion of the costs of the Project; and

**WHEREAS**, the Issuer will on the date hereof issue and sell the Series 2015 Bonds in the aggregate principal amount of \$3,250,000 pursuant to the Act (as defined hereinbelow), the Resolution and a Bond Purchase Agreement dated as of November 3, 2015 (the "*Bond Purchase Agreement*"), by and among the Issuer, the Institution and First Niagara Bank, N.A. as purchaser; and

**WHEREAS**, the Internal Revenue Code of 1986, as amended (together with the final, temporary or proposed regulations of the United States Treasury Department promulgated thereunder, the "*Code*"), imposes certain restrictions on the issuance of the Series 2015 Bonds, the activities of the Institution, the application of proceeds of the Series 2015 Bonds and other amounts relating to the Series 2015 Bonds and earnings thereon and the use of the Project Facility (as defined below) in order that interest on the Series 2015 Bonds be and remain excludable from gross income for purposes of federal income taxation of the holders of the Series 2015 Bonds; and

**WHEREAS**, in order to ensure that the requirements of the Code are and will continue to be met, the Issuer and the Institution have determined to enter into this Tax Compliance Agreement, to set forth certain representations, expectations, conditions and covenants relating to

the activities of the Institution, the Series 2015 Bonds, the Project Facility and the application of proceeds of the Series 2015 Bonds and other amounts relating to the Series 2015 Bonds;

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Issuer and the Institution hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATION**

#### **SECTION 1.1 DEFINITIONS.**

Capitalized terms used herein and not otherwise defined herein or in Exhibit A attached hereto shall have the meanings set forth in the Bond Purchase Agreement unless the context or use herein indicates another or different meaning or intent. The following words and terms as used in this Tax Compliance Agreement shall have the following meanings:

*“Acceptable Opinion of Bond Counsel”* means an opinion of Bond Counsel that a proposed action will not adversely affect the excludability from gross income of the interest on the Series 2015 Bonds, which opinion shall be reasonably acceptable in form and substance to the Issuer and the Purchaser.

*“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, Resolution No. 5-3 of 2010 of the Erie County Legislature and Resolution No. 110 of 2011, each as amended to date

*“Annual Debt Service”* means the scheduled amount of interest and amortization of principal payable for any Bond Year with respect to an Issue or any portion thereof, as the context requires. For purposes of determining the debt service on an Issue, there shall not be taken into account amounts scheduled with respect to any obligation (or portion thereof) that has been retired before the beginning of the Bond Year.

*“Average Economic Life”* means the minimum average reasonably expected economic life, within the meaning of Section 147(b) of the Code, of the assets financed or refinanced with the Proceeds of an Issue.

*“Average Maturity”* means the average maturity of an Issue or any portion thereof, as the context requires, within the meaning of Section 147(b) of the Code.

*“Bona Fide Debt Service Fund”* means “bona fide debt service fund” as such term is defined in Treas. Reg. § 1.148-1(b).

*“Bond Counsel”* means the law firm of Barclay Damon, LLP, or an attorney or firm of attorneys whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized.

*“Bond Year”* means a period of twelve (12) consecutive months (or shorter initial period from the date of delivery of the Series 2015 Bonds) beginning July 1 in any calendar year and ending on June 30 of the succeeding calendar year.

*“Computation Date”* means an Installment Computation Date or the Final Computation Date

“*Computation Date Credit*” means for each Bond Year during which there are amounts allocated to Gross Proceeds of an Issue that are subject to the rebate requirement, the computation credit, if any, allowed under the Code or such higher amount established under the Code.

“*Computation Period*” means the period beginning on the Issue Date and ending on the first Computation Date and each period beginning on such Computation Date and ending on the next Computation Date thereafter.

“*Controlled Group*” means a group of entities controlled directly or indirectly by the same entity or group of entities. The determination of direct control is made on the basis of all the relevant facts and circumstances. In general, “direct control” exists while a controlling entity possesses either of the following rights or powers and the rights and powers are discretionary or non-ministerial: (i) the right or power to approve and to remove without cause a controlling portion of the governing body of the controlled entity, or (ii) the right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity. If one entity directly controls another, then the controlling entity indirectly controls any entity controlled directly or indirectly by such other entity.

“*Fair Market Value*” means, for purposes of calculating the yield on any obligation as required under this Tax Compliance Agreement, the price at which a willing buyer would purchase an investment from a willing seller in a bona fide, arm’s length transaction. Fair Market Value is generally determined on the date on which a contract to purchase or sell a Nonpurpose Investment becomes binding (*i.e.*, the trade date rather than the settlement date). This means, with regard to the purchase price and disposition price of an obligation, that a premium cannot be paid to adjust the yield, that a lower interest rate than is usually paid cannot be accepted to adjust the yield on an obligation and that no transaction is permitted to result in a smaller profit or larger loss than would have resulted if the transaction had been at arm’s length and had the yield on the Issue not been relevant to either party. The Fair Market Value of certain Nonpurpose Investments shall be determined pursuant to the rules set forth in Exhibit A. Except as provided in Exhibit A, a Nonpurpose Investment that is not of a type traded on an established securities market is rebuttably presumed to be acquired or disposed of for a price not equal to its Fair Market Value.

“*Final Computation Date*” means the date the last bond that is part of an Issue is discharged.

“*Financing Agreement*” means the Loan Agreement dated as of November 1, 2015, between the Issuer and the Institution. For purposes of the Series 2015 Bonds, the Financing Agreement is a Purpose Investment.

“*Fixed Yield Bond*” means any bond whose yield is fixed and determinable on the Issue Date of the bond using the assumptions and rules provided in Treas. Reg. § 1.148-4(b) or two Variable Yield Bonds whose aggregation would result in their treatment as a Fixed Yield Bond pursuant to Treas. Reg. § 1.48-4(b)(5).

“*Fixed Yield Issue*” means any Issue if each obligation that is part of the Issue is a Fixed Yield Bond.

“*Future Value*” means the future value of a payment with respect to a Nonpurpose Investment or a receipt from a Nonpurpose Investment at the end of any period determined using

the economic accrual method and equals the value of that payment or receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the Issue, using the same compounding interval and financial conventions used to compute the Yield.

“*Governmental Unit*” means a state or local governmental unit or any instrumentality thereof. Such term does not include the United States or any agency or instrumentality thereof.

“*Gross Proceeds*” means any Sale Proceeds, Investment Proceeds, Transferred Proceeds and Replacement Proceeds.

“*Guarantor*” means any party which provides a guarantee in substance (as defined in Treas. Reg. § 1.148-4(e)(3)) of payment of principal or interest on an Issue, or payment obligations under a Purpose Investment, subject to a Qualified Guarantee.

“*Installment Computation Date*” means with respect to a Fixed Yield Issue or any portion thereof the last day of the fifth and each succeeding fifth Bond Year unless the Issuer shall designate another date of its selection within five years of the preceding Installment Computation Date or the date hereof as an Installment Computation Date.

“*Investment Proceeds*” means any amounts actually or constructively received from investing Proceeds of an Issue.

“*Investment*” or “*Investment Property*” means (i) any security (within the meaning of Code Section 165(g)(2)(A) or (B)), (ii) any obligation other than a Tax-Exempt Bond which is not a “specified private activity bond” as defined in Code Section 57(a)(5)(C), (iii) any annuity contract within the meaning of Code Section 72, (iv) any investment-type property that is held as a passive vehicle for the production of income, including any prepayment for property or services if a principal purpose of prepayment is to receive an investment return from the time of the prepayment until the time payment would otherwise have been made, and (v) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

“*Issuance Costs*” means costs to the extent incurred in connection with, and allocable to, the issuance of an Issue within the meaning of Code Section 147(g). For example, Issuance Costs include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriter’s spread; counsel fees; financial advisory fees; rating agency fees; trustee fees; paying agent fees; bond registrar; certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than for a Qualified Guarantee; and similar costs.

“*Issue*” has the meaning given to such term by Treas. Reg. § 1.150-1(c).

“*Issue Date*” means November 3, 2015.

“*Issue Price*” has the meaning given such term by Sections 1273(b) and 1274 of the Code. Thus, if bonds are publicly offered (not including a bond house, broker or similar persons or organizations acting in the capacity of underwriters or wholesalers) and are not issued for property, the Issue Price of the bonds is determined on the basis of the initial offering price to the

public at which price a substantial amount (*i.e.*, ten percent (10%)) of each maturity of the bonds was sold to the public, subject to further rules as set forth in Treas. Reg. § 1.148-1(b).

“*Issuer Election*” means any election available to the Issuer under Treas. Reg. §§ 1.148-1 through 1.148-11 which must be in writing and signed by an Authorized Officer of the Issuer on or before the Issue Date of the Series 2015 Bonds and which otherwise meets the procedural requirements of Treas. Reg. § 1.148-1(d).

“*Management Contract*” means a management, service, or incentive payment contract between a Qualified User and a Service Provider under which the Service Provider provides services involving all, a portion of, or any function of a facility.

“*Minor Portion*” means the lesser of five percent (5%) of the Sale Proceeds of an Issue or \$100,000.

“*Multipurpose Issue*” means an Issue the proceeds of which are used for two or more separate purposes determined in accordance with Treas. Reg. § 1.148-9(h).

“*Net Proceeds*” means, with respect to any Issue, the Sale Proceeds (other than those Sale Proceeds used to retire bonds that are not deposited in a Reasonably Required Reserve or Replacement Fund) reduced by any portion thereof deposited in a Reasonably Required Reserve or Replacement Fund, and increased by any Investment Proceeds that accrue during the period beginning on the Issue Date and ending on the date that the financed facility is Placed in Service.

“*Net Sale Proceeds*” means Sale Proceeds less amounts invested in a Reasonably Required Reserve or Replacement Fund and as part of the Minor Portion.

“*Nongovernmental Person*” means any person other than a Governmental Unit.

“*Nonpurpose Investment*” means any Investment Property which is not a Purpose Investment.

“*Placed in Service*” means, with respect to a facility, the date on which, based on all the facts and circumstances, (1) the facility has reached a degree of completion which would permit its operation at substantially its design level; and (2) the facility is, in fact, in operation at such level.

“*Private Business Use*” means use (directly or indirectly), other than as a member of the general public, in a trade or business carried on by any Person, subject to the exceptions for use not exceeding 200 days, 100 days and 50 days pursuant to Treas. Reg. §§ 1.141-3(c)(3), (d)(3)(i) and (d)(3)(ii), respectively. For purposes of this definition, activities of the Institution that constitute an unrelated trade or business within the meaning of Section 513(a) of the Code shall constitute Private Business Use. The term “Private Business Use” shall include the lease of the Institution’s facilities (or any portion thereof) to Nongovernmental Persons whose use constitutes Private Business Use.

“*Proceeds*” of an Issue means Sale Proceeds, Investment Proceeds and any Transferred Proceeds. Such term shall not include amounts actually or constructively received with respect to a Purpose Investment to the extent such amounts are properly allocated to the immaterially higher yield under Treas. Reg. § 1.148-2(d) or Code Section 143(g) or to administrative costs recoverable under Treas. Reg. § 1.148-5(e).

“*Program Investment*” means a “program investment” as defined in Treas. Reg. § 1.148-1(b).

“*Project Facility*” means the land and improvements described in Section 2.1 hereof.

“*Purchase Price*” of an investment means the cost of such investment (without regard to transaction costs incurred in acquiring, carrying, selling or redeeming such investment) at the time it was acquired or allocated to the Issue or the Fair Market Value at the time such investment becomes a Nonpurpose Investment.

“*Purchaser*” means First Niagara Bank, N.A. and its successors and assigns.

“*Purpose Investment*” means any investment that is allocated to Gross Proceeds of an Issue and that is acquired in order to carry out the governmental purpose of the Issue. Such term does not include: (1) any temporary investment until the Proceeds of the Issue are needed for the governmental purpose of the Issue, (2) any investment that is acquired in order to fund a reserve or replacement fund, or (3) any other investment if the principal purpose for acquiring the investment is to earn arbitrage.

“*Qualified Costs*” means costs and expenses of the Project Facility allocable to Proceeds of the Series 2015 Bonds that are chargeable to the Institution’s capital account (under Federal tax law principles) or would be so chargeable (i) with a proper election by the Institution or (ii) but for a proper election by the Institution to deduct such amounts, but excluding costs and expenses of the Project Facility to be used for activities constituting Private Business Use; provided, however, that (1) Issuance Costs shall not be deemed to be Qualified Costs and (2) interest accrued on the Series 2015 Bonds allocable to the Project Facility during the construction period of the Project Facility shall be allocated pro rata between Qualified Costs and other costs and expenses to be paid from Proceeds of the Series 2015 Bonds.

“*Qualified Guarantee*” means, with respect to any bond, an arrangement (i) with any party which is not related to the issuer, which is not a co-obligor with respect to the Issue, and which together with any Related Party does not use more than ten percent (10%) of the Issue, (ii) that unconditionally shifts to the guarantor substantially all of the credit risk to pay all or part of any payment of principal and interest or redemption price on the bond (or any payment of the tender price of the bond if the bond is a Tender Bond) that is actually and unconditionally due under the terms of the bond, and (iii) otherwise meets the requirements of Treas. Reg. § 1.148-4(f).

“*Qualified Hedge*” means a qualified hedge as defined in Treas. Reg. § 1.148-4(h)(2).

“*Qualified Management Agreement*” has the meaning set forth in Exhibit A attached to this Tax Compliance Agreement.

“*Qualified Research Agreement*” has the meaning set forth in Exhibit A attached to this Tax Compliance Agreement.

“*Qualified User*” has the meaning set forth in Exhibit A attached to this Tax Compliance Agreement.

“*Reasonably Required Reserve or Replacement Fund*” has the meaning used in Treas. Reg. § 1.148-2(f)(2) and generally means the portion of a reserve or replacement fund that is eligible to be invested without Yield Restriction. The amounts invested without Yield

Restriction as part of such a Reasonably Required Reserve or Replacement Fund for an Issue are subject to a size limitation equal to the least of the following: (i) ten percent (10%) of the stated principal amount of the Issue (or, for any bonds of an Issue that have more than a *de minimis* amount of original issue discount or premium, the Issue Price of such bonds); (ii) the maximum annual principal and interest requirements on the Issue; or (iii) one hundred twenty-five percent (125%) of average annual principal and interest requirements on the Issue.

“*Rebate*” or “*Rebate Requirement*” means the arbitrage rebate requirement under Section 148(f) of the Code.

“*Rebate Amount*” means, as of any date, with respect to an Issue, the excess of (1) the Future Value, as of that date, of all receipts on Nonpurpose Investments over (2) the Future Value of all the payments on Nonpurpose Investments with respect to the Issue. If there are gross earnings from a Bona Fide Debt Service Fund (including earnings on any accrued interest on the Issue deposited therein) in any Bond Year of less than \$100,000, then receipts and payments with respect to such earnings thereon for such Bond Year shall not be taken into account for purposes of computing the Rebate Amount. If the average annual debt service on an Issue does not exceed \$2,500,000, then receipts and payments with respect to earnings from a Bona Fide Debt Service Fund shall not be taken into account for purposes of computing the Rebate Amount.

“*Rebate Installment*” means at least ninety percent (90%) of the Rebate Amount as of each Installment Computation Date.

“*Related Party*” means, in reference to a Governmental Unit or a Section 501(c)(3) Organization, any member of a Controlled Group, and in reference to any other person, a Related Person.

“*Related Person*” has the meaning ascribed to such phrase in Section 144(a)(3) of the Code. Examples of relationships which may cause individuals or entities to be Related Persons are set forth in Exhibit A attached to this Tax Compliance Agreement.

“*Replacement Proceeds*” means amounts with a sufficiently direct nexus to an Issue to conclude that such amounts would have been used for the governmental purpose of the Issue if the Proceeds of the Issue were not so used, including, to the extent held by or derived from the Issuer, the Institution or a Related Party of the Issuer or the Institution including:

(a) sinking funds, such as debt service funds, redemption funds, reserve funds, replacement funds, or any other fund, to the extent reasonably expected to be used directly or indirectly to pay principal or interest on the Issue;

(b) pledged funds, any amount directly or indirectly pledged to pay principal or interest on the Issue, cast in any form but providing reasonable assurance that such amount will be available to pay principal or interest on the Issue, even if the Issuer or the Institution encounters financial difficulty;

(c) negative pledges, amounts held under an agreement to maintain such amount at a particular level for the direct or indirect benefit of holders or a guarantor of the Issue, excluding amounts the Issuer, the Institution or a Related Party of the Issuer or the Institution may grant rights in superior to the rights of the bondholders or the guarantor and amounts not in excess of the reasonable needs for which it is maintained,

the required level of which is tested no more frequently than every 6 months and which may be spent without any substantial restriction other than a requirement to replenish such amount by the next testing date; and

(d) other replacement proceeds, including amounts arising during a period that the Issue, to the extent reasonably expected by the Issuer as of the Issue Date, remain outstanding longer than necessary.

“*Sale Proceeds*” means, with respect to an Issue, any amounts actually or constructively received from the sale of the Issue, including amounts used to pay underwriter’s discount or compensation.

“*Section 501(c)(3) Organization*” means an organization exempt from federal income taxation under Code Section 501(a), as an entity described in Code Section 501(c)(3).

“*Series 2015 Bonds*” means the \$3,250,000 aggregate principal amount Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015.

“*Service Provider*” shall have the meaning set forth in Exhibit A attached to this Tax Compliance Agreement.

“*SLG*” means a security issued by the United States Department of the Treasury, Bureau of Public Debt, pursuant to the Demand Deposit State and Local Government Series program described in 31 C.F.R. Part 344.

“*Tax-Exempt Bond*” means SLGs and tax-exempt bonds that are not specified private activity bonds within the meaning of Section 57(a)(5)(C) of the Code.

“*TEFRA Notice*” means a published reasonable public notice of a public hearing held in advance of the approval of the applicable elected representative pursuant to Code Section 147(f) and Treas. Reg. § 5f.103-2.

“*Tender Bond*” means a bond that is subject to a tender right (as hereinafter defined) if all interest on such bond (other than in the event of a remote contingency) accrues at a tender rate (as hereinafter defined) which is actually and unconditionally due at periodic intervals of one year or less. For purposes of the preceding sentence, (i) a bond is subject to a tender right if the holder of the bond may or must in all events tender the bond for purchase or redemption at par (plus any accrued interest) pursuant to the terms of the bond on one or more tender dates before the final stated maturity date, and (ii) interest accrues at a “tender rate” if (a) in the case of interest accruing to the first tender date, the interest rate is set on or after the sale date at the lowest rate that would enable the bond to be marketed at par (plus any accrued interest) on the date of issue and (b) in the case of interest accruing for each period between tender dates (including the final period to maturity), under the terms of the bond the interest rate is reset for each period at the lowest rate that would enable the bond to be remarketed at par (plus accrued interest, if any) at the beginning of the period.

“*Transferred Proceeds*” means any proceeds of a prior refunded Issue that become proceeds of a refunding Issue and cease to be proceeds of the prior refunded Issue pursuant to the transferred proceeds allocation rule under Treas. Reg. § 1.148-9 (or the applicable corresponding provision of prior law).

“*Treasury*” means the United States Department of Treasury.

“*Universal Cap*” means, as of any date of determination, the value (as determined under Treas. Reg. § 1.148-4(e)) of all outstanding bonds of an Issue.

“*Unused Universal Cap*” means, as of any date of calculation, the excess (if any) of the value ascribed to the Universal Cap for an Issue over the aggregate value of the Nonpurpose Investments allocated to the Issue.

“*Variable Yield Bond*” means any bond that is not a Fixed Yield Bond.

“*Variable Yield Issue*” means any Issue that is not a Fixed Yield Issue.

“*Variable Yield Obligation*” means any obligation whose Yield is not fixed and determinable on the Issue Date of the obligation using the assumptions and rules provided in Treas. § 1.148-4(b).

“*Yield*” means, except as specifically modified herein, that discount rate which when used in computing the present value of all payments of principal and interest on an obligation produces an amount equal to its purchase price (defined as the initial offering price to the public, excluding bond houses and brokers, at which price a substantial amount of such obligations was sold). For example, if any investment of \$100 results in a payment of \$110.25 exactly one year later, then the yield to maturity of the investment, based on semiannual compounding, is ten percent (10%) because the future payment of \$110.25 when discounted at ten percent (10%) equals the purchase price of \$100.

“*Yield Restriction*” or “*Yield Restricted*” means required to be invested in Tax-Exempt Bonds or at a Yield that is not materially higher than the Yield on the Issue under Code Section 148(a) and Treas. Reg. § 1.148-2.

## **SECTION 1.2 INTERPRETATION.**

In this Tax Compliance Agreement:

(a) Unless the context requires otherwise, words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(b) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) This Tax Compliance Agreement shall be governed by and construed in accordance with the applicable laws of the State of New York.

(d) The table of contents and the headings of the several Articles and Sections in this Tax Compliance Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be construed as an interpretation of any provision of this Tax Compliance Agreement. Unless specifically stated otherwise, references herein to Articles, Sections, Exhibits and Schedules shall refer to Articles, Sections, Exhibits and Schedules to this Tax Compliance Agreement.

(e) If any provision of this Tax Compliance Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions hereof.

(f) This Tax Compliance Agreement shall survive the purchase, sale or defeasance of the Series 2015 Bonds, the obligations of the Institution to make payments required by Section 8.10 and all indemnities hereunder and shall survive any termination or expiration of this Tax Compliance Agreement and the payment of the Series 2015 Bonds.

**SECTION 1.3 COVENANT WITH BONDHOLDER.**

The Issuer and the Institution agree that this Tax Compliance Agreement is executed in part to induce the Purchaser to purchase the Series 2015 Bonds. Accordingly, all covenants, agreements, representations and warranties by the Issuer and the Institution herein are declared to be for the benefit of the Bondholders.

**SECTION 1.4 RELIANCE ON DOCUMENTS.**

The Issuer and the Purchaser shall be permitted to conclusively rely on the contents of any certification, document and instructions provided by the Institution pursuant to this Tax Compliance Agreement, including, without limitation, the information provided in the several Schedules attached hereto, and shall not be responsible or liable in any way for verifying the accuracy or correctness of the contents thereof or the failure of the Institution to deliver any such certification, document or instruction at the time and in the manner required hereby.

The Issuer and the Purchaser may (but shall have no obligation), upon reasonable basis therefor and at the sole cost and expense of the Institution, obtain such opinions, verifications or other information from such experts (including accountants and attorneys) as the Issuer or the Purchaser, as the case may be, may deem necessary to verify or determine the information set forth or as should be set forth in any certification, document or instructions delivered or required to be delivered by the Institution under this Tax Compliance Agreement.

**SECTION 1.5 QUESTIONNAIRE.**

The undersigned officer executing this Tax Compliance Agreement on behalf of the Institution has examined a copy of the Financing Agreement, various records of the Institution and the Tax-Exempt Financing Diligence Questionnaire, dated October 5, 2015, that was completed by the Institution, as supplemented by correspondence from the Institution and its counsel, Jaeckle Fleischmann & Mugel, LLP, to Barclay Damon, LLP (collectively, the "*Questionnaire*"). The undersigned officer believes that the Institution has made such examination and investigation as is necessary to complete the Questionnaire, to make the certifications herein and to certify to the accuracy of the information set forth in this Tax Compliance Agreement and in the exhibits attached hereto.

**ARTICLE II**  
**THE PROJECT FACILITY**

**SECTION 2.1 DESCRIPTION OF THE PROJECT FACILITY.**

The Institution represents, warrants, covenants and agrees that:

(a) the Project Facility consists of the acquisition of improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 to be used by the Institution to operate a charter school for grades 7-12.

(b) the Institution is the owner for federal income tax purposes of the Project Facility.

As set forth in Section 5.2(e), the purchase price of the Project Facility is \$4,150,000 and equity of the Institution in the amount of \$621,969.62 and a Seller credit of \$458,433.87 will be allocated to the Project Facility.

**SECTION 2.2 ALLOCATION OF NON-BOND PROCEEDS TO UNRELATED BUSINESS USE AND EXCESS PRIVATE BUSINESS USE.**

The Institution represents, warrants, covenants and agrees that it has funded or will fund from sources other than Sale Proceeds of the Series 2015 Bonds the cost of that portion of the Project Facility, if any, used for Private Business Use (including use in an unrelated trade or business, within the meaning of Section 513(a) of the Code, by the Institution) that exceeds the maximum Private Business Use permitted under the Code. Any funds paid toward the cost of the Project Facility from sources other than Sale Proceeds of the Series 2015 Bonds were or will be first allocated to the cost of the portion of the Project Facility devoted to Private Business Use. For purposes of this Tax Compliance Agreement, to the extent so allocated, the Project Facility was or will be deemed not to have Private Business Use except as set forth in Exhibit E attached hereto.

**SECTION 2.3 NO UNRELATED TRADE OR BUSINESS USE.**

The Institution represents, warrants, covenants and agrees that, except as set forth in Exhibit E, the Institution (a) has not performed, and does not expect to perform, any act, (b) has not entered into, and does not expect to enter into, any agreement, and (c) has not used or permitted any use of, and does not expect to use or permit any use of, any part of the Project Facility, that could constitute an unrelated trade or business use of the Project Facility, within the meaning of Section 513(a) of the Code with respect to the Institution that exceeds the maximum Private Business Use permitted under the Code. The Institution agrees that it shall not perform any such act, enter into any such agreement or such use or permit any such use of any part of the Project Facility that exceeds the maximum Private Business Use permitted under the Code, unless, prior to the Institution performing any such act, entering into any such agreement, or using or permitting any part of the Project Facility, to be used in such manner, the Institution provides written notice to the Issuer of its proposed act, agreement or use, and obtains and provides to the Issuer and the Purchaser an Acceptable Opinion of Bond Counsel with respect to such act, agreement or use.

#### **SECTION 2.4 NO PRIVATE USE.**

The Institution represents, warrants, covenants and agrees that except for arrangements that constitute Qualified Management Agreements, Qualified Research Agreements or as otherwise set forth on Exhibit E attached hereto, so long as the Series 2015 Bonds are outstanding, the proceeds of the Series 2015 Bonds and the Project Facility have been and will be used in compliance with either of the following subsections.

(a) Private Business Use. No more than five percent (5%), reduced by amounts used for the payment of Issuance Costs, of the Net Proceeds of the Series 2015 Bonds were or may be used for an activity or activities which constitute a Private Business Use.

(b) Private Security Payment. The gross payments derived from any and all Private Business Uses of the proceeds of the Series 2015 Bonds or the Project Facility, or derived from any Nongovernmental Person from its Private Business Use of the Project Facility, were or will directly or indirectly be the source of payment for less than five percent (5%) of the debt service on the Series 2015 Bonds as provided in Section 141(b)(2)(B) of the Code and any assets that are owned or used by a Nongovernmental Person and that were or are directly or indirectly pledged to secure the payment of debt service on the Series 2015 Bonds will not exceed five percent (5%) of the amount of the Series 2015 Bonds.

#### **SECTION 2.5 MANAGEMENT AGREEMENT.**

The Institution represents, warrants, covenants and agrees that, except as set forth in Exhibit E, the Institution has not entered into and does not expect to enter into any Management Contract with any Service Provider under which such Service Provider provides services involving all, a portion of, or any function of the Project Facility that does not constitute a Qualified Management Agreement. The Institution covenants that it will not enter into a Management Contract that does not constitute a Qualified Management Agreement unless, prior to entering into such contract, the Institution has obtained and provided to the Issuer and the Purchaser an Acceptable Opinion of Bond Counsel with respect thereto. A Service Provider shall include a Section 501(c)(3) Organization if the Project Facility is used in an unrelated trade or business as defined in Section 513(a) of the Code with respect to that organization.

#### **SECTION 2.6 CONTRACTS FOR USE OR LEASE OF THE PROJECT FACILITY.**

The Institution represents, warrants, covenants and agrees that except as set forth on Exhibit E attached hereto, the Institution has not entered into and does not expect to enter into any lease or other agreement (other than a Qualified Management Agreement or, if applicable, Qualified Research Agreement) providing to or conferring upon any Service Provider any special legal entitlement to use of, or any special economic benefit with respect to, any part of the Project Facility. The Institution covenants that it will not enter into any such lease or agreement (other than a Qualified Management Agreement or Qualified Research Agreement) unless, prior to entering into such lease or agreement, the Institution has obtained and provided to the Issuer and the Purchaser an Acceptable Opinion of Bond Counsel with respect thereto.

#### **SECTION 2.7 PROHIBITED LOANS AND FACILITIES.**

The Institution represents, warrants, covenants and agrees that no portion of the Proceeds of the Series 2015 Bonds will be used to make loans to Nongovernmental Persons or to provide

any airplane, skybox or other private luxury box, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

**SECTION 2.8 RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS.**

The Institution represents, warrants, covenants and agrees that it has not used, and shall not use or permit to be used, any portion of the Net Proceeds of the Series 2015 Bonds to provide residential rental property for family units. For purposes of this Section 2.8, “residential rental property” means a building or structure which contains five or more units, which are used on other than a transient basis and are available to members of the general public in accordance with Treas. Reg. § 1.103-8(a)(2).

**SECTION 2.9 LIMITATION ON FINANCING OF ISSUANCE COSTS.**

Each of the Issuer and the Institution represents, warrants, covenants and agrees that it will not take any action which will result in more than two percent (2%) of the Sale Proceeds of the Series 2015 Bonds being used to finance Issuance Costs. The Institution used equity to pay all Issuance Costs and no Sale Proceeds were used to finance Issuance Costs.

**SECTION 2.10 NAICS CODE.**

The Institution certifies that the North American Industry Classification System (NAICS) Code for the Project Facility is 611110.

**SECTION 2.11 COMPLETION AND MAINTENANCE.**

The Institution covenants to maintain and operate the Project Facility for its intended purposes through April 30, 2023, the final maturity date of the Series 2015 Bonds, unless the Institution delivers, to the Issuer and the Purchaser, an Acceptable Opinion of Bond Counsel with respect to any failure to so maintain or operate.

**SECTION 2.12 CHANGES IN PROJECT FACILITY USE.**

The Institution understands that a change in the use of the Project Facility that is described in Section 150(b)(3) of the Code will result in both the loss of exclusion of interest on the Series 2015 Bonds from gross income for purposes of federal taxation and the loss of income tax deductions for interest paid by the person making the nonqualified use of the Project Facility. The Institution acknowledges that, if any portion of the Project Facility financed with the Net Proceeds of the Series 2015 Bonds (other than a portion financed with not more than three percent (3%) of the Net Proceeds of the Series 2015 Bonds) is used by a Nongovernmental Person other than the Institution, but continues to be owned by the Institution, then, in addition to any loss of tax exemption that may occur with respect to interest on the Series 2015 Bonds, the Institution will be treated as using the Project Facility, as the case may be, in an unrelated trade or business with respect to such portion. The amount of gross income attributable to such portion for any period shall not be less than the fair rental value of such portion for such period. Any such change in use will result in the disallowance of deductions for interest payments on the Series 2015 Bonds with respect to the portion of the Project Facility used in the unrelated trade or business for the period of such use. The Institution hereby covenants and agrees that before taking a deliberate action resulting in, or making or permitting, any change in the use of the Project Facility, the Institution shall first file with the Purchaser and the Issuer an Acceptable Opinion of Bond Counsel relating to the proposed change in use.

### **SECTION 2.13 OPERATION OF THE PROJECT FACILITY.**

The Institution represents, warrants and covenants as follows:

(a) *Shops, etc.* Any cafeterias, restaurants, gift shops, book or supply stores, or similar facilities which are part of the facilities financed with the proceeds of the Series 2015 Bonds are, and will be, operated principally for students, staff, visitors and patrons of the Institution, and the operation thereof shall be substantially related to the exempt purposes of the Institution, unless the Issuer receive an Acceptable Opinion of Bond Counsel satisfactory to the Issuer to the effect that the operation of such cafeteria, restaurant, gift shop, book or supply store or similar facility will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(b) *Governing Board.* The members of the Institution's governing board are derived from a cross-section of the community.

(c) *Federal Grants.* No portion of the Project Facility is being or has been financed with proceeds of a federal grant which requires a special allocation between the costs to be financed or refinanced with proceeds of the Series 2015 Bonds and those to be financed or refinanced with proceeds of such grant. No portion of the Project Facility has been or is being financed in anticipation of refunding with proceeds of a federal grant.

(d) *Parking Facilities.* No portions of the Project Facility constitute parking facilities.

### **SECTION 2.14 NO BUSINESS VENTURES.**

The Institution has not entered into and does not expect to enter into any business ventures, partnerships or joint ventures with for-profit organizations or entities (including business ventures in which the Institution is a member of any partnership or joint venture) which may adversely affect the exclusion from gross income for federal income tax purposes of interest on the Series 2015 Bonds.

### **SECTION 2.15 NO DISPOSITION OF PROJECT FACILITY.**

The Institution does not expect to take a deliberate action to sell or otherwise dispose of the Project Facility or its interest therein, in whole or in part, while the Series 2015 Bonds are Outstanding other than the disposition of obsolete equipment in the ordinary course of business.

## **ARTICLE III**

### **GENERAL REPRESENTATIONS AND COVENANTS OF THE AUTHORITY**

#### **SECTION 3.1 PUBLIC APPROVAL.**

The Issuer makes the following representations, warranties, covenants and agreements as the basis for the undertakings on its part contained in the financing documents:

(a) By adopting the Resolution, the Issuer determined to proceed with the issuance of the Series 2015 Bonds.

(b) Based upon representations of the Institution as to the character and utilization of the Project Facility, the acquisition and use of the Project Facility qualify for financing by the Issuer under the Act.

(c) In compliance with Section 147(f) of the Code, the Issuer on October 8, 2015, held a public hearing on the issuance of the Series 2015 Bonds following publication of notice of the hearing on September 24, 2015, in the *Buffalo News*, a newspaper of general circulation in the area where the Project Facility is located. On October 27, 2015, County Executive of the County, as the “applicable elected representative” of the County for purposes of Section 147(f) of the Code, approved the issuance of the Series 2015 Bonds. Copies of documents relating to such publication, hearing and approval are included in the Record of Proceedings relating to the Series 2015 Bonds as Exhibits to Item B(1).

#### **SECTION 3.2 REPORTING REQUIREMENTS.**

The Issuer has complied with or will comply with the information reporting requirements applicable to the issuance of the Series 2015 Bonds under Section 149(e) of the Code by causing Bond Counsel to file a completed Internal Revenue Service (“IRS”) Form 8038, with the Internal Revenue Service Center, Ogden, Utah 84201, in a timely manner – namely, on or before the fifteenth (15th) day of the second calendar month after the close of the calendar quarter in which the Series 2015 Bonds were issued (specifically, February 15, 2016).

#### **SECTION 3.3 RECORDKEEPING.**

The Issuer will maintain or cause the Institution to maintain records to support the representations, certifications and expectations set forth in this Tax Compliance Agreement until three (3) years after the last of the Series 2015 Bonds has been retired, and if any of the Series 2015 Bonds are refunded by the Issuer with proceeds of tax-exempt obligations other than the Series 2015 Bonds (“*Refunding Obligations*”), the Issuer will maintain all records required to be maintained hereunder until the later of three (3) years after the last of the Series 2015 Bonds has been retired or the date that is three (3) years after the last of the Refunding Obligations has been retired. The records that must be retained pursuant to this provision include, but are not limited to: (1) documentation evidencing expenditure of the Series 2015 Bond Proceeds, (2) documentation evidencing the timing and allocation, to the extent received from the Institution, of expenditures of Series 2015 Bond Proceeds, (3) documentation (including as set forth in Section 2.2 of Exhibit B) pertaining to any investment of Series 2015 Bond Proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received from the investment of Proceeds and rebate calculations), and (4) records of all amounts paid to the United States and any elections or revocations of elections.

## **ARTICLE IV**

### **GENERAL REPRESENTATIONS AND COVENANTS OF THE INSTITUTION**

#### **SECTION 4.1 SECTION 501(C)(3) STATUS.**

The Institution represents and warrants that (i) it is a Section 501(c)(3) Organization, (ii) it received a letter from the IRS dated April 30, 2012 (a copy of which is attached as Exhibit D), verifying that the IRS recognized the Institution's exempt status by letter dated October 2004; (iii) the facts and circumstances which form the basis of such letter as represented to the IRS continue to exist and no other material facts or circumstances have arisen which could adversely affect the Institution's exempt status; (iv) the Institution is exempt from federal income taxes under Section 501(a) of the Code; (v) the Institution has not been audited by the IRS in any of the preceding five years; and (vi) the Institution has not undergone any material changes since April 30, 2012 which would adversely affect its status as a Section 501(c)(3) Organization, and no such changes are contemplated. The Institution agrees not to perform any act or enter into any agreement which would adversely affect the Institution's status as a Section 501(c)(3) Organization and shall conduct its operations in a manner that will conform to the standards necessary to maintain such status.

The Institution will take all action reasonably necessary to maintain its status as such an organization and its exemption from federal income tax under Section 501(a) until the Series 2015 Bonds have been redeemed. No proceedings are pending or, to the Institution's knowledge, threatened, which if successful would adversely affect the Institution's status as an organization described in Section 501(c)(3) of the Code, or which would subject any income of the Institution to federal income taxation to such extent as would result in the loss of its tax-exempt status under Section 501(a) of the Code or the loss of non-inclusion in gross income of interest on the Series 2015 Bonds for federal income tax purposes under Section 103 of the Code. The Institution is not, to its knowledge, under examination or audit by the IRS, nor has it received written or oral notice from the IRS of a proposed examination or audit thereby, with respect to any fiscal year of the Institution.

The Institution will not merge into, or consolidate with, one or more organizations unless (i) the surviving organization is a Section 501(c)(3) Organization and exempt from federal income taxation under Section 501(a) of the Code, (ii) such merger or consolidation will not adversely affect the validity of the Series 2015 Bonds or the exclusion from gross income of the interest on the Series 2015 Bonds and will not cause any of the Series 2015 Bonds to violate Section 145(b) of the Code, and (iii) the surviving organization agrees to comply with all terms of this Tax Compliance Agreement.

#### **SECTION 4.2 CONTRACTS WITH GOVERNING BOARD.**

Except as permitted by Section 4.4, the Institution has not entered into, and will not enter into, any contracts with members of the Institution's governing board (or Related Persons to such members).

#### **SECTION 4.3 USE OF EXCESS REVENUES.**

Any year-end excess of revenues over expenses of the Institution is, and will be, used for one or more exempt purposes of the Institution. In addition, upon dissolution the Institution's

assets will be distributed for one or more exempt purposes and not to the members, directors, officers, employees, or founders of the Institution.

#### **SECTION 4.4 TRANSACTIONS WITH DIRECTORS, STAFF OR EMPLOYEES.**

Except in accordance with the Institution's conflict of interest policy, the Institution (i) has not made or given, and will not make or give, loans or advances to or enter into any other transactions with the directors, employees or staff of the Institution or members of the Institution's governing board, bearing interest at less than a fair market interest rate or less than Fair Market Value; (ii) has not made, and will not make, purchases from or sales to persons in control of the Institution; and (iii) has not used, and will not use, its funds to pay personal expenses of, and has not acted, and will not act, as guarantor for any loan made by banks (or other parties) to directors, employees or staff of the Institution or members of the Institution's governing board. Any question as to reasonableness will be raised with counsel expert in Code Section 501(c)(3) matters that is reasonably acceptable to the Issuer.

#### **SECTION 4.5 SOLICITATION OF FUNDS.**

The Institution may from time to time solicit contributions, and receive unsolicited contributions, of funds specifically to be used for the payment of the costs of acquisition of the Project Facility. If while any Series 2015 Bonds are Outstanding the Institution receives any gift or grant required by its terms to be used to pay any item which is a cost of the Project Facility, the Institution shall notify the Issuer and Purchaser thereof. The amount of any such gift or grant shall be applied to the payment of principal due on the Series 2015 Bonds.

#### **SECTION 4.6 AFFILIATION AGREEMENTS.**

The Institution represents and warrants that any affiliation agreements that the Institution has entered into or will enter into with other Nongovernmental Persons will not result in any portion of the proceeds of the Series 2015 Bonds being expended or otherwise used for the benefit of any such Nongovernmental Person. The Institution represents and warrants that any agreements with fundraisers who assist the Institution in its fundraising efforts will not result in any portion of the proceeds of the Series 2015 Bonds being expended or otherwise used for the benefit of any such other Nongovernmental Person.

#### **SECTION 4.7 \$150 MILLION LIMITATION.**

The Institution represents, warrants and covenants that ninety-five percent (95%) or more of the Net Proceeds of the Bonds are to be used to finance capital expenditures incurred after August 5, 1997. Consequently, pursuant to paragraph (5) of Section 145(b) of the Code, the \$150,000,000 limit described in paragraphs (1) through (4) of Section 145(b) of the Code does not apply to the Bonds.

#### **SECTION 4.8 IRS FILINGS.**

The Institution hereby requests the Issuer to file a Form 8038 with respect to the Series 2015 Bonds in a timely fashion with the Internal Revenue Service Center, Ogden, Utah 84201 and confirms that the information on Form 8038 included in the Record of Proceedings relating to the Series 2015 Bonds as Item B(3) is accurate.

**SECTION 4.9 RECORDKEEPING REGARDING USE OF THE PROJECT FACILITY AND USE OF THE PROCEEDS OF THE SERIES 2015 BONDS.**

(a) The Institution covenants to maintain records to support the representations, certifications and expectations set forth in this Tax Compliance Agreement until three (3) years after the last of the Series 2015 Bonds has been retired, and if any of the Series 2015 Bonds are refunded by the Issuer with proceeds of tax-exempt obligations other than the Series 2015 Bonds (“*Refunding Obligations*”), the Institution covenants to maintain all records required to be maintained hereunder until the later of three (3) years after the last of the Series 2015 Bonds has been retired or the date that is three (3) years after the last of the Refunding Obligations has been retired. The records that must be retained pursuant to this provision include, but are not limited to: (1) documentation evidencing expenditure of the Series 2015 Bond Proceeds, (2) documentation evidencing the use of the Project Facility by public and private entities (e.g., management contracts, research agreements, leases, etc.), (3) documentation evidencing the timing and allocation of expenditures of Series 2015 Bond Proceeds, (4) documentation evidencing all sources of payment or security for the Series 2015 Bonds, (5) documentation (including as set forth in Section 2.2 of Exhibit B) pertaining to any investment of Series 2015 Bond Proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received from the investment of Proceeds and rebate calculations), and (6) records of all amounts paid to the United States and any elections or revocations of elections.

(b) The Board of Trustees of the Institution will within sixty (60) days after the Issue Date adopt policies and procedures with respect to monitoring compliance with this Tax Compliance Agreement and the requirements of the Code throughout the entire period that the Series 2015 Bonds remain outstanding, including, without limitation, the requirements under Treas. Reg. § 1.141.12 (change in use) and Code Section 148 (arbitrage and rebate). The Institution shall promptly notify the Issuer and the Purchaser in writing of any violations of this Tax Compliance Agreement or the requirements of the Code.

**ARTICLE V**  
**USE OF PROCEEDS AND**  
**SOURCE OF DEBT SERVICE PAYMENTS**

**SECTION 5.1 EXPECTED USE OF PROCEEDS OF THE SERIES 2015 BONDS.**

The Institution expects and, based on the Institution's expectations stated herein and its representations set forth in the Financing Agreement, the Issuer expects that the Proceeds of the Series 2015 Bonds will be applied in the manner set forth in (i) this Article V, (ii) Article VIII, and (iii) Schedule A.

**SECTION 5.2 INSTITUTION'S CERTIFICATION AS TO COSTS.**

With respect to the Series 2015 Bonds, the Institution hereby certifies and agrees as follows:

(a) No Investment Proceeds are expected because all of the Sale Proceeds will be spent on the Issue Date.

(b) The total amount shown in Item 5 of Schedule A as Qualified Costs is ninety-five percent (95%) or more of the amount of the Net Proceeds of the Series 2015 Bonds and represents amounts that will be spent on costs and expenses of the acquisition of the Project Facility. In this regard, the Institution certifies that the seller of the Project is not a Related Party to the Institution.

(c) Except as permitted in this Tax Compliance Agreement and an Acceptable Opinion of Bond Counsel, none of the Proceeds of the Series 2015 Bonds will be used (directly or indirectly) for any purpose other than the acquisition the Project Facility, paying Issuance Costs and related Qualified Costs as provided in the Bond Purchase Agreement. Capitalized interest is not expected to be paid from Proceeds of the Series 2015 Bonds.

(d) The Institution expects that a portion the cost of the acquisition of Project Facility will be financed with Proceeds of the Series 2015 Bonds and that the remaining costs of the Project Facility will be paid from equity of, or other sources available to, the Institution. Issuance Costs (other than the Purchaser fee in the amount of \$7,394.50) will be paid from equity of, or other sources available to, the Institution.

(e) The Institution expects that the total expected costs of the Project Facility and the total expected sources of funding for the costs of the Project Facility are as follows:

***Project Costs***

Acquisition of the Project Facility	\$4,150,000.00
Financing Costs (including Issuance Costs)	180,403.49
Capitalized Interest	<u>-0-</u>
<b>Total Project Cost</b>	<b>\$4,330,403.49</b>

***Sources of Funding***

Series 2015 Bonds	\$3,250,000.00
Equity	621,969.62
Credit from Seller	<u>458,433.87</u>
<b>Total Sources of Funding</b>	<b>\$4,330,403.49</b>

**SECTION 5.3 NO ADVANCE REFUNDING.**

No portion of the Series 2015 Bonds will be used to “advance refund” any prior bonds of the Institution within the meaning of Code Section 149(d).

**ARTICLE VI**  
**AVERAGE ECONOMIC LIFE AND AVERAGE**  
**MATURITY OF THE SERIES 2015 BONDS**

**SECTION 6.1 AVERAGE ECONOMIC LIFE OF THE PROJECT.**

The Institution represents that the Economic Life of the Project Facility is 35 years as shown on the excerpt of the appraisal dated July 27, 2015, attached hereto as Schedule B-2, and multiplied by one-hundred-twenty percent (120%) is 42 years.

**SECTION 6.2 WEIGHTED AVERAGE MATURITY OF THE SERIES 2015 BONDS.**

(a) The Institution represents that Schedule C sets forth the computation of the weighted Average Maturity of the Series 2015 Bonds. As shown on Schedule C, the weighted Average Maturity of the Series 2015 Bonds is 3.7845 years.

(b) The Institution represents that the weighted Average Maturity of the Series 2015 Bonds does not exceed one hundred twenty percent (120%) of the weighted Average Economic Life of the Project Facility.

## **ARTICLE VII**

### **COMPOSITE ISSUES AND FEDERAL GUARANTEES**

#### **SECTION 7.1 COMPOSITE ISSUES.**

The Institution represents that neither the Institution nor any person on its behalf has sold within the fifteen (15) day period ending on the date of the sale of the Series 2015 Bonds, debt obligations of the Institution, any which have been sold pursuant to the same plan of financing with the Series 2015 Bonds, and are reasonably expected to be paid from substantially the same source of funds (determined without regard to guarantees from unrelated parties) as the Series 2015 Bonds. Neither the Institution nor any person on its behalf will issue, within the fifteen (15) day period beginning on the date of sale of the Series 2015 Bonds, debt obligations of the Institution which will be sold pursuant to the same plan of financing with the Series 2015 Bonds, and are reasonably expected to be paid from substantially the same source of funds (determined without regard to guarantees from unrelated parties) as the Series 2015 Bonds, unless an Acceptable Opinion of Bond Counsel is obtained with respect to such proposed issuance.

#### **SECTION 7.2 FEDERAL GUARANTEES.**

The Institution represents that neither payment of principal of, or interest on, the Series 2015 Bonds nor payments under the Loan Agreement are guaranteed, in whole or in part, by the United States (or any agency or instrumentality thereof) and that none of the Proceeds will be invested, directly or indirectly, in federally insured deposits or accounts, within the meaning of Section 149(b) of the Code, other than investments during an initial temporary period until such proceeds are needed for the purpose for which the Series 2015 Bonds were issued, investments in a Reasonably Required Reserve or Replacement Fund, investments in a Bona Fide Debt Service Fund and investments in bonds issued by the Treasury.

## **ARTICLE VIII**

### **ARBITRAGE**

#### **SECTION 8.1 SOURCES AND USES OF PROCEEDS.**

On the basis of the facts, estimates, and circumstances in existence on this date, the Institution represents, and the Issuer reasonably expects, based solely on the representations of the Institution, the following with respect to the Series 2015 Bonds and the use of the Proceeds of the Series 2015 Bonds:

(a) The total Proceeds to be derived by the Issuer in connection with the sale of the Series 2015 Bonds consist of Sale Proceeds in the amount of \$3,250,000 (which amount represents the aggregate principal amount of the Series 2015 Bonds of \$3,250,000, less accrued interest of \$-0-) and are expected on the Issue Date to be needed and fully expended as follows:

(i) \$49,832.00 of such Proceeds of the Series 2015 Bonds will be used on the date hereof to pay Qualified Costs, including the title issuance premium and the Issuer fee; and

(ii) \$7,394.50 of such Proceeds of the Series 2015 Bonds will be used to pay the Purchaser's origination fee; and

(iii) \$3,192,773.50 of such Proceeds of the Series 2015 Bonds will be expended to pay Qualified Costs to acquire Project Facility.

(b) The total Sale Proceeds to be received by the Issuer in connection with the sale of the Series 2015 Bonds, together with investment earnings thereon, do not exceed the total amount necessary for the purposes described above.

(c) The portion of the Sale Proceeds of the 2015 Bonds used by the Issuer to pay Issuance Costs will not exceed two percent (2%) of the Sale Proceeds of the 2015 Bonds.

#### **SECTION 8.2 PURPOSE INVESTMENT AND PROGRAM INVESTMENT.**

The Issuer will acquire with the Proceeds of the Series 2015 Bonds a Purpose Investment in the form of the Institution's obligations to make payments to the Issuer as described in the Loan Agreement, including the Issuer's administrative fee in the amount of \$32,500 paid on the Issue Date in connection with the issuance of the Series 2015 Bonds. The yield to the Issuer on the Loan Agreement as it relates to the Series 2015 Bonds does not exceed the yield on the Series 2015 Bonds by more than one and one-half percent (1.5%) allowed under Treas. Reg. § 1.148-2(d)(2)(iii) with respect to Program Investments.

#### **SECTION 8.3 FUNDS AND ACCOUNTS.**

(a) Funds and Accounts. A Project Fund has been established under the Bond Purchase Agreement.

(b) Description of Funds and Accounts. As provided in the Bond Purchase Agreement, there shall be deposited in the Project Fund, all of the Proceeds of the Series 2015 Bonds, except as otherwise provided in Section 8.1. Proceeds of the Series 2015 Bonds deposited in the Project Fund will on the Issue Date be used to pay a portion of the purchase price of the Project Facility on the date hereof and used to pay Issuance Costs and other Qualified Costs allocable to the Series 2015 Bonds.

(c) No Other Funds. There is and will be no segregated or identifiable fund not described herein (including, but not limited to, a sinking fund, pledged fund or similar fund, including, without limitation, any arrangements under which money, securities or obligations are pledged directly or indirectly to secure or for payment of debt service on the Series 2015 Bonds or any contract securing the Series 2015 Bonds or any arrangement providing for compensating balances to be maintained by the Issuer and the Institution, any guarantor or any Related Person to the Institution with or for the benefit of the Purchaser) held by or on behalf of the Issuer and the Institution, any guarantor, the Purchaser or any holder of the Series 2015 Bonds which the holders of the Series 2015 Bonds are assured will be available to pay the principal of, or interest and premium, if any, on the Series 2015 Bonds, which will be pledged as security for the Series 2015 Bonds, or which will replace money that will be used to pay such principal, interest or premium, if any.

#### **SECTION 8.4 YIELD RESTRICTIONS.**

(a) Project Fund. Proceeds of the Series 2015 Bonds may be invested without Yield Restriction for thirty (30) days after the Issue Date.

#### **SECTION 8.5 DETERMINATION OF YIELD.**

(a) The purchase price for the Series 2015 Bonds will be 100% of the aggregate principal amount of Series 2015 Bonds, which amount is equal to the aggregate principal amount of the Series 2015 Bonds. The Institution paid the Purchaser a fee of \$7,394.50, which is characterized by the Purchaser as a loan origination fee charged to the Institution by the Purchaser on the date hereof and which the Purchaser have represented is a fee for services or property and not in the nature of points.

(b) For purposes of this Tax Compliance Agreement, yield is calculated as set forth in Section 148(b) of the Code and Treas. Reg. §§ 1.148-4 and 1.148-5 of the Regulations. The Issuer certifies that the Issue Price of the Series 2015 Bonds is \$3,250,000.00, which represents the price at which the Series 2015 Bonds were sold, as represented by the Purchaser in Exhibit C, attached hereto. The Series 2015 Bonds are variable rate obligations. As such, the Yield on the Series 2015 Bonds is computed separately for each Computation Period. If any portion of the Series 2015 Bonds is outstanding as of the end of a Computation Period, an amount equal to the value of the outstanding Series 2015 Bonds is taken into account on the last day of such Computation Period and the first day of the immediately subsequent Computation Period.

#### **SECTION 8.6 MISCELLANEOUS ARBITRAGE COVENANTS.**

(a) The Institution covenants that no portion of the amount received from the sale of the Series 2015 Bonds will be used by the Institution as a substitute for other funds which were otherwise to be used for the facilities financed with the Series 2015 Bonds and which have been or will be used to acquire, directly or indirectly, obligations producing a yield to maturity in excess of the yield on the Series 2015 Bonds. For this purpose, replacement proceeds of the Series 2015 Bonds are amounts that have a sufficiently direct nexus to the Series 2015 Bonds to conclude that the amounts would have been used for the governmental purpose if the proceeds of the Series 2015 Bonds were not used or to be used for the governmental purpose.

(b) The Institution covenants that, other than the funds and accounts described herein, there are no funds or accounts of the Institution established pursuant to the Bond Purchase Agreement, the Financing Agreement or otherwise nor any funds or accounts expected to be

established, pursuant to any instrument or arrangement which are reasonably expected to be used to pay debt service on the Series 2015 Bonds or for which there is a reasonable assurance that amounts therein or the investment income earned from such funds or accounts will be available to pay debt service on the Series 2015 Bonds if the Institution encounter financial difficulties.

**SECTION 8.7 HEDGE BONDS.**

The Institution and the Issuer, in reliance on the representations of the Institution herein, reasonably expect (i) that at least eighty-five percent (85%) of the spendable Proceeds of the Series 2015 Bonds will be expended on the costs associated with the acquisition of the Project Facility within three (3) years of the date of issuance hereof, and (ii) that not more than fifty percent (50%) of the proceeds of the Series 2015 Bonds will be invested in nonpurpose investments having a substantially guaranteed yield for four (4) years or more.

**SECTION 8.8 REIMBURSEMENT.**

The Institution represents that no portion of the proceeds the Series 2015 Bonds will be applied to reimburse the Institution for costs incurred in connection with the Project Facility prior to the date of issuance of the Series 2015 Bonds.

**SECTION 8.9 TIMING OF ISSUANCE.**

The date of issuance of the Series 2015 Bonds has been determined solely on the basis of bona fide financial reasons.

**SECTION 8.10 ARBITRAGE AND REBATE COMPLIANCE.**

The Institution hereby covenants that (i) it will not take any action or fail to take any action that would cause the Series 2015 Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code, (ii) it will comply with provisions of the Code applicable to the Series 2015 Bonds, including without limitation the provisions of the Code relating to the computation of yield on investments of the Gross Proceeds of the Series 2015 Bonds, reporting of earnings on the gross proceeds of the Series 2015 Bonds, and rebating of excess earnings to the Department of Treasury of the United States of America, (iii) it will retain a qualified expert to assist the Institution and Issuer in computing the Rebate Amount and satisfying the Rebate Requirement, and (iv) it will comply with Exhibit B, as such may be amended from time to time.

**SECTION 8.11 ISSUER ELECTIONS.**

Any Issuer Election with respect to the Series 2015 Bonds shall be approved by the Institution. Any Issuer Election made in writing by the Issuer herein shall be deemed approved by the Institution by virtue of its execution and delivery of this Tax Compliance Agreement.

**ARTICLE IX**  
**COVENANT AND AMENDMENTS**

**SECTION 9.1 COMPLIANCE WITH CODE.**

(a) The Institution agrees and covenants that it shall at all times do and perform all acts and things necessary or desirable and within its reasonable control in order to ensure that interest paid on the Series 2015 Bonds shall, for the purpose of federal income taxation, be excludable from the gross income of the recipients thereof and exempt from such taxation.

(b) The Institution acknowledges that the covenants and conditions set forth in this Tax Compliance Agreement are based upon the Code as it exists on the date hereof and that the Code may be subsequently interpreted or modified by the Federal government in a manner which is inconsistent with the covenants set forth herein. The Institution agrees that any such subsequent modification or interpretation of the Code applicable to the Series 2015 Bonds will be deemed a requirement that must be met pursuant to the general tax covenant set forth in paragraph (a) of this Section 9.1.

**SECTION 9.2 AMENDMENTS.**

This Tax Compliance Agreement may be amended only by a writing signed by an Authorized Officer of the Issuer and the Institution with consent of the Purchaser after delivery by Bond Counsel to the Purchaser and the Issuer of an Acceptable Opinion of Bond Counsel.

**SECTION 9.3 RELIANCE.**

The Issuer and Institution acknowledge that all parties to the transaction for the financing of the Project Facility, including the Purchaser, Bond Counsel and counsel to the parties, are relying on and are entitled to rely on the representations and expectations made by the Issuer and Institution herein, including, without limitation, the representations and expectations established in the Schedules appended hereto.

**SECTION 9.4 ISSUER'S RELIANCE ON OTHERS.**

The Issuer has relied on the covenants, representations, certifications and agreements of the Institution and certification of the Purchaser contained in Exhibit C attached hereto for purposes of making covenants and agreements under this Tax Compliance Agreement. No provision, covenant, or agreement contained in this Tax Compliance Agreement, and no obligation herein imposed on the Issuer, or the breach thereof, shall constitute an indebtedness of the Issuer or the State of New York, Erie County, New York, or any political subdivision thereof within the meaning of any State constitutional provision or statutory provision, or shall give rise to a pecuniary liability to the Issuer or the State of New York, Erie County, New York, or any political subdivision thereof or a charge against its general credit or taxing powers. The Issuer and any of its officials, directors, members, officers or employees shall have no monetary liability arising out of any of the obligations of the Issuer hereunder or in connection with any covenant, representation or warranty made by the Issuer herein, and neither the Issuer nor its officials, directors, members, officers or employees shall be obligated to pay any amounts in connection with the transactions contemplated hereby other than from the payments required under the Financing Agreement or other moneys received by the Institution.

**SECTION 9.5 EXECUTION OF COUNTERPARTS.**

This Tax Compliance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 9.6 AUTHORIZED REPRESENTATIVES OF INSTITUTION .**

The undersigned is the authorized representative of the Institution, and as such is familiar with the business, assets, operations and properties thereof and is duly authorized to make the certifications and covenants set forth herein on behalf of the Institution.

The Institution has discussed, with such professionals as they have deemed necessary, the provisions of this Tax Compliance Agreement, the Questionnaire and the Code. Based on these discussions, the Institution is satisfied that (a) it understands the certifications and representations which it has made in this Tax Compliance Agreement (including the exhibits and schedules attached hereto) and in the Questionnaire, and (b) it understands the basis for continuing compliance with the representations and covenants made in this Tax Compliance Agreement (including the exhibits and schedules attached hereto) in order to maintain the exclusion from gross income for federal income tax purposes of the interest on the Series 2015 Bonds. The statements contained herein (including the exhibits and schedules attached hereto) and in the Questionnaire fully and accurately represent the facts as known to the Institution, and are, in its opinion, true and correct, and no information available to the Institution has been omitted therefrom, the omission of which would tend to render misleading any of the statements herein contained under the circumstances in which they are made. The undersigned understands that in rendering its opinion as Bond Counsel with respect to the Series 2015 Bonds, Barclay Damon, LLP intends to rely upon this Tax Compliance Agreement and the Questionnaire.

IN WITNESS WHEREOF, the Issuer and the Institution have caused this Tax Compliance Agreement to be executed on their behalf by their respective authorized representatives as of the date first above written.

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

By:   
Karen Fiala, Assistant Treasurer

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By:   
Yusuf Akyar, Authorized Representative

## EXHIBIT A

### CERTAIN DEFINED TERMS

Those terms described in the Tax Compliance Agreement as having such meanings ascribed to them in this Exhibit A, are defined as follows:

I. Service Provider; Qualified User; Qualified Management Agreement; Qualified Research Agreement.

A “Service Provider” means any person other than a Qualified User that provides services under a contract to or for the benefit of a Qualified User. A “Qualified User” means (i) a Governmental Person, and (ii) a Section 501(c)(3) Organization if the Project Facility is not used in an Unrelated Business Use.

A. Qualified Management Agreement.

A management, service or incentive payment contract with a Service Provider is a Qualified Management Agreement if, and only if such contract satisfies the requirements of each of the following subsections:

(1) For contracts for services in which all compensation is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee for service rendered by the Service Provider:

(a) the term of the contract (including renewal options) may not exceed two years;

(b) the contract is cancelable by the Qualified User without cause or penalty at the end of the first year of the contract term by giving the Service Provider reasonable (30 days) notice;

(c) the compensation, which must be reasonable, may not be based on a percentage of the net profits from the operation of the Project Facility, however, during start-up, compensation may be based on a percentage of either gross revenues, adjusted gross revenues (gross revenues less allowances for bad debts and contractual and similar allowances) or expenses of the Project Facility; and

(d) the contract term covers the initial start-up period of the Project Facility for which there have been insufficient operations to establish a reasonable estimate of the amount of annual gross revenues and expenses (*e.g.*, a contract for general management services for the first year of operation).

(2) For contracts for services of Service Providers in which at least 80% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee (*e.g.*, a stated dollar amount of compensation is paid each month):

(a) the term of the contract, including all renewal options, must not exceed the lesser of 80% of the reasonably expected useful life of the Project Facility and ten (10) years;

(b) the compensation, which must be reasonable, may not be based on any percentage of the net profits of the Project Facility; however, it may be increased automatically if the increase does not exceed the percentage increases determined by a specified objective, external standard for computing such increase (e.g., the Consumer Price Index or similar external indices that track prices in an area or increases in revenues or costs in an industry). A fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(3) For contracts for services of Service Providers in which at least 95% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee:

(a) the term of the contract, including all renewal options, must not exceed the lesser of 80% of the reasonably expected useful life of the Project Facility and fifteen (15) years;

(b) the compensation, which must be reasonable, may not be based on any percentage of the net profits of the Project Facility; however, it may be increased automatically if the increase does not exceed the percentage increases determined by a specified objective, external standard for computing such increase (e.g., the Consumer Price Index or similar external indices that track prices in an area or increases in revenues or costs in an industry). A fee does not fail to qualify as a periodic fixed fee as a result of a one-time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is equal to a single, stated dollar amount.

(4) For contracts for services of Service Providers in which at least 50% of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee and no amount of compensation is based on a capitation fee (fixed amount paid per person served where service provided varies significantly among persons served) or a per-unit fee (state dollar amount paid for each service provided) or any combination thereof:

(a) the term of the contract (including renewal options) may not exceed five (5) years;

(b) the contract is cancelable by the Qualified User without cause of penalty upon reasonable notice at the end of the third year of the contract terms; and

(c) the compensation, which must be reasonable, may not be based upon any percentage of the net profits of the Project Facility.

(5) For contracts for services of Service Providers in which all of the compensation is based on a capitation fee or a combination of capitation fee and a periodic fixed fee:

(a) compensation for services must be reasonable and cannot be based in any part on the net profits of the Project Facility; and

(b) the term of the contract (including renewal options) may not exceed five years and the contract must be cancelable by the Qualified User, upon reasonable notice, without cause or penalty at the end of the third year of the contract term.

(6) For contracts for services of Service Providers in which all of the compensation is based upon a per-unit fee or a combination of a per-unit fee and a periodic fixed fee:

(a) The term of the contract (including renewal options) may not exceed three years and the Qualified User must have the option, upon reasonable notice, to cancel the contract without cause or penalty at the end of the second year of the contract term;

(b) No amount of compensation to the Service Provider is based on a share of net profits; and

(c) The amount of the per-unit fee must be reasonable and must be specified in the contract or otherwise specifically limited by the Qualified User or an independent third party.

(7) For certain 5-year contracts for services of Service Providers in which all of the compensation for services is based on a stated amount; periodic fixed fee; a capitation fee; a per-unit fee; or a combination thereof:

(a) The compensation for services also may include a percentage of gross revenues, adjusted gross revenues, or expenses of the facility (but not both revenues and expenses); and

(b) The term of the contract, including all renewal options, may not exceed five years and such contract need not be terminable by the Qualified User prior to the end of the term.

For purposes of this paragraph (7), a tiered productivity award will be treated as a stated amount or a periodic fixed fee, as appropriate.

(8) With respect to all of the above-described contracts, the Service Provider must not have the ability to limit the Qualified User's exercise of its rights under the contract. In particular, not more than 20% of the voting power of the governing body of the Qualified User may be exercisable in the aggregate by the Service Provider and its respective directors, officers, shareholder and employees. In addition, no member of the governing board of the Qualified User may be the chief executive officer of the Service Provider or its governing body and vice versa. Finally, the Qualified User and the Service Provider must not be members of the same Controlled Group or related parties as defined in Section 144(a)(3) of the Code.

B. Qualified Research Agreement.

A research contract with a Service Provider is a Qualified Research Agreement if, and only if such contract is described in either (1) or (2) below:

(1) Corporate-sponsored Research. A research contract relating to property used for basic research supported or sponsored by a sponsor is described in this paragraph (1) if any license or other use of resulting technology by the sponsor is permitted only on the same terms as the recipient would permit that use by any unrelated, non-sponsoring party (that is, the sponsor must pay a competitive price for its use), with the price paid for that use determined at the time the license or other resulting technology is available for use. Although the Qualified User need not permit persons other than the sponsor to use any license or other resulting technology, the price paid by the sponsor must be no less than the price paid by any non-sponsoring party for those same rights.

(2) Cooperative Research Agreements. A research contract relating to property used pursuant to a joint industry-governmental cooperative research arrangement is described in this paragraph (2) if:

(a) Multiple, unrelated sponsors agreed to fund governmentally performed basic research;

(b) The research to be performed and the manner in which it is to be performed is determined by the Qualified User;

(c) Title to any patent or other product incidentally resulting from the basic research lies exclusively with the Qualified User; and

(d) Sponsors are entitled to no more than a nonexclusive, royalty-free license to use the product of any of that research.

In applying the above guidelines to federally-sponsored research agreements, the rights of the federal government and its agencies mandated by the Bayh-Dole Act will not cause a research agreement to fail to meet the requirements of this Section provided that the license granted to any party other than a Qualified User to use the product of the research is no more than a nonexclusive royalty-free license. For example, the existence of march-in-rights or other special rights of the federal government or the sponsoring federal agency mandated by the Bayh-Dole Act will not cause a research agreement to fail to meet the requirements of this Section, provided that the Qualified User determines the subject and manner of the research in accordance with Section I(B)(2)(b), the Qualified User retains exclusive title to any patent or other product of the research in accordance with Section I(B)(2)(c), and the nature of any license granted to the federal government or the sponsoring federal agency (or to any third party nongovernmental person) to use the product of the research is no more than a nonexclusive, royalty-free license in accordance with Section I(B)(2)(d).

II. Fair Market Value of Certain Nonpurpose Investments.

The Fair Market Value of the following Nonpurpose Investments shall be determined as set forth below:

(a) United States Treasury Obligations. The Fair Market Value of a United States Treasury Obligation that is purchased directly from the United States Treasury is its purchase price.

(b) Certificates of Deposit. The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal and which is not traded on an established securities market will be treated as its Fair Market Value if the yield on the certificate of deposit is not less than the yield on reasonably comparable direct obligations of the United States and the yield is not less than the highest yield that is published or posted by the provider to be currently available from the provider on comparable certificates of deposit offered to the public.

(c) Guaranteed Investment Contracts. Investments pursuant to a guaranteed investment contract may be regarded as being made at a Fair Market Value if

(A) the Issuer makes a bona fide solicitation on the investment contract. A bona fide solicitation is a solicitation that satisfies all of the following requirements:

(1) The bid specifications are in writing and are timely forwarded to potential providers.

(2) The bid specifications include all material terms of the bid. A term is material if it may directly or indirectly affect the yield or cost of the investment.

(3) The bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer or any other person (whether or not in connection with the Issue), and that the bid is not being submitted solely as a courtesy to the Issuer or any other person for purposes or satisfying the requirements of the Code.

(4) The terms of the bid specifications are commercially reasonable. A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the investment.

(5) For purchases of guaranteed investment contracts only, the terms of the solicitation take into account the purchaser's reasonably expected deposit and drawdown schedule for the amounts to be invested.

(6) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(7) At least three reasonably competitive providers are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of investments being purchased.

(B) The bids received meet all of the following requirements:

(1) The Issuer receives at least three bids from providers that the Issuer solicited under a bona fide solicitation meeting the foregoing requirements and that do not have a material financial interest in the Issue. A lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the Issue until fifteen (15) days after the Issue Date of the Issue. In addition, any entity acting as a financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded to potential providers has a material financial interest in the Issue. A provider that is a Related Person to a provider that has a material financial interest in the Issue is deemed to have a material financial interest in the Issue.

(2) At least one of the three bids described in paragraph (1) is from a reasonably competitive provider, within the meaning of paragraph (A)(7) above.

(3) If the Issuer uses an agent to conduct the bidding process, the agent did not bid to provide the investment.

(C) The winning bid is the highest yielding bona fide bid (determined net of any broker's fees).

(D) The obligor on the guaranteed investment contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the investment.

(E) The Issuer retains the following records with the bond documents until three (3) years after the last outstanding bond is redeemed:

(1) A copy of the guaranteed investment contracts.

(2) The receipt or other record of the amount actually paid for the investments, including a record of any administrative costs paid by the Issuer, and the certification under paragraph (D) above.

(3) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid and the bid results.

(4) The bid solicitation form and, if the terms of the guaranteed investment contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

### III. Related Party.

“Related Party” in reference to a governmental unit or a 501(c)(3) organization, means any member of a group of entities controlled directly or indirectly by the same entity or group of entities. The determination of direct control is made on the basis of all the relevant facts and circumstances. In general, “direct control” exists while a controlling entity possesses either of the following rights or powers and the rights and powers are discretionary or non-ministerial – (i) the right or power to approve and to remove without cause a controlling portion of the governing body of the controlled entity, or (ii) the right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity. If one entity directly controls another,

then the controlling entity indirectly controls any entity controlled directly or indirectly by such other entity.

#### IV. Related Persons.

Set forth below are examples of certain relationships which may cause entities to be Related Persons.

(A) Individual. “Related Persons” to an individual include but are not limited to:

(1) members of his family. The family of an individual includes his brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants;

(2) a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned (directly or indirectly) by or for that individual, his family or his partner. An individual is also considered to own a proportionate share of the stock owned by a partnership, corporation or trust of which the individual is a partner, shareholder or beneficiary; and

(3) a partnership, if the individual owns, directly or indirectly, more than fifty percent (50%) of the capital interest or profits interest in the partnership.

(B) Partnership. “Related Persons” to a partnership (or to a limited liability company treated for tax purposes as a partnership) include but are not limited to:

(1) a partner, if the partner owns, directly or indirectly, more than fifty percent (50%) of the capital interest or profits interest in the partnership;

(2) another partnership in which the same Person or Persons own, directly or indirectly, more than fifty percent (50%) of the capital interest or profits interest; and

(3) a corporation, if any partner or group of partners own, directly or indirectly, more than fifty percent (50%) of the capital interest or profits interest in the partnership and more than fifty percent (50%) in value of the outstanding stock of the corporation.

(C) Corporation: “Related Persons” to a corporation include but are not limited to:

(1) an individual who owns, directly or indirectly, more than fifty percent (50%) in value of the outstanding stock of the corporation, or any employee-owner of a personal service corporation irrespective of the percentage ownership amount;

(2) a partnership, if any partner or group of partners own, directly or indirectly, more than fifty percent (50%) of the capital interest or profits interest in the partnership and more than fifty percent (50%) in value of the outstanding stock of the corporation;

(3) another corporation, if that other corporation owns more than fifty percent (50%) of the voting power or value of the stock of the first corporation;

(4) another corporation, if more than fifty percent (50%) of the voting power or value of its stock is owned by the first corporation;

(5) another corporation, if an individual, directly or indirectly, owns more than fifty percent (50%) in value of the outstanding stock of both corporations, provided that one of the corporations was a personal holding company or foreign personal holding company with respect to the taxable year of the corporation preceding the date of the transaction in question; and

(6) another corporation which is a member of the same “controlled group of corporations.” The term “controlled group of corporations” means:

(a) a parent subsidiary controlled group;

(b) a brother-sister controlled group;

(c) a combined group consisting of three or more corporations each of which is a member of a group of corporations described directly above in (a) or (b) and one of which is a common parent corporation included in a parent-subsidiary controlled group and also is included in a brother-sister controlled group; and

(d) two or more insurance companies subject to federal taxation as life insurance companies under Section 801 of the Code which are members of a controlled group of corporations described directly above in (a), (b) or (c).

The term “controlled group of corporations” is more fully defined in Section 1563(a) of the Code, except that, pursuant to Section 144(a)(3)(B) of the Code (formerly Section 103(b)(6)(C) of the 1954 Code), “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears in Section 1563(a) of the Code.

(D) Miscellaneous: The following are also considered “Related Persons”:

(1) a grantor and a fiduciary of any trust;

(2) a fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(3) a fiduciary of a trust and a beneficiary of such trust;

(4) a fiduciary of a trust and a beneficiary of another trust, if the same Person is a grantor of both trusts; and

(5) a fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a Person who is a grantor of the trust.

(E) Stock Ownership: For purposes of determining stock ownership under all of the above, except subparagraph (C)(6) (relating to members of a “controlled group of corporations”), the following shall apply:

(1) stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by or for its shareholders, partners or beneficiaries;

(2) an individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(3) an individual owning (otherwise than through his family by the application of subparagraph (2) above) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(4) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors and lineal descendants;

(5) stock constructively owned by a Person by reason of the application of subparagraph (1) above shall, for the purpose of applying subparagraphs (1), (2) or (3) above, be treated as actually owned by such Person, but stock constructively owned by an individual by reason of the application of subparagraphs (2) or (3) above shall not be treated as owned by him for the purpose of again applying either subparagraphs (2) or (3) in order to make another the constructive owner of such stock;

(6) the ownership of a capital interest or profits interest in a partnership shall be determined in accordance with subparagraphs (1) through (5) of this paragraph (E), excluding subparagraph (3); and

(7) for the rules for determining stock ownership for purposes of determining whether a corporation is a member of a "controlled group of corporations," see Section 1563(d) of the Code.

## **EXHIBIT B**

### **ARBITRAGE REBATE COMPLIANCE REQUIREMENTS**

#### **ARTICLE I**

##### **DEFINITIONS AND INTERPRETATION**

###### **Section 1.1 Certain Definitions.**

Except as otherwise herein defined, all words and phrases used herein shall have the meanings given to such terms in the Tax Compliance Agreement among the **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION** and **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL** dated November 3, 2015 relating to the Buffalo and Erie County Industrial Land Development Corporation Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015.

###### **Section 1.2 Interpretation.**

In this Exhibit:

(a) Unless the context requires otherwise, words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(b) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(c) This Exhibit shall be governed by and construed in accordance with the applicable laws of the State of New York.

(d) The headings of the several Sections in this Exhibit have been prepared for convenience of reference only and shall not control, affect the meaning of or be construed as an interpretation of any provision of this Exhibit.

(e) If any provision of this Exhibit shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions hereof.

(f) This Exhibit shall survive the purchase and sale of the Series 2015 Bonds. The obligations of the Institution to make payments required by Article II hereof on behalf of the Issuer and all indemnities shall survive any termination or expiration of this Tax Compliance Agreement and the payment of the Series 2015 Bonds.

###### **Section 1.3 Covenant with Owners.**

The Issuer and the Institution agree that, subject to the provisions of Section 9.4 “Issuer’s Reliance on Others” of this Tax Compliance Agreement, the covenants, agreements, representations and warranties of the Institution and the Issuer (in reliance on the covenants, agreements, representations and warranties of the Institution) contained in this Exhibit are made

in part to induce the owners of the Series 2015 Bonds (“*Owners*”) to purchase the Series 2015 Bonds. Accordingly, all covenants, agreements, representations and warranties by the Institution and the Issuer herein are declared to be for the benefit of the Owners.

### **Section 2.1 Covenants Against Arbitrage Bonds.**

(a) The Institution covenants and agrees, for itself and on behalf of the Issuer, that the Proceeds, investment earnings thereon, Investment Property acquired with Proceeds or investment earnings thereon and any other moneys on deposit in any fund or account maintained in respect of the Series 2015 Bonds (whether such moneys were derived from the proceeds of the sale of the Series 2015 Bonds or from other sources) will not be used in a manner which would cause any 2015 Bonds to be “arbitrage bonds” within the meaning of such term in Section 148 of the Code.

(b) The Institution specifically covenants and agrees to comply, and the Issuer hereby covenants to comply and hereby directs the Institution to comply, with the provisions contained in this Exhibit and all other provisions of Section 148 of the Code and of Treas. Reg. §§1.148-0 through 1.148-11 and § 1.150-1 and any successor regulation for the purpose of assuring that none of the Series 2015 Bonds become “arbitrage bonds” within the meaning of such term in Section 148 of the Code.

(c) Section 148(f) of the Code requires the payment to the United States of the excess of the amount earned on the investment of Gross Proceeds in Nonpurpose Investments over the amount that would have been earned on such investments had the amount so invested been invested at a rate equal to the Yield on the Series 2015 Bonds, together with any income attributable to such excess. In order to meet the rebate requirement of Section 148(f), the Institution agrees and covenants to take the following actions set forth in Section 2.2.

(d) In furtherance of the covenant and agreement made in paragraph (a) of this Section 2.1 above, and without any limitation thereof, the Institution covenants and agrees, for itself and on behalf of the Issuer, that, in the event any Proceeds that are subject to Yield Restriction are found to have been invested in such a manner as the applicable Yield Restriction has been exceeded, the Institution will cause Yield Reduction payments to be made to the United States under the Issuer of, and pursuant to the requirements of Treas. Reg. § 1.148-5(c). As provided in Treas. Reg. § 1.148-5(c), any such yield reduction payments are to be made within the times and in the manner provided for payments of Rebate Amount as provided in Treas. Reg. § 1.148-3.

### **Section 2.2 Covenants Pertaining to Rebate Requirement.**

(a) ***Payment to the United States.*** The Institution and the Issuer agree that if all of the Gross Proceeds of the Series 2015 Bonds are not expended for the purpose of the Issue as provided in Sections 2.2(c), (d) and (e) hereof, then the Institution will pay on behalf of the Issuer to the Treasury of the United States of America, in the manner prescribed in Treas. Reg. § 1.148-3:

(i) an amount that, when added to all rebate payments, equals at least ninety percent (90%) of the total Rebate Amount due on the Issue as of each Installment Computation Date (computed from the Issue Date to the Installment Computation Date) made pursuant to this Section 2.2(a); and

(ii) all of the Rebate Amount as of the Final Computation Date.

(b) ***Compliance with Rebate Requirement.***

(i) To assist compliance with Section 2.2(a) hereof, the Institution agrees that it will take the actions, follow the procedures and otherwise comply with the requirements set forth in this Section 2.2 on behalf of the Issuer.

(ii) For each Nonpurpose Investment in which Gross Proceeds are invested, the Institution on behalf of the Issuer shall maintain records adequate to determine the rebate payment, if any (the "Investment Records"). The Investment Records will include but are not necessarily limited to, information regarding the following with respect to each and every Nonpurpose Investment:

- (1) the purchase price;
- (2) nominal rate of interest;
- (3) amount of accrued interest purchased (included in purchase price);
- (4) par or face amount;
- (5) purchase date;
- (6) maturity date;
- (7) amount of original issue discount or premium (if any);
- (8) type of Investment Property;
- (9) frequency of periodic payments;
- (10) period of compounding;
- (11) yield to maturity;
- (12) date of disposition;
- (13) all receipts with respect to such Investment Property;
- (14) brokerage commissions or other similar fees;
- (15) amount realized on the disposition (including accrued interest); and
- (16) market price data sufficient to establish that the purchase price was equal to the fair market value on the date of acquisition or, if earlier, on the date of a binding contract to acquire such Investment Property. For instance, it would be sufficient for the Institution, when purchasing a Treasury Bill on behalf of the Issuer to record: that it had received three independent, arm's-length bids; the bidders; the bids themselves; and that the purchaser had chosen the lowest bid.

The Institution shall provide all Investment Records to the Issuer upon request and at the times provided in Section 2.2(b)(v) hereof. The Institution shall maintain a copy of all Investment Records and the results of all calculations or payments required under this Section 2.2 for six years after the final interest or principal payment under the Loan Agreement.

(iii) The Institution shall determine the amount of the Rebate as of the Computation Dates.

(iv) For each Computation Period ending on the Computation Dates referred to in Section 2.2(b)(iii), the Institution shall calculate or cause to be calculated the amount of the Rebate Amount. If the amount determined in this Section 2.2(b) for any Computation Period is positive, the Institution on behalf of the Issuer shall pay Rebate to the United States as provided in Section 2.2(b)(v).

(v) Not later than thirty (30) days after each Installment Computation Date, the Institution shall deliver to the Issuer (A) all Investment Records for the immediately preceding Computation Period, and (B) a copy of the Institution's calculations and work papers supporting its computation of the Rebate Amount or a copy of a arbitrage rebate analysis secured by the Institution by a third party rebate analyst (each referred to herein as the "Rebate Analysis"). If the Institution determines that no Rebate Installment is payable to the United States, it shall advise the Issuer in writing of its determination. If the Institution determines that a Rebate Installment is payable to the United States, the Institution shall, at the time it delivers the Investment Records and Rebate Analysis, deliver to the Issuer an Internal Revenue Service Form 8038-T in proper form for execution and filing by the Issuer, and a check or money order, payable to "United States Treasury" in the amount of the Rebate Installment (and any interest and penalty due thereon).

(vi) The Issuer shall be entitled to rely conclusively on (i) the completeness and accuracy of the Internal Revenue Service Form 8038-T delivered by the Institution or (ii) the Institution's representation and covenant that no Rebate Installment is due as of the Computation Date, pursuant to Section 2.2(b)(v); provided, however, that such entitlement shall not constrain or diminish the right of the Issuer to prepare its own rebate calculations, which calculations shall be binding on the Institution. The Institution shall indemnify and hold the Issuer, its officers, directors, employees and agents harmless against any claim, damage, assessment, penalty or charge arising from such reliance.

(vii) The Institution shall, at its own cost and expense, defend any claim, audit, examination or inquiry by the Internal Revenue Service regarding (i) the failure to file form 8038-T or pay arbitrage rebate when due, or (ii) the accuracy and completeness of any form 8038-T filed by the Issuer pursuant to Section 2.2(b) hereof. The Institution shall pay the Issuer's reasonable expenses (including but not limited to legal fees and the fees of a rebate analyst) incurred by the Issuer connection with any such claim, audit, examination or inquiry by the Internal Revenue Service or any other agency charged with the enforcement of the Internal Revenue laws. The Institution shall be solely responsible for payment of any additional rebate, interest or penalty related to the Institution's determination of rebate liability pursuant to this Exhibit.

(c) ***Six-Month Exception to Rebate Requirement.***

(i) Notwithstanding anything in this Section 2.2 to the contrary, if all of the Gross Proceeds of the Series 2015 Bonds (which term "Gross Proceeds" shall not include, for purposes of this Section 2.2(c), amounts on deposit in any

reasonably required reserve or replacement fund, amounts not reasonably expected to become Gross Proceeds on the Issue Date but which become Gross Proceeds more than six months after the Issue Date, sale or investment proceeds on a Purpose Investment, and repayments of grants) have been expended for the purpose of the Issue within six months after the Issue Date, then the amount of the Rebate Amount shall be zero until such time as either (A) amounts are received from the sale, condemnation, casualty or other disposition of the Project Facility or any part thereof, or (B) any other amounts are pledged as security for the Series 2015 Bonds, and neither of such amounts are expended on the payment of principal or interest on the Series 2015 Bonds within thirteen (13) months of the date of their receipt, provided, however, that the rebate requirement under Section 2.2 hereof is satisfied from the Issue Date with respect to earnings on amounts in any reasonably required reserve or replacement fund.

(ii) For purposes of the six-month expenditure exception, payments of principal on the Series 2015 Bonds which are part of the construction issue shall not be treated as an expenditure of the Gross Proceeds of the Issue.

(d) ***Eighteen-Month Exception to Rebate Requirement.***

(i) Notwithstanding anything in this Section 2.2 to the contrary, if all of the Gross Proceeds of the Series 2015 Bonds (which term “Gross Proceeds” shall not include, for purposes of this Section 2.2(d), amounts on deposit in any reasonably required reserve or replacement fund, amounts not reasonably expected to become Gross Proceeds on the Issue Date but which become Gross Proceeds more than six months after the Issue Date, sale or investment proceeds on a Purpose Investment and repayments of grants) have been expended for the purpose of the Issue within eighteen months after the Issue Date, then the amount of the Rebate Amount shall be zero provided that the expenditure test set forth in subparagraph (ii) below is satisfied until such time as either (A) amounts are received from the sale, condemnation, casualty or other disposition of the Project Facility or any part thereof, or (B) any other amounts are pledged as security for the Series 2015 Bonds, and neither of such amounts are expended on the payment of principal or interest on the Series 2015 Bonds within thirteen (13) months of the date of their receipt, and further provided that the rebate requirement under Section 2.2 hereof is satisfied from the Issue Date with respect to earnings on amounts in any reasonably required reserve or replacement fund. In order to qualify for this expenditure test, the construction portion of the Series 2015 Bonds must satisfy the temporary period requirements under Treas. Reg. § 1.148-2(e)(2).

(ii) In order to satisfy the expenditure test, the following percentages of Gross Proceeds must be spent for the governmental or exempt purposes of the Issue within the following periods commenced on the date of issuance:

15% within six (6) months

60% within one (1) year, and

100% within eighteen (18) months.

(iii) With respect to the above requirement to expend one hundred percent (100%) within eighteen (18) months, one hundred percent (100%) will be treated as expended within eighteen (18) months if (A) one hundred percent (100%) is expended within thirty (30) months of the Issue Date and such requirement would have been met within eighteen (18) months but for a reasonable retainage (not exceeding five percent (5%) of the Net Sale Proceeds of the Issue), *e.g.*, retainage to insure compliance with the terms of construction contracts or (B) the Institution exercises due diligence to complete the Project and the unexpended amount at the end of eighteen (18) months does not exceed the lesser of three percent (3%) of the Issue Price of the Construction Portion of the Series 2015 Bonds or \$250,000.

(iv) For purposes of the eighteen (18) month expenditure exception, payments of principal on the Series 2015 Bonds which are part of the construction issue shall not be treated as an expenditure of the Gross Proceeds of the Issue.

(e) ***Two-Year Exception to Rebate Requirement.***

(i) Notwithstanding anything in this Section 2.2 to the contrary, if all of the Available Construction Proceeds (as defined below) of the Series 2015 Bonds have been expended within two (2) years of the Issue Date of the Series 2015 Bonds, then the amount of the Rebate Amount shall be zero provided that (A) after such two (2) year period the rebate requirement is met with respect to earnings on amounts in any reasonably required reserve or replacement fund, (B) the expenditure test set forth in subparagraph (ii) below is satisfied, (C) the Available Construction Proceeds are derived from a “construction issue” as defined in subparagraph (iii) below, (D) the ownership test in subparagraph (iv) is satisfied, and (E) the Series 2015 Bonds are “qualified bonds” as described in subparagraph (v) below.

(ii) In order to satisfy the expenditure test, the following percentages of Available Construction Proceeds must be spent for the governmental or exempt purposes of the Issue within the following periods commencing on the date of issuance:

- (A) ten percent (10%) within six (6) months
- (B) forty-five percent (45%) within one (1) year
- (C) seventy-five percent (75%) within eighteen (18) months and
- (D) one hundred percent (100%) within two (2) years.

With respect to the above requirement to expend one hundred percent (100%) within two (2) years, one hundred percent (100%) will be treated as expended within two (2) years if (A) one hundred percent (100%) is expended within three (3) years of the Issue Date and such requirement would have been met within two (2) years but for a reasonable retainage (not exceeding five percent (5%) of the Available Construction Proceeds of the Issue), *e.g.*, retainage to insure compliance with the terms of construction contracts or (B) the Institution exercises due diligence to complete the Project Facility and the unexpended

amount at the end of two (2) years does not exceed the lesser of three percent (3%) of the Issue Price of the Construction Portion of the Series 2015 Bonds or \$250,000.

For purposes of the expenditure test set forth in this subparagraph (ii), the term “Available Construction Proceeds” shall equal the Issue Price of the construction issue, increased by earnings on the Issue Price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the Issue, and earnings on all of the foregoing earnings, and reduced by the amount of the Issue Price in any reasonably required reserve or replacement fund and the issuance costs financed by the Issue and by any sale or investment proceeds derived from payments under a Purpose Investment or any repayments of grants.

If the Institution on behalf of the Issuer so elects on the date of issuance of the Series 2015 Bonds, the term “Available Construction Proceeds” shall exclude investment earnings on any reasonably required reserve or replacement fund but in such event investment earnings on such fund will be subject to the rebate requirement under Section 2.2 hereof from the date of issuance (rather than from the end of the two-year expenditure period or upon the completion of construction, whichever occurs earlier).

(iii) The two-year expenditure exception shall apply only to issues where at least seventy-five percent (75%) of the Available Construction Proceeds of the Issue are to be used for construction expenditures with respect to property which is owned by a Governmental Person or by a Section 501(c)(3) Organization. If only a portion of an Issue is to be used for Construction Expenditures, such portion and the portion which is not to be used for Construction Expenditures may, at the election of the Institution on behalf of the Issuer, be treated as separate issues for the purposes of the application of the two (2) year expenditure exception and the six (6) month and eighteen (18) month expenditure exceptions under Sections 2.2(c) and 2.2(d) hereof, respectively.

In order to qualify as separate issues, (1) one of the separate issues must meet the definition of a construction issue; (2) the Institution on behalf of the Issuer must reasonably expect, as of the Issue Date, that this construction issue will finance all of the Construction Expenditures to be financed by the entire Issue; and (3) on or before the Issue Date, the Institution on behalf of the Issuer must make an election to apportion the Issue under Treas. Reg. § 1.148-7(j)(1) that specifically identifies the amount of the Issue Price of the Issue allocable to the construction issue.

(iv) All property to be financed by the Issue must be owned by a Governmental Person or a Section 501(c)(3) Organization. Property leased by a Governmental Person or Section 501(c)(3) Organization shall be treated as owned by such Governmental Person or Section 501(c)(3) Organization if (1) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment tax credit with respect to the property, (2) the lease term is not more than eighty percent (80%) of the reasonably expected economic life of the property, and (3) the lessee has no

option to purchase the property other than at fair market value as of the time the option is exercised.

(v) The two (2) year expenditure exception shall apply to: (1) bonds which are not private activity bonds, (2) qualified 501(c)(3) bonds and (3) private activity bonds to finance property to be owned by a Governmental Person or a Section 501(c)(3) Organization.

(vi) If the Institution on behalf of the Issuer elects on or before the Issue Date of the Series 2015 Bonds to pay a penalty in lieu of payment of the Rebate Amount, the rebate requirement shall be deemed to be satisfied if the Institution on behalf of the Issuer pays a penalty with respect to the close of each six-month period after the Issue Date of the Series 2015 Bonds equal to one and one-half percent (1.5%) of the amount of the Available Construction Proceeds of the Issue which, as of the close of such period, are not spent as required under the expenditure test in subparagraph (ii) above. The one and one-half percent (1.5%) penalty shall cease to apply only as provided in subparagraph (vii) below or after the latest maturity date of any bond in the Issue (including any refunding bond with respect thereto).

(vii) At the election of the Institution on behalf of the Issuer (made not later than ninety (90) days after the earlier of the end of the initial temporary period under Section 148(c) of the Code or the date the construction is substantially completed), the one and one-half percent (1.5%) penalty shall not apply after the initial temporary period if the requirements of (A), (B) and (C) below are met:

(A) The Institution on behalf of the Issuer pays a penalty within ninety (90) days after the end of the initial temporary period equal to three percent (3%) of the amount of Available Construction Proceeds of the Issue which is not spent for the governmental purposes of the Issue as of the close of such initial temporary period multiplied by the number of years (including fractions of years computed to two (2) decimal places) in the initial temporary period.

(B) The amount of the Available Construction Proceeds of the Issue which is not spent for the governmental purposes of the Issue as of the close of such initial temporary period is invested at a yield not exceeding the Yield on the Issue or which is invested in any Tax-Exempt Bond.

(C) The amount of the Available Construction Proceeds of the Issue that is not spent for the governmental purposes of the Issue as of the earliest date on which Bonds may be redeemed is used to redeem Bonds on such date.

(viii) If:

(A) the construction to be financed by a construction issue is substantially completed before the end of the initial temporary period,

(B) the Institution on behalf of the Issuer identifies an amount of Available Construction Proceeds that will not be spent for the governmental purposes of the Issue,

(C) the Institution on behalf of the Issuer has met all of the conditions to make the election to terminate the one and one-half percent (1.5%) penalty under subparagraph (vii) above, and

(D) the Institution on behalf of the Issuer makes an election under this subparagraph (viii) before the close of the initial temporary period and not later than ninety (90) days after the date the construction is substantially completed to terminate the one and one-half percent (1.5%) penalty, then the one and one-half percent (1.5%) penalty under subparagraph (vi) above and the three percent penalty (3%) under subparagraph (vii) above shall be applied to the Available Construction Proceeds so identified as if the initial temporary period ended as of the date the election is made.

(ix) For purposes of the two (2) year expenditure exception, payments of principal on the Series 2015 Bonds that are part of the construction issue shall not be treated as an expenditure of the Available Construction Proceeds of the Issue.

(x) The two (2) year expenditure exception shall not apply to any refunding bond and any portion of an Issue which is used to refund any Issue (or portion thereof) shall be treated as a separate Issue for purposes of subparagraph (iii) above.

(xi) The Institution on behalf of the Issuer reasonably expects as of the Issue Date that at least seventy-five percent (75%) of the Available Construction Proceeds of the issue are to be spent for Construction Expenditures with respect to property owned by a Governmental Person or a Section 501(c)(3) Organization.

With respect to earnings on the Bond Fund and the Debt Service Portion of the Pledge Fund (to the extent such fund or portion constitutes a Bona Fide Debt Service Fund), any amount earned on such funds shall not be taken into account if the aggregate gross earnings on such funds for the Bond Year are less than \$100,000. If the aggregate gross earnings on such funds for the Bond Year do equal or exceed \$100,000, such amounts must be taken into account in determining the Rebate Amount. If the Bond Fund and the Debt Service Portion of the Pledge Fund (to the extent such fund or portion constitutes a Bona Fide Debt Service Fund) are funds with respect to an issue with an average annual debt service that is not in excess of \$2,500,000, then no earnings on these funds are taken into account in determining the Rebate Amount.

## EXHIBIT C

### CERTIFICATE OF FIRST NIAGARA BANK, N.A.

#### WITH RESPECT TO ISSUE PRICES AND OTHER MATTERS

This Certificate is furnished by First Niagara Bank, N.A. (the “*Purchaser*”) in connection with the purchase of \$3,250,000 in principal amount of Buffalo and Erie County Industrial Land Development Corporation (the “*Issuer*”) Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 issued in the aggregate principal amount of \$3,250,000 (the “*Series 2015 Bonds*”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Tax Compliance Agreement (the “*Tax Compliance Agreement*”) to which this Certificate has been appended.

#### WE HEREBY CERTIFY as follows:

(1) The Purchaser purchased the Series 2015 Bonds in a direct, private placement transaction pursuant to the terms of a Bond Purchase Agreement dated November 3, 2015 (the “*Agreement*”), by and among the Issuer, the Institution and the Purchaser. The sale date of the Series 2015 Bonds is November 3, 2015 (the “*Sale Date*”).

(2) The Purchaser purchased the Series 2015 Bonds at a purchase price equal to 100% of the principal amount thereof. This purchase price of 100% of the principal amount of the Series 2015 Bonds was established in an arm’s-length transaction and the Purchaser made no additional payments with respect to the Series 2015 Bonds to the Issuer (or to others on the Issuer’s behalf) other than the purchase price for the Series 2015 Bonds. The Purchaser acknowledges that such price will be relied on by Bond Counsel as the issue price for establishing the Yield on the Series 2015 Bonds and relied upon by the Issuer and the Institution in computing any rebate due on the Series 2015 Bonds.

(3) The Series 2015 Bonds are being purchased for investment for our own account and not with a present view toward resale or the distribution thereof, in that we do not now intend to resell or otherwise dispose of all or any part of our interest in the Series 2015 Bonds; provided, however, we retain the right to assign, pledge as security, participate or transfer the Series 2015 Bonds as permitted in the Agreement.

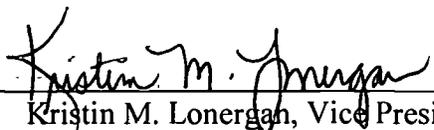
(4) The Purchaser received a fee in the amount of \$7,394.50 in connection with the purchase of the Series 2015 Bonds. The Purchaser characterizes the fee as an origination fee. The fee is for the payment of services or property provided by the Purchaser and does not represent a payment in the nature of points.

*[Signatures follow on next page]*

We understand that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Compliance Agreement and Barclay Damon, LLP in connection with its opinion as to the exclusion from gross income of the interest on the Series 2015 Bonds for federal income tax purposes. The Undersigned is certifying only as to facts in existence on the date hereof. Nothing herein represents the undersigned's interpretation of any laws – in particular, the regulations under the Internal Revenue Code of 1986, as amended (the "Code") or the application of any laws to these facts. The certifications contained herein are not necessarily based on personal knowledge, but may instead be based on either inquiry deemed adequate by the undersigned or institutional knowledge (or both) regarding the matters set forth herein. We are neither accountants nor actuaries, nor are we engaged in the practice of law; accordingly, while we believe our determinations described herein to be correct, we do not warrant their validity for purposes of Sections 103 and 141 through 150 of the Code.

November 3, 2015

**FIRST NIAGARA BANK, N.A.**

By:   
Kristin M. Lonergan, Vice President

**EXHIBIT D**

**IRS LETTER REGARDING TAX-EXEMPT STATUS**

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**See Attached**



P.O. Box 2508  
Cincinnati OH 45201

In reply refer to: 0248164798  
Apr. 30, 2012 LTR 4168C E0  
20-0723492 000000 00  
00021180  
BODC: TE

BUFFALO ACADEMY OF SCIENCE CHARTER  
SCHOOL  
% YUNUS KUMEK  
190 FRANKLIN ST  
BUFFALO NY 14202-2407

004923

Employer Identification Number: 20-0723492  
Person to Contact: Mr Bayer  
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your Apr. 19, 2012, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in October 2004.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(ii).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website [www.irs.gov/eo](http://www.irs.gov/eo) for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. We will publish a list of organizations whose tax-exempt status was revoked under section 6033(j) of the Code on our website beginning in early 2011.

0248164798  
Apr. 30, 2012 LTR 4168C E0  
20-0723492 000000 00  
00021181

BUFFALO ACADEMY OF SCIENCE CHARTER  
SCHOOL  
% YUNUS KUMEK  
190 FRANKLIN ST  
BUFFALO NY 14202-2407

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If you have any questions, please call us at the telephone number  
shown in the heading of this letter.

Sincerely yours,



S. A. Martin, Operations Manager  
Accounts Management Operations

## **EXHIBIT E**

### **EXCEPTIONS TO REPRESENTATIONS AND COVENANTS OF INSTITUTION**

This Exhibit E to the Tax Compliance Agreement contains a description of any contracts, arrangements or other information which would, were such matters not described in this Exhibit, cause any of the representations of the Institution in such Agreement not be true and correct. The information provided below is numbered to correspond to the relevant provisions of Tax Compliance Agreement to which this Exhibit is attached.

#### **Section 2.6 CONTRACTS FOR USE OR LEASE OF THE PROJECT FACILITY**

The Institution entered into an agreement for housekeeping and janitorial services. Pursuant to Rev. Proc. 97-13, contracts for services that are solely incidental to the primary function of the Project Facility such as contracts for janitorial or similar services do not constitute private business use.

The Institution has an Agreement on Provision of Food Services with the Buffalo Board of Education for 2015-2016 school year pursuant to which employees of the Board of Education provide food services to students of the Institution at the Project Facility. The Buffalo Board of Education is a Governmental Person and therefore such use does not constitute private business use of the Project Facility.

**SCHEDULE A**  
**USE OF PROCEEDS OF THE SERIES 2015 BONDS**

**PART I: Application of Proceeds of 2015 Bonds to Qualified Costs.**

1. The total Proceeds of the Series 2015 Bonds (exclusive of accrued interest) consist of sum of:

A.	Sale Proceeds, equal to the initial offering price to the public:	
	Face amount of the Series 2015 Bonds	\$3,250,000.00
	Plus original issue premium	\$ <u>          -0-</u>
	<b>TOTAL SALE PROCEEDS</b>	<b>\$3,250,000.00</b>
B.	Transferred Proceeds	\$ <u>          -0-</u>
C.	Investment Proceeds	\$ <u>          0</u>
	<b>TOTAL PROCEEDS</b>	<b>\$3,250,000.00</b>

2. Amount of Issuance Costs and certain other costs of the Series 2015 Bonds to be paid from Sale Proceeds:

Issuance Costs	\$ <u>      7,394.50</u>
<b>TOTAL ISSUANCE COSTS</b>	<b>\$      7,394.50</b>
Other Qualified Costs	\$      49,832.00

The Issuance Costs in the amount of \$7,394.50 were paid with the Sale Proceeds of the Series 2015 Bonds which is 0.23% thereof and, therefore, is not greater than the two percent (2%) limitation established by the Code.

3. From the total Proceeds of the Series 2015 Bonds (\$3,250,000) subtract any amount used to fund a reasonably required reserve fund (\$-0-). The difference (\$3,250,000) is the amount referred to in this Schedule A as "Net Proceeds."

4. From the Net Proceeds (\$3,250,000), subtract the amount of Proceeds, if any, to be used to refund any bonds (\$0). The difference (\$3,250,000) is referred to in this Schedule A as the "Adjusted Net Proceeds."

5. Adjusted Net Proceeds will be applied as follows:

Qualified Costs of the Project	\$3,192,773.50
Issuance Costs	\$      7,394.50
Other Qualified Costs (including Issuer Fee and Title Insurance)	\$ <u>      49,832.00</u>
<b>TOTAL</b>	<b>\$3,250,000.00</b>

**Part II: Information to be Submitted to Internal Revenue Service with respect to the Series 2015 Bonds.**

The following information on the use of the Sale Proceeds of the Series 2015 Bonds must be furnished to the Internal Revenue Service by the Issuer on Form 8038. The amount shown in Item 6 below as "Non-Refunding Proceeds" may not equal Adjusted Net Proceeds reflected in Part I above because the Transferred Proceeds, if any, and expected Investment Proceeds, if any, have not been included.

1.	Issue Price (Face amount of \$3,250,000.00 plus premium of \$-0-)	\$ 3,250,000.00
2.	Issuance Costs (including any Underwriter's Discount)	\$ 7,394.50
3.	Credit Enhancement	\$ -0-
4.	Reasonably Required Reserve Fund Deposits	\$ -0-
5.	Refunding Proceeds	\$ <u>-0-</u>
6.	Non-Refunding Proceeds (amount on line 1, less amounts on lines 2 through 5)	\$ 3,242,605.50
<b>Allocation of Non-Refunding Proceeds</b>		
a.	Acquisition of land	\$ -0-
b.	Building and Structures	\$ 3,192,773.50
c.	Equipment with an ACRS life of more than 5 years	\$
d.	Equipment with an ACRS life of 5 years or less	\$ -0-
e.	Other (Issuer and Title Insurance fees)	\$ <u>49,832.00</u>
	Total (Non-Refunding Proceeds)	\$
7.	Accrued Interest	\$ -0-

**SCHEDULE B**

**AVERAGE ECONOMIC LIFE OF PROJECT FACILITY**

[Excerpt of Appraisal to be attached]



**Northeastern  
Appraisal Associates  
Commercial, Inc.**

**616 NORTH FRENCH ROAD, SUITE 200  
AMHERST, NEW YORK 14228  
PHONE: (716) 634-8970 FAX: (716) 565-2024**

**Client:** First Niagara Bank, N.A.  
Appraisal Department  
726 Exchange Street, 9<sup>th</sup> Floor  
Buffalo, New York 14210

**Attention:** Mr. Ronald Hibit

**Appraiser:** Donna F. Renier  
Principal Appraiser  
  
Michael Gluc, MAI  
President, Review Appraiser

**NEAC File No.:** 15-348

**FNFG File No.:** 15-000686-01

**Applicant:** Buffalo Academy of Science Charter School

**Property Type:** School/Educational

**Appraisal Report  
(Summary Format)  
Buffalo Academy of Science Charter School (BASCS)  
180 Franklin Street  
Buffalo, New York 14202**

**Date of Valuation: July 27, 2015**

**The "As Is" Market Value of the Fee Simple Interest  
In the Subject Property,  
As of July 27, 2015, Is:**

**\$4,150,000**

**EXECUTIVE SUMMARY**

<b>ADDRESS</b>	180 Franklin Street Buffalo, New York 14202
<b>SBL NO.</b>	111.45-3-5
<b>REPUTED OWNER</b>	Apple Educational Services, Inc.
<b>INTEREST BEING APPRAISED</b>	Fee Simple
<b>BUILDING AREA</b>	63,000± Total Gross
<b>LAND SIZE/AREA</b>	.61± acre
<b>ZONING</b>	DO-Downtown Opportunity (Conforms)
<b>ASSESSMENT</b>	\$2,953,500
<b>FULL VALUE ASSESSMENT</b>	\$3,356,250
<b>REAL ESTATE TAXES</b>	Tax Exempt (\$102,373.12 True Taxes)
<b>ACTUAL AGE</b>	63± Years – Constructed in 1952
<b>EFFECTIVE AGE</b>	15± Years
<b>REMAINING ECONOMIC LIFE</b>	35± Years (Renovations 2006, 2010 & 2013)
<b>HIGHEST &amp; BEST USE AS VACANT</b>	See "Highest & Best Use" Section
<b>HIGHEST &amp; BEST USE AS IMPROVED</b>	Continued Present Use as School/Educational
<b>DATE OF PROPERTY INSPECTION</b>	July 27, 2015
<b>DATE OF PROPERTY VALUATION</b>	July 27, 2015

**EXECUTIVE SUMMARY: (Continued)**

**VALUE INDICATORS**

<b>COST APPROACH</b>	<u>N/A</u>
<b>SALES COMPARISON APPROACH</b>	<u>\$3,600,000</u>
<b>INCOME APPROACH</b>	<u>\$4,375,000</u>

**FINAL "AS-IS" MARKET VALUE**

**\$4,150,000**

**SCHEDULE C**

**BOND REPORT**

**See Attached**

**SCHEDULE C**

**BOND REPORT**

**See Attached**

FORM 8038 STATISTICS

ILDC  
BASCS 11-3-15 Bond

Dated Date 11/03/2015  
Delivery Date 11/03/2015

Bond Component	Date	Principal	Coupon	Price	Issue Price	Redemption at Maturity
Bond Component	11/30/2015	36,111.11	0.000%	100.000	36,111.11	36,111.11
	12/31/2015	36,111.11	0.000%	100.000	36,111.11	36,111.11
	01/31/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	02/29/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	03/31/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	04/30/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	05/31/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	06/30/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	07/31/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	08/31/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	09/30/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	10/31/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	11/30/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	12/31/2016	36,111.11	0.000%	100.000	36,111.11	36,111.11
	01/31/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	02/28/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	03/31/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	04/30/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	05/31/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	06/30/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	07/31/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	08/31/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	09/30/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	10/31/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	11/30/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	12/31/2017	36,111.11	0.000%	100.000	36,111.11	36,111.11
	01/31/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	02/28/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	03/31/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	04/30/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	05/31/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	06/30/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	07/31/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	08/31/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	09/30/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	10/31/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	11/30/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	12/31/2018	36,111.11	0.000%	100.000	36,111.11	36,111.11
	01/31/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	02/28/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	03/31/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	04/30/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	05/31/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	06/30/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	07/31/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	08/31/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	09/30/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	10/31/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	11/30/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11
	12/31/2019	36,111.11	0.000%	100.000	36,111.11	36,111.11

FORM 8038 STATISTICS

ILDC  
BASCS 11-3-15 Bond

Bond Component	Date	Principal	Coupon	Price	Issue Price	Redemption at Maturity
Bond Component:						
	01/31/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	02/29/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	03/31/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	04/30/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	05/31/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	06/30/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	07/31/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	08/31/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	09/30/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	10/31/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	11/30/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	12/31/2020	36,111.11	0.000%	100.000	36,111.11	36,111.11
	01/31/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	02/28/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	03/31/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	04/30/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	05/31/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	06/30/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	07/31/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	08/31/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	09/30/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	10/31/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	11/30/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	12/31/2021	36,111.11	0.000%	100.000	36,111.11	36,111.11
	01/31/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	02/28/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	03/31/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	04/30/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	05/31/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	06/30/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	07/31/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	08/31/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	09/30/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	10/31/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	11/30/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	12/31/2022	36,111.11	0.000%	100.000	36,111.11	36,111.11
	01/31/2023	36,111.11	0.000%	100.000	36,111.11	36,111.11
	02/28/2023	36,111.11	0.000%	100.000	36,111.11	36,111.11
	03/31/2023	36,111.11	0.000%	100.000	36,111.11	36,111.11
	04/30/2023	36,111.11	0.000%	100.000	36,111.11	36,111.11
		3,249,999.90			3,249,999.90	3,249,999.90

	Maturity Date	Interest Rate	Issue Price	Stated Redemption at Maturity	Weighted Average Maturity	Yield
Final Maturity	04/30/2023		36,111.11	36,111.11		
Entire Issue			3,249,999.90	3,249,999.90	3.7845	

**DISBURSEMENT STATEMENT**

**For**

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

**\$3,250,000 TAX-EXEMPT REVENUE BONDS**

**Issued for the benefit of**

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

**and purchased by**

**FIRST NIAGARA BANK, N.A.**

**CLOSING DATE – November 3, 2015**

**PURCHASE PRICE OF BONDS:**

**\$3,250,000.00**

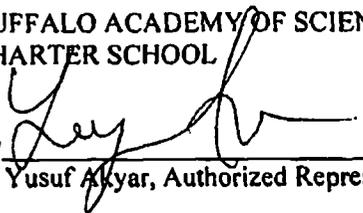
**COSTS OF ISSUANCE PAID OUT OF BOND PROCEEDS:**

**SEE EXHIBIT A**

The undersigned Borrower agrees to the acceptance of the Purchase Price at Closing set forth above and requests payment as set forth on Exhibit A.

Dated as of November 3, 2015:

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By 

**Yusuf Akyar, Authorized Representative**

**EXHIBIT A**

**1. COSTS OF ISSUANCE PAID OUT OF BOND PROCEEDS**

<u>Payee</u>	<u>Amount</u>	<u>Purpose</u>	<u>Payment Method</u>
First Niagara	\$7,394.50	Purchaser's Fees and Costs	Retained by First Niagara Bank, N.A.
Buffalo and Erie County Land Development Corporation	\$32,500	Issuer's Administration Fee	By wire pursuant to following instructions:  Account Number: 8840008349 Account Name: ECIDA – General Fund ABA/Routing: 222370440 Bank: First Niagara Bank – Buffalo, NY Agency Address: 95 Perry Street, Suite 403, Buffalo, NY 14203 For international wire transfers, the Swift Code is FNFGUS31  ILDC FEDERAL ID# 22-2413596
Chicago Title Insurance Company	\$17,332	Title Premium	By wire pursuant to following instructions:  Receiving Bank: Bank of America ABA Number: 026 009 593 Party to Credit: Chicago Title Insurance Account Number to Credit: 1257045899 Phone Advise: MaryAnn Furlong 716-200-5864
<b>TOTAL</b>	<b>\$57,226.50</b>		

**2. DISBURSEMENT OF REMAINDER OF BOND PROCEEDS**

<u>Payee</u>	<u>Amount</u>	<u>Purpose</u>	<u>Payment Method</u>
First Niagara Bank, N.A.	\$1,096,756.66  * includes per diem through 11/3/15	Portion of purchase price consisting of pay-off of existing First Niagara loan	By internal transfer between First Niagara accounts

Apple Educational Services, Inc.	\$2,096,016.84	Portion of purchase price	By wire pursuant to following instructions: Account Number 30100000257 Account Type Demand Deposit Account Account Currency USD Account Title Apple Educational Services Inc. ABA #(Fed Wire/ACH) 026012713 Account with Institution Turkiye Vakiflar Bankasi T.A.O. New York Branch 680 STH Avenue 23RD Floor New York, NY 10019 SWIFT CODE TVBAUS33
<b>TOTAL</b>	<b>\$3,192,773.50</b>		

**3. PURCHASE PRICE AND CLOSING COSTS PAID BY BORROWER FROM EQUITY**

<u>Payee</u>	<u>Amount</u>	<u>Purpose</u>	<u>Payment Method</u>
Apple Educational Services, Inc.	\$456,912.00	Portion of Purchase Price	By wire from Buffalo Academy of Science Charter School account # 750040556 with First Niagara pursuant to following instructions:  Account Number 30100000257 Account Type Demand Deposit Account Account Currency USD Account Title Apple Educational Services Inc. ABA #(Fed Wire/ACH) 026012713 Account with Institution Turkiye Vakiflar Bankasi T.A.O. New York Branch 680 STH Avenue 23RD Floor New York, NY 10019 SWIFT CODE TVBAUS33
Erie County Clerk	\$1,101.50	BASCS recording fees	First Niagara Bank Draft from Buffalo Academy of Science Charter School account # 750040556
Barclay Damon	\$60,000	Bond Counsel Fees and Expenses	By wire from Buffalo Academy of Science Charter School account # 750040556 with First Niagara pursuant to following instructions:  Key Bank, NA 201 S. Warren Street Syracuse, New York

			<p>ABA Routing: 021300077  Acct Num: 3296 8102 2391  Acct Name Barclay Damon LLP  Operating Account  Reference: Sue Katzoff / BASCS</p>
Harris Beach	\$15,300	Issuer's Counsel Fees and Expenses	<p>By wire from Buffalo Academy of Science Charter School account # 750040556 with First Niagara pursuant to following instructions:</p> <p>ABA# 021313103  SWIFT # CTZIUS33  Account # 4199000096 - Harris Beach PLLC  Operating A/C  Harris Beach Address: 99 Garnsey Road,  Pittsford, NY 14534  Bank Citizens Bank, Eastview Office, 5  Eastview Mall Drive, Victor, NY 14564  Reference # - File 279189</p> <p>FEDERAL ID# 84-1623836</p>
Hodgson Russ LLP	\$18,500	Purchaser's Counsel Fees and Expenses	<p>By wire from Buffalo Academy of Science Charter School account # 750040556 with First Niagara pursuant to following instructions:</p> <p>Bank: First Niagara Bank, Buffalo, NY  Account Name: Hodgson Russ LLP Mortgage  Account, 140 Pearl St, Buffalo, NY 14202  Account No. 79908612  ABA: 222370440  Wire Reference - 010043.10228 (CCF)  Contact: Sandy Pulli 716-848-1378</p>
Jaekle, Fleischmann & Mugel, LLP	\$20,076.12	Borrower's Counsel Fees and Expenses	<p>By wire from Buffalo Academy of Science Charter School account # 750040556 with First Niagara pursuant to following instructions:</p> <p>Bank of America  10 Fountain Plaza  Buffalo, NY 14202  ABA Routing# 026009593  Swift Code BOFAUS3N (for wire from foreign country)  Operating Account# 009395102722  Account Name: Jaekle Fleischmann &amp; Mugel</p>

			Reference: George Bellows / BASCS
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**4. PURCHASE PRICE AND CLOSING COSTS PAID OUT OF EARNEST MONEY DEPOSIT  
FOR PURCHASE TRANSACTION HELD BY BARCLAY DAMON (AS BASCS COUNSEL ON  
PURCHASE TRANSACTION)**

<u>Payee</u>	<u>Amount</u>	<u>Purpose</u>	<u>Payment Method</u>
Apple Educational Services, Inc.	\$4,520.63	Portion of Purchase Price	Check from Barclay Damon
Erie County Clerk	\$37,360	Portion of Purchase Price	Check from Barclay Damon
Elfar & Associates, PC	\$8,119.37	Seller's attorney's fees	Check from Barclay Damon

**DISBURSEMENT STATEMENT**

**For**

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

**\$3,250,000 TAX-EXEMPT REVENUE BONDS**

**Issued for the benefit of**

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

**and purchased by**

**FIRST NIAGARA BANK, N.A.**

**CLOSING DATE – November 3, 2015**

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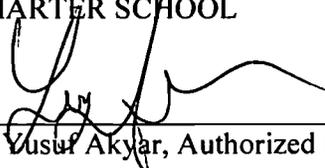
**PURCHASE PRICE OF BONDS: \$3,250,000.00**

**COSTS OF ISSUANCE PAID OUT OF BOND PROCEEDS: SEE EXHIBIT A**

The undersigned Borrower agrees to the acceptance of the Purchase Price at Closing set forth above and requests payment as set forth on Exhibit A.

Dated as of November 3, 2015:

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By   
Yusuf Akyar, Authorized Representative

**EXHIBIT A**

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<b>TOTAL</b>	<b>\$57,226.50</b>		

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First Niagara Bank, N.A.	\$1,096,756.66  * includes per diem through 11/3/15	Portion of purchase price consisting of pay-off of existing First Niagara loan	By internal transfer between First Niagara accounts

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Eric County Clerk	\$1,101.50	BASCS recording fees	First Niagara Bank Draft from Buffalo Academy of Science Charter School account # 750040556
Barclay Damon	\$60,000	Bond Counsel Fees and Expenses	By wire from Buffalo Academy of Science Charter School account # 750040556 with First Niagara pursuant to following instructions:  Key Bank, NA 201 S. Warren Street Syracuse, New York

			<p>ABA Routing: 021300077          Acct Num: 3296 8102 2391          Acct Name Barclay Damon LLP          Operating Account          Reference: -Sue.Katzoff / BASCS</p>
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			Reference: George Bellows / BASCS
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Erie County Clerk	\$37,360	Portion of Purchase Price	Check from Barclay Damon
Elfar & Associates, PC	\$8,119.37	Seller's attorney's fees	Check from Barclay Damon

## CLOSING RECEIPT

**CLOSING RECEIPT** executed as of November 2, 2015, by the **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION** (the "*Issuer*"), **BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL** (the "*Institution*") and **FIRST NIAGARA BANK, N.A.** (the "*Purchaser*"), relating to the Issuer's Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "*Bonds*"). The Bonds were issued under and pursuant to a Bond Purchase Agreement dated November 2, 2015 (the "*Bond Purchase Agreement*"), by and among the Issuer, the Institution and the Holder.

### WITNESSETH:

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Bond Purchase Agreement shall have the meanings ascribed to them in the Bond Purchase Agreement, except that, for purposes of this Closing Receipt, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this Closing Receipt and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this Closing Receipt and not as of any future date or to any successor or assign.

1. The Issuer (a) has executed and delivered or is delivering to the Holder the Bonds, in satisfaction of the requirements of Section 3.03 of the Bond Purchase Agreement, (b) acknowledges receipt from the Lender of notice that the Lender acknowledges satisfaction of the requirements of Section 3.03 of the Bond Purchase Agreement for execution and delivery of the Bond, (c) has executed, delivered, sealed and acknowledged, where appropriate, the Bond Documents and Collateral Documents to which it is a party, (d) has executed and directed Bond Counsel to mail the Information Return required by Section 149(e) of the Internal Revenue Code of 1986, as amended, to the appropriate office of the Internal Revenue Service, (e) acknowledges receipt of the Bond Documents and Collateral Documents duly executed and acknowledged, where appropriate, by the Institution and the Holder, and (f) acknowledges receipt from the Institution of its administrative fee.

2. The Institution has executed, delivered and acknowledged, where appropriate, the Bond Documents and Collateral Documents to which it is a party.

3. The Holder (a) has executed, delivered, sealed and acknowledged, where appropriate, the Bond Documents and Collateral Documents to which it is a party, and (b) acknowledges receipt of the Bonds.

IN WITNESS WHEREOF, this Closing Receipt has been duly executed by the Issuer, the Institution and the Holder.

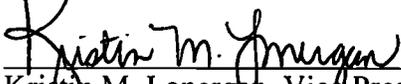
**BUFFALO AND ERIE COUNTY  
INDUSTRIAL LAND DEVELOPMENT  
CORPORATION**

By:   
Karen Fiala, Assistant Treasurer

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By:   
Yusuf Akyar, Authorized Representative

**FIRST NIAGARA BANK, N.A.**

By:   
Kristin M. Lonergan, Vice President

## ISSUER GENERAL CERTIFICATE

**THIS CERTIFICATE** is made in connection with the issuance by the Buffalo and Erie County Industrial Land Development Corporation (the “*Issuer*”) of its \$3,250,000 Buffalo and Erie County Industrial Land Development Corporation Tax Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 (the “*2015 Bonds*”) pursuant to the Bond Purchase Agreement dated November 2, 2015 (the “*Bond Purchase Agreement*”) by and among the Issuer, First Niagara Bank, N.A. (the “*Holder*”) and Buffalo Academy of Science Charter School (the “*Institution*”). The Issuer will use the proceeds of the 2015 Bonds to make a loan to the Institution to finance the acquisition of a certain Project to be undertaken by the Institution, pay costs incidental to the issuance of the 2015 Bonds, and to fund a debt service reserve fund, if any, required with respect to the 2015 Bonds. Capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Bond Purchase Agreement.

The undersigned, Assistant Treasurer of the Buffalo and Erie County Industrial Land Development Corporation, a not-for-profit corporation organized and existing under the laws of the State of New York, does HEREBY CERTIFY as follows:

1. The County of Erie (the “*County*”), through the County Executive of Erie County (the “*County Executive*”) is the sole member of the Issuer.

2. The following persons are officers of the Issuer, holding the offices set forth opposite their names:

Steve Weathers is the Chief Executive Officer/President of the Issuer.

Andrew Schoepich is the Treasurer/CFO of the Issuer.

John Cappellino is the Executive Vice President of the Issuer.

Karen M. Fiala is the Assistant Treasurer of the Issuer.

Robert G. Murray is Secretary of the Issuer.

Pietra Lettieri is an Assistant Secretary of the Issuer.

3. That attached hereto at **Exhibit “A”** are true, correct, and complete copies of Resolution No. 218 of 2009 adopted by the Erie County Legislature (the “*Legislature*”) on July 24, 2009, as amended by Resolution No. 295 of 2009, adopted by the Legislature on November 19, 2009, and Resolution No. 5-3 (2010) adopted by the Legislature on March 25, 2010, and Resolution No. 110 of 2011, adopted by the Legislature on June 30, 2011 (collectively, the “*County Resolutions*”), and said County Resolutions are, to the best of the Issuer’s knowledge, in full force and effect in accordance with their terms as of the date of this certificate.

4. That attached hereto at **Exhibit “B”** is a certified copy of the certificate of incorporation of the Issuer.

5. That attached hereto at **Exhibit "C"** is a true, correct, and complete copy of the by-laws of the Issuer (the "*By-Laws*"), together with all amendments thereto or modifications thereof; and said By-Laws, as so amended and modified, are in full force and effect in accordance with their terms as of the date of this certificate.

6. That attached to the Record of Proceedings is a true, correct and complete copy of the Loan Agreement, dated as of November 1, 2015 between the Issuer and the Institution (the "*Loan Agreement*"), the Bond Purchase Agreement, the Mortgage and Security Agreement, dated as of November 1, 2015, from the Institution to the Issuer and the Holder (the "*Mortgage*"), the Assignment of Leases and Rents, dated as of November 1, 2015, from the Institution to the Issuer and the Holder (the "*Assignment of Leases and Rents*"); the Assignment of Mortgage, dated as of November 1, 2015, from the Issuer to the Holder (the "*Assignment of Mortgage*"), the Assignment of Assignment of Leases and Rents, dated as of November 1, 2015, from the Issuer to the Holder (the "*Assignment of Assignment of Leases and Rents*"), the Environmental Compliance and Indemnification Agreement, dated as of November 1, 2015, from the Institution to the Issuer and the Holder (the "*Environmental Compliance and Indemnification Agreement*"), the Tax Compliance Agreement, dated November 1, 2015 between the Issuer and the Institution (the "*Tax Compliance Agreement*"), the Pledge and Assignment, dated as of November 1, 2015 from the Issuer to the Holder with an acknowledgement by the Institution (the "*Pledge and Assignment*"); and, together with the Loan Agreement, the Bond Purchase Agreement, the Mortgage, the Assignment of Leases and Rents, the Assignment of Mortgage, the Assignment of Assignment of Leases and Rents, the Environmental Compliance and Indemnification Agreement and the Tax Compliance Agreement, collectively, the "*Issuer Documents*") and all of which were duly authorized by the members of the Issuer by resolution adopted on October 21, 2015 and all of which were executed and delivered, where and as applicable, by officers of the Issuer authorized to do so, and none of the Issuer Documents have been modified, supplemented, amended or cancelled, but each continues in full force and effect.

7. That attached hereto at **Exhibit "D"** is a true, correct and complete copy of the Acceptance by the County Executive of the Appointment to act as the Member of the Issuer on behalf of the County.

8. That attached hereto at **Exhibit "E"** is a true, correct and complete copy of the notice or waiver thereof of the meeting of the Issuer held on October 21, 2015 which was given pursuant to the By-Laws of the Issuer and duly sent to each director of the Issuer, all in accordance with the applicable provisions of the By-Laws of the Issuer.

9. That attached hereto at **Exhibit "F"** is a true, correct and complete copy of the resolution duly adopted on October 21, 2015 (the "*Resolution*") taking official action towards issuance by the Buffalo and Erie County Industrial Land Development Corporation of its tax-exempt revenue bonds to finance certain costs relating to, and approving the undertaking by the Issuer of, a certain project consisting of: (a) acquiring improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 to be used to operate a charter school for grades 7-12; and (b) the granting of certain financial assistance in connection therewith, including the issuance of the Issuer's tax-exempt revenue bonds in an amount sufficient to finance the cost thereof and the funding of any appropriate reserves and paying capitalized interest, if any, and the costs of such issuance.

10. That the Resolution described above was duly adopted at a meeting of the Issuer duly called and held, and at which a quorum was present and acted throughout, and that said Resolution is in full force and effect and has not been modified or amended.

11. That attached hereto at **Exhibit "G"** is a true, correct and complete copy of the Affidavit of Publication of the Notice of Public Hearing pursuant to Section 147 (f) of the Code.

12. The Issuer is a not-for-profit local development corporation duly organized and existing under the laws of the State of New York. The Issuer is authorized to issue the 2015 Bonds in accordance with: (i) Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "*State*"), as amended, and the County Resolutions; (ii) the Bond Purchase Agreement; and (iii) the Resolution. The Issuer is authorized to use the proceeds thereof as described herein for the purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities in the County and lessening the burdens of government and acting in the public interest.

13. The Issuer has complied with the provisions of the County Resolutions and has full power and authority pursuant to law, the County Resolutions and its Certificate of Incorporation and By-Laws to act with respect to all transactions contemplated by the 2015 Bonds, the aforementioned Resolution and the Issuer Documents, to issue, sell and deliver the 2015 Bonds, and to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

14. When delivered to and paid for by the Holder, the 2015 Bonds will have been duly authorized, issued, executed, authenticated and delivered, will constitute the legal, valid and binding special and limited obligations of the Issuer. The 2015 Bonds are payable solely from certain funds held under the Bond Purchase Agreement.

15. The execution and delivery of the 2015 Bonds and the Issuer Documents, and compliance with the provisions thereof will not conflict with or constitute on the part of the Issuer a violation of the County Resolutions, or a violation or breach of or default under its Certificate of Incorporation or By-Laws nor will such execution and delivery require consent under or result in a breach or default under any statute, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound, or, to the knowledge of the Issuer, any law, judgment, order, writ, rule, injunction, decree or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties; and all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required of the Issuer for the consummation of the transactions contemplated thereby have been obtained.

16. The Issuer will apply the proceeds from the sale of the 2015 Bonds for the purposes specified in the Loan Agreement and the Tax Compliance Agreement, as in force from time to time.

17. There is no action, suit, proceeding or investigation at law or in equity by or before any court or public agency, of which the Issuer has notice, or, to the best of the knowledge of the Issuer, is there any basis therefor, wherein an unfavorable decision, ruling or

finding would adversely affect the transactions contemplated by the Issuer Documents or the Issuer's ability to perform its obligations thereunder, or which in any way would adversely affect the validity of the 2015 Bonds, the resolutions adopted by the Issuer above stated, any of the Issuer Documents or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in consummation of the transactions contemplated by the Issuer Documents.

18. The Issuer makes no representation or warranty concerning the financial position or business condition of the Institution nor does it represent or warrant as to the correctness of any statements or representations made or materials furnished by the Institution or any other party in connection with the sale of the 2015 Bonds.

19. The 2015 Bonds have been duly authorized, executed and delivered by the Issuer, constitute the valid and legally binding special and limited obligations of the Issuer, and are enforceable in accordance with their terms and the terms of the Loan Agreement.

20. To the best knowledge of the Issuer, no legislation, ordinance, rule or regulation has been enacted or introduced or favorably reported for passage by any governmental body, department or agency of the State or of the County and no decision by any court of competent jurisdiction of such State or County has been rendered that would adversely affect the exemption from all taxation (except for transfer and estate taxes) in the State or of any similar body and all properties owned by it or by such similar body.

**THE UNDERSIGNED FURTHER DETERMINES, PURSUANT TO THE RESOLUTIONS ADOPTED BY THE ISSUER ON OCTOBER 21, 2015 THAT:**

1. The aggregate principal amount of the 2015 Bonds shall be \$3,250,000.

**THE UNDERSIGNED FURTHER CERTIFIES AS FOLLOWS:**

1. On or before the date hereof the undersigned officially signed the Issuer's 2015 Bonds, being at the date of such signing and on this date, the duly chosen, qualified and acting officer authorized to execute the 2015 Bonds.

2. The 2015 Bonds have been duly executed in the name and on behalf of the Issuer by the manual signature of an Assistant Treasurer of the Issuer.

3. Each of the representations of the Issuer set forth in the Issuer Documents is true and accurate in all material respects at and as of the date hereof and each of the obligations of the Issuer thereunder to be performed at or prior to the Closing Date has been performed.

4. No controversy, proceeding or litigation of any nature is now pending or threatened (either in State or Federal Courts) against or affecting the Issuer or restraining or enjoining the issuance, sale, execution or delivery of the 2015 Bonds or the payment, collection or application of the proceeds derived from the sale of the 2015 Bonds, or loan payments or other monies and securities pledged or to be pledged under the Issuer Documents, or questioning or affecting directly or indirectly the validity of or the authority for, the issuance of the 2015 Bonds or of any provisions made or authorized for their payment or the making and entering into of any

of the Issuer Documents, or any proceedings taken by the Issuer with respect to the foregoing or the organization, creation, corporate existence or powers of the Issuer or the title of any of the present officers of the Issuer to their respective offices, and that none of the proceedings or authority for the issuance, sale, execution or delivery of the 2015 Bonds has been repealed, revoked or rescinded.

5. The Issuer Documents and any and all other agreements and documents executed and delivered by the Issuer in order to carry out, give effect to and consummate the transactions contemplated thereby have each been duly authorized, executed and delivered by the Issuer, and, as of the date of this Certificate each is in full force and effect and each constitutes the legal, valid, binding and enforceable obligation of the Issuer, and the Issuer is entitled to the benefits of the same, and all right, title and interest inuring to the Issuer under the Loan Agreement, including the payments thereunder, have been duly pledged and assigned to the Trustee (except for Unassigned Rights).

**IN WITNESS WHEREOF**, the undersigned has hereunto set her official signature and the corporate seal of the Issuer this 15<sup>th</sup> day of November, 2015.

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

By: Karen M. Fiala  
Name: Karen M. Fiala  
Title: Assistant Treasurer

**EXHIBIT "A"**

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., JULY 24, 2009

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 15th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twenty Fourth day of July, 2009 A.D., a Resolution was adopted, of which the following is a true copy:

WHEREAS, it is the policy of the State to promote the economic welfare and prosperity of its inhabitants and to actively promote, attract, encourage, and develop economically sound commerce and industry; and

WHEREAS, it is in the interest of the County that the ILDC should support responsible businesses that will deliver on their promises to provide good jobs and services to the residents of Erie County and enhance local workforce development, and since the ILDC will provide not-for-profits significant local tax breaks, and local communities should get the promised benefits in exchange for sacrificing this much needed revenue; and

WHEREAS, Erie County is tasked with the responsibility and burden to promote the health, safety, and general welfare of its residents by, among other things, preventing unemployment and economic deterioration including by increasing and maintaining employment opportunities and attracting and sustaining economically sound commerce; and

WHEREAS, the number of facilities located within the County that are operated by not-for-profit corporations has increased and will continue to increase the employment opportunities for County residents; and

WHEREAS, the ability to provide financing through the issuance of tax exempt and taxable bonds to projects of not-for-profit corporations is essential to the continued development, construction, improvement, and operation of these facilities; and

WHEREAS, in furtherance of its public purposes, the County has traditionally supported the provision of tax-exempt financing by the Erie County Industrial Development Agency (ECIDA) and of certain other financial incentives to not-for-profit corporations to promote the creation and preservation of employment opportunities for Erie County residents and to develop economically sound commerce consistent with the County's burdens and responsibilities as expressed above; and

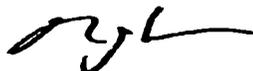
WHEREAS, the Buffalo and Erie County Industrial Land Development Corporation (ILDC), a local development corporation formed on January 13, 1982, under Sections 402 and 1411 of the Not-For-Profit Corporation Law, was established and is operated pursuant to its Certificate of Incorporation (a copy of which is on file with the County Clerk); and

WHEREAS, the exclusive public purpose of the ILDC is to relieve and reduce unemployment, promote and provide for additional and maximum employment, improve and maintain job opportunities, and lessen the burdens of government; and

WHEREAS, the ILDC, acting in the public interest, has the powers, among other things, to construct, to acquire, to rehabilitate, and to improve for use by others industrial or manufacturing plants and to assist financially in such construction, acquisition, rehabilitation, and improvement, to acquire real or personal property, and to issue bonds, notes, and other obligations thereof; and

WHEREAS, to accomplish its job creation and other economic development responsibilities and to relieve the burdens related to same and to facilitate the ability of not-for-profit corporations to access capital

ATTEST



ROBERT M. GRABER

*Clerk of the Legislature of Erie County*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., JULY 24, 2009

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 15th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twenty Fourth day of July, 2009 A.D., a Resolution was adopted, of which the following is a true copy:

for projects that enhance, create, and preserve employment opportunities for County residents, the County desires to charge the ILDC with such burdens and responsibilities and to authorize the ILDC to issue bonds on behalf of the County for such purposes only and to work with the ECIDA to achieve such public purposes without in any way infringing on the powers of the Erie County Comptroller and Erie County Legislature to conduct, authorize or sell bonds or notes for County purposes.

NOW, THEREFORE, BE IT

RESOLVED, that Erie County hereby authorizes the ILDC to issue bonds on behalf of the County, subject to the third RESOLVED below for the sole purpose of issuing debt for the benefit of tax-exempt not-for-profit corporations and private entities who otherwise would seek assistance from the Erie County Industrial Development Agency in order to further job creation and economic development; and be it further

RESOLVED, that such powers shall include those powers described in Section 1411 of the New York Not-For-Profit Corporation Law and its Certificate of Incorporation, with the power to issue tax exempt and taxable bonds, notes, or other obligations on behalf of the County in furtherance of its purposes; and be it further

RESOLVED, that any obligations issued by the ILDC 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, nor any political subdivision thereof shall be liable thereon; and be it further

RESOLVED, that the County is hereby authorized to covenant and agree with the ILDC in a transaction contemplated by this resolution for the benefit of the ILDC and the holders from time to time of any bonds, notes, or other obligations or other securities (hereinafter collectively, the "Securities") issued by the ILDC; and be it further

RESOLVED, that whenever a recipient of financial assistance from the ILDC enters into any contract, subcontract, lease, grant, bond, covenant or other agreement for or in connection with any construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration, or improvement work on a project, such project shall be deemed to be a public work for the purposes of Article Eight of the New York State Labor Law and all the provisions of such Article shall apply. An employer shall pay employees no less than the prevailing rate of wage and supplements under Article Eight of the New York State Labor Law; and be it further

RESOLVED, that the County will not limit or alter the rights of the ILDC to fulfill the terms of its agreements with the holders of the Securities or in any way impair the rights and remedies of such holders of the security for the Securities until the Securities, together with the interest due thereon or payable in respect thereof and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged; and be it further

RESOLVED, that authorized representatives of the County are hereby granted the power to make such a covenant to and agreement with the ILDC and to take any and all actions necessary or desirable to cause such covenant and agreement to be made or enforced; and be it further

ATTEST



ROBERT M. GRABER

*Clerk of the Legislature of Erie County*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., JULY 24, 2009

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 15th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twenty Fourth day of July, 2009 A.D.; a Resolution was adopted, of which the following is a true copy:

RESOLVED, that the ILDC is required to provide to the Erie County Legislature and the Erie County Comptroller a report no later than the sixtieth day after any bond issuance which report shall include (1) a list of any Securities issued or sold during the past thirty (30) days or proposed to be issued during the next thirty (30) days, (2) the transacting parties to such issued or proposed to be issued Securities, and (3) the details of each closed transaction, including, but not limited to, the purchasers of such Securities, the interest rate for each transaction, the term of each transaction, the underwriter, if any, of each transaction, and a copy of any official statement or other offering document issued pursuant to each transaction and the ILDC is required to provide the Erie County Legislature and the Erie County Comptroller copies of any New York State PAAA reports; and be it further

RESOLVED, that the chairperson of the Legislature, chairperson of the Legislature's Economic Development Committee, and the President of the local AFL-CIO shall be appointed as members of the seven-member Board of Directors of the ILDC and in the event those appointments are not made, any County authorization shall expire immediately; and be it further

RESOLVED, that a copy of the By Laws of the ILDC shall be filed with the Erie County Legislature within five (5) days after adoption; be it further

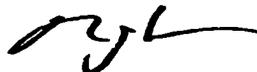
RESOLVED, that these resolutions shall take effect immediately; and be it further

RESOLVED, that upon the enactment of legislation by the New York State Legislature permitting Industrial Development Agencies to issue taxable and tax exempt bonds, notes or other obligations, this Resolution and the powers delegated to the ILDC hereunder shall expire immediately; and be it further

RESOLVED, that certified copies of this resolution shall be forwarded to the Erie County Executive; the County Attorney; the Western New York Legislative Delegation; the Director of Budget and Management; the Commissioner of Environment and Planning; Deputy Commissioner of the Department of Environment and Planning; the Board of Directors of the ILDC; Counsel for the ILDC; and the County Comptroller.

REFERENCE:                      COMM. 14E-2 (2009)                      AS AMENDED

ATTEST



ROBERT M. GRABER

*Clerk of the Legislature of Erie County*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., NOVEMBER 19, 2009

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, *That at the 22nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Nineteenth day of November, 2009 A.D., a Resolution was adopted, of which the following is a true copy:*

## **A RESOLUTION TO BE SUBMITTED BY LEGISLATORS MARINELLI & KENNEDY**

WHEREAS, pursuant to resolutions adopted on July 24, 2009, the Erie County Legislature authorized the Buffalo and Erie County Industrial Land Development Corporation ("ILDC") to issue revenue bonds and provide financial assistance on behalf of Erie County (the "County") in conjunction with certain economic development activities; and

WHEREAS, the ILDC filed its Certificate of Incorporation with the New York State Department of State on December 14, 1981 and a Certificate of Amendment to the Certificate of Incorporation of the Buffalo and Erie County Industrial Land Development Corporation with the New York State Department of State on September 11, 1996 (collectively, the "Certificate of Incorporation"), a copy of which such Certificate of Incorporation is on file with the Erie County Clerk; and

WHEREAS, on November 9, 2009, the members of the ILDC amended the by-laws of the ILDC to restructure the ILDC so as to comply with the County resolutions and facilitate such economic development activities; and

WHEREAS, the Certificate of Incorporation and the amended by-laws of the ILDC are attached hereto; and

WHEREAS, in order to facilitate the issuance of bonds by the ILDC, bond counsel to the ILDC has requested that the County Legislature ratify and confirm the reconstituted ILDC by approving the Certificate of Incorporation and By-Laws.

NOW, THEREFORE, BE IT

RESOLVED, that the County Legislature hereby approves the attached Certificate of Incorporation and By-laws of the ILDC and the restructuring of the ILDC and its operations as reflected in the attached form of amended by-laws; and be it further

RESOLVED, that any obligations issued by the ILDC 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, nor any political subdivision thereof shall be liable thereon; and be it further

RESOLVED, that the ILDC shall, in all respects, comply with all terms and conditions contained within of Erie County Legislature Resolution No. 218 dated July 25, 2009 as if the Resolution had been specifically adopted by the ILDC; and be it further

ATTEST



ROBERT M. GRABER

*Clerk of the Legislature of Erie County*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., NOVEMBER 19, 2009

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 22nd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Nineteenth day of November, 2009 A.D., a Resolution was adopted, of which the following is a true copy:

RESOLVED, that failure to comply with a material term or condition of the above noted resolution will render the prior authorization to issue tax exempt bonds null and void for all projects for which bonds have not been issued; and be it further

RESOLVED, that these resolutions shall take effect immediately.

REFERENCE:                      INTRO 22-4 (2009)                      AS AMENDED

ATTEST



ROBERT M. GRABER  
*Clerk of the Legislature of Erie County*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., March 25, 2010

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 6th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twenty-Fifth day of March, 2010 A.D., a Resolution was adopted, of which the following is a true copy:

## A RESOLUTION TO BE SUBMITTED BY LEGISLATOR KENNEDY

WHEREAS, the enactment by the United States Congress of the American Recovery and Reinvestment Act (ARRA) of 2009 created a new type of exempt facility bond entitled Recovery Zone Facility Bonds (RZFBs) which must be issued prior to January 1, 2011; and

WHEREAS, the ARRA also created a new type of interest rate subsidized taxable direct payment bond entitled Recovery Zone Economic Development Bonds, which also must be issued prior to January 1, 2011 ("RZEDBs"; and, together with the RZFBs, "ARRA Bonds") in which the federal government requires the payment of Davis-Bacon prevailing wages in connection with the construction and equipping of any project financed with RZEDBs and provides a subsidy of forty-five percent (45%) of the interest payable on such RZEDBs; and

WHEREAS, the RZFBs are designed to assist counties and large municipalities with local job creation and economic development activities by providing access to tax-exempt financing for certain kinds of businesses (e.g., redevelopment projects, large manufacturing plants, distribution centers, hotels, research parks, etc.); and

WHEREAS, the RZEDBs are designed to be used to finance "qualified economic development purposes" (as defined in ARRA) and may only be issued for projects or purposes for which tax-exempt governmental bonds could be issued under current law; and

WHEREAS, ARRA Bonds can be issued for expenses incurred only within a designated Recovery Zone as defined by the ARRA; and

WHEREAS, the County of Erie (the "County") meets the necessary criteria required by the ARRA to be so designated; and

WHEREAS, the County desires to designate all of Erie County as a Recovery Zone to maximize potential qualifying projects; and

WHEREAS, pursuant to the ARRA, the County received authority to cause to be issued, up to \$17,102,000 of RZFBs and \$11,401,000 of RZEDBs; the City of Buffalo (the "City") received authority to cause to be issued, up to \$7,151,000 of RZFBs and \$4,767,000 of RZEDBs; and the Town of Amherst (the "Town") received authority to cause to be issued up to \$3,699,000 of RZFBs and \$2,466,000 of RZEDBs; and

WHEREAS, as a means of maximizing the benefits of their respective allocations of ARRA Bonds, the County, the City, and the Town are contemplating, in the spirit of regionalism, to cooperate and collectively approve the use of the allocation of ARRA Bonds to further economic development activities with and within the County; and

ATTEST



ROBERT M. GRABER  
Clerk of the Legislature of Erie County

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., March 25, 2010

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 6th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twenty-Fifth day of March, 2010 A.D., a Resolution was adopted, of which the following is a true copy:

WHEREAS, as part of the collective and collaborative effort, the County, the City, and the Town will establish a committee ("Committee") to assist with the issuance of the ARRA Bonds; and

WHEREAS, the Committee will consist of the Erie County Legislature's Chairperson of the Economic Development Committee, the Erie County Commissioner of the Department of Environment and Planning, a representative from the City of Buffalo appointed by the Mayor of Buffalo, and the Town Board's Amherst Industrial Development Agency's liaison or the Chair of the Amherst Industrial Development Agency; and

WHEREAS, the County desires to task the Committee to make recommendations to the County Executive for the use of the County's allocation of ARRA Bonds; and

WHEREAS, each of the County, the City, and the Town specifically lacks the authority under the Laws of New York State to issue RZFBs for the benefit of private entities; and

WHEREAS, Empire State Development ("ESD") is the duly authorized New York State government entity responsible for providing guidance related to ARRA Bonds and RZFBs in particular; and

WHEREAS, ESD has specifically requested the County, in the event the County does not intend to use its RZFB allocation, to immediately waive said allocation in full or in part, and assign such amounts to ESD for reallocation to other essential projects throughout New York State; and

WHEREAS, the County does intend to utilize its RZFB allocation within the County and does not desire to waive said allocation for reallocation through ESD for use in other areas of New York State; and

WHEREAS, to ensure that the County's RZFB allocation is utilized in the County and not otherwise reallocated by or to ESD for use outside of Erie County, the County may designate the Erie County Industrial Development Agency (the "ECIDA") and the Buffalo and Erie County Industrial Land Development Corporation (the "ILDC") to act on behalf of the County as the exclusive issuer of RZFBs for purposes of utilizing the financial benefit offered by these bonds; and

WHEREAS, in furtherance of its public purposes, the County has supported the provision of taxable and tax-exempt financing by the ECIDA and the ILDC, and of certain other financial incentives to for-profit entities and not-for-profit corporations to promote the creation and preservation of employment opportunities for residents of the County and development of economically sound commerce consistent with the County's burdens and responsibilities.

NOW, THEREFORE, BE IT

RESOLVED, that the County determines that all areas of Erie County have significant unemployment, rate of home foreclosures, or general distress, and, therefore, the County hereby designates that all of Erie County is a Recovery Zone pursuant to the criteria set forth by the ARRA and projects to be designated as eligible for ARRA Bonds allocation shall also be compliant with the Erie Niagara Framework for Regional Growth; and be it further

ATTEST



ROBERT M. GRABER  
Clerk of the Legislature of Erie County

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., March 25, 2010

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 6th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twenty-Fifth day of March, 2010 A.D., a Resolution was adopted, of which the following is a true copy:

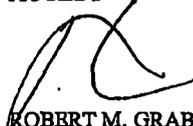
RESOLVED, that the Erie County Legislature's Chairperson of the Economic Development Committee and the Commissioner of the Department of Environment and Planning are hereby appointed as the County's representatives on the Committee, said Committee to make recommendations to the County Executive for the use of the County allocation of RZFBs and RZBDBs; and be it further

RESOLVED, that the County hereby designates the ECIDA and the ILDC as the exclusive issuers of the County for the purposes of issuing RZFBs and each an eligible issuer of RZBDBs, and to exercise on the County's behalf all lawful powers as may be deemed necessary to accomplish the issuance of the ARRA Bonds; provided, however, that any obligations issued by the ECIDA or the ILDC shall never be a debt of the State of New York, the County or any political subdivision thereof (other than the ECIDA or the ILDC, as the case may be) and neither the State of New York, the County, or any political subdivision thereof (other than the ECIDA or the ILDC, as the case may be) shall be liable; and be it further

RESOLVED, that the County Executive or the County Executive's designated representative is hereby authorized and directed on behalf of the County to do all things required of the County or provided for by the provision of the ARRA with respect to the County in connection with the issuance of RZFBs, including, but not limited to, all approvals in connection with the use and or beneficiary of the County RZFB allocation, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the County Executive or the County Executive's designated representative, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the County with all of the terms, covenants and provisions of the ARRA with respect to the County in connection with the issuance of RZFBs; and be it further

RESOLVED, that in an effort to spur economic activity within the County, (i) the ILDC Board, solely in connection with the issuance of bonds created or modified pursuant to ARRA including qualified 501(c)(3) bonds and RZFBs, is hereby authorized, by majority vote, to waive the requirements imposed upon the ILDC by that certain resolution adopted by the County Legislature on July 24, 2009 (more particularly described as Resolution No. 218 of 2009), as amended by that certain resolution adopted by the County Legislature on November 19, 2009 (more particularly described as Resolution No. 295 of 2009), upon ten (10) days written notice to the chairperson of the Legislature explaining how such waiver will either generate economic or community development activities, or assist with the development of the not-for-profit community within the County; (ii) such authorization shall apply to all such projects which have received an Inducement Resolution by the ILDC Board on or before December 31, 2010 notwithstanding the enactment of legislation by the New York State Legislature permitting Industrial Development Agencies to issue taxable and tax exempt bonds, notes or other obligations on behalf of not-for-profit corporations prior to such date; (iii) the ability for the ILDC Board to authorize the waiver of those certain requirements as specified in the aforementioned County resolutions shall expire on December 31, 2010; (iv) the requirements of Resolutions No. 218 of 2009 and No. 295 of 2009 shall, in all other respects, remain in full force and effect; (v) the obligations issued by the ILDC 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; and (vi) the chairperson of the Legislature, chairperson of the Legislature's Economic Development Committee, and the President of the local AFL-CIO must remain as

ATTEST



ROBERT M. GRABER  
Clerk of the Legislature of Erie County

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., March 25, 2010

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 6th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twenty-Fifth day of March, 2010 A.D., a Resolution was adopted, of which the following is a true copy:

members of the seven-member Board of Directors of the ILDC for the ILDC to issue any obligations on behalf of the County; and be it further

**RESOLVED**, that to the extent that the County issues RZEDBs, such obligations will be issued following the procedures and policies in place that currently govern the issuance of the County's general obligation bonds and nothing in this resolution shall act to amend such policies and procedures for any debt issued by the County; and be it further

**RESOLVED**, that in the event the Committee recommends an allocation of RZEDBs in which such RZEDBs will be issued by a municipality other than the County, said recommendation shall be confirmed by the Erie County Legislature; and be it further

**RESOLVED**, that certified copies of this resolution be sent to the County Executive; the Director of Budget and Management; Kathy Konst, Commissioner of Environment and Planning; Daniel D. Barry, Deputy Commissioner of Environment and Planning; the Legislative Chairperson of the Economic Development Committee; the Chairperson of the Buffalo Economic Renaissance Corporation; and Chairperson of the Town of Amherst Industrial Development Agency; the County Comptroller; and the County Attorney.

**REFERENCE:    INTRO 5-3 (2010)    AS AMENDED**

ATTEST



ROBERT M. GRABER

*Clerk of the Legislature of Erie County*

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., June 30, 2011

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, That at the 14th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Thirtieth day of June, 2011 A.D., a Resolution was adopted, of which the following is a true copy:

WHEREAS, pursuant to resolutions adopted on July 24, 2009 ("Initial Resolution"), the Erie County Legislature authorized the Buffalo and Erie County Industrial Land Development Corporation ("ILDC") to issue revenue bonds and provide financial assistance on behalf of Erie County ("County") in conjunction with economic development activities so long as the ILDC complied with certain conditions enumerated therein ("Conditions"); and

WHEREAS, on November 19, 2009, the Erie County Legislature adopted resolutions supplemental to the Initial Resolution ("First Supplemental Resolution") whereby it approved the ILDC's Certificate of Incorporation and By-Laws and restated the requirement that the ILDC comply with the Conditions; and

WHEREAS, on March 25, 2010, the Erie County Legislature adopted further resolutions supplemental to the Initial Resolution and the First Supplemental Resolution ("Second Supplemental Resolution"; and, together with the Initial Resolution and the First Supplemental Resolution, the "Resolutions") whereby, among other things, it waived compliance with certain of the Conditions during a period of time enumerated therein; and

WHEREAS, compliance with certain of the Conditions caused an increase in total project costs thereby reducing the effectiveness of the ILDC to promote economic development activity within Erie County; to wit: between the time commencing with the adoption of the Initial Resolution (November 19, 2009) and the adoption of the Second Supplemental Resolution (March 25, 2010), the ILDC received an application to provide financial assistance to only one (1) project, which such project was already required by law to comply with the Conditions that increased total project costs; and

WHEREAS, between the time commencing with the adoption of the Second Supplemental Resolution (March 25, 2010) and today, the ILDC has received applications from ten (10) project applicants, including Galvstar LLC, Enterprise Charter School, Medaille College, Iskalo 2780 Delaware LLC, Buffalo Niagara Medical Campus/134 High Street LLC, The Canisius College of Buffalo, New York, Baker Hall/Baker Victory Services, Baja Beach Club, Inc., Multisorb Technologies, Inc., and Seneca Exchange Larking Partners, LLC; which such projects will directly create or retain 1849 jobs on behalf of each project, create over 1000 new construction jobs within Erie County and cause investments to be made within Erie County exceeding \$162,000,000 thereby implying that the Conditions were adversely effecting economic growth in Erie County.

NOW, THEREFORE, BE IT

RESOLVED, that in an effort to spur economic activity within the County, (i) the ILDC Board, solely in connection with the issuance of revenue bonds for the benefit of third parties; is hereby authorized, by majority vote, to waive the requirements imposed upon the ILDC by that certain resolution adopted by the County Legislature on July 24, 2009 (more particularly described as Resolution No. 218 of 2009), as amended by that certain resolution adopted by the County Legislature on November 19, 2009 (more particularly described as Resolution No. 295 of 2009), upon ten (10) days written notice to the chairperson of the Legislature explaining how such waiver will either generate economic or community development activities, or assist with the development of the not-for-profit community within the County; (ii) such authorization shall apply to all such projects which have received an Inducement Resolution by the ILDC Board notwithstanding the enactment of legislation by the New York State Legislature permitting Industrial Development Agencies to issue taxable and tax exempt bonds, notes or other obligations on behalf of not-for-profit corporations prior to such date; (iii) the requirements of Resolutions No. 218 of 2009 and No. 295

ATTEST



ROBERT M. GRABER  
Clerk of the Legislature of Erie County

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., June 30, 2011

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, *That at the 14th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Thirtieth day of June, 2011 A.D., a Resolution was adopted, of which the following is a true copy:*

of 2009 shall, in all other respects, remain in full force and effect; (iv) the obligations issued by the ILDC 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; and (v) the chairperson of the Legislature, chairperson of the Legislature's Economic Development Committee, and the President of the local AFL-CIO must remain as members of the seven-member Board of Directors of the ILDC for the ILDC to issue any obligations on behalf of the County.

RESOLVED, In the absence of a waiver permitting otherwise, and to the extent permitted by law, every project seeking ILDC tax exempt revenue bonds must use all local labor for the construction of new, expanded or renovated facilities. "Local" is defined as residing in Erie, Niagara, Chautauqua, Cattaraugus and Alleghany Counties, and be it further

RESOLVED, that certified copies of this resolution be sent to the County Executive; the Director of Budget and Management; Kathy Konst, Commissioner of Environment and Planning; Daniel D. Barry, Deputy Commissioner of Environment and Planning; the Legislative Chairperson of the Economic Development Committee; the Chairperson of the Buffalo Economic Renaissance Corporation; and Chairperson of the Town of Amherst Industrial Development Agency; the County Comptroller; and the County Attorney.

REFERENCE:      COMM. 24E-4 (2010)      AS AMENDED

ATTEST



ROBERT M. GRABER  
*Clerk of the Legislature of Erie County*

---

**EXHIBIT "B"**

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 29, 2009.

A handwritten signature in black ink, appearing to read "D. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

THE UNIVERSITY OF THE STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT  
ALBANY, NEW YORK 12234

OFFICE OF THE COMPTROLLER

November 9, 1981

4832031

TO: Department of State  
Division of Corporations

FROM: Office of Counsel and  
Deputy Commissioner for Legal Affairs

By: Mary L. Gammon  
Legal Assistant

*Mary L. Gammon*

SUBJECT: BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION

REFERENCE: Proposed Certificate of Incorporation

The attached document was submitted to this Office for review to determine whether the provisions of Section 116 of the Education Law require the consent of the Commissioner of Education to its filing with the Department of State, or whether the Education Department would have any objection to its filing.

In the opinion of this Office, there is no necessity for the Commissioner of Education to consent to filing and we have no objection to same.

This waiver of consent to filing is granted with the understanding and upon the conditions set forth on the reverse side of this memorandum.

Att.

This waiver of consent to filing is granted with the understanding that nothing contained in the annexed document shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 7 of section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to use any title restricted by such law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services.

This waiver of consent to filing is granted with the further understanding that nothing contained in the annexed document shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This waiver of consent to filing shall not be deemed to be or to take the place of registration for the operation of a private business school in accordance with the provisions of section 5002 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents pursuant to the provisions of section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.

CERTIFICATE OF INCORPORATION

OF

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

Under Section 402 of the Not-For-Profit Corporation Law

The undersigned, for the purpose of forming a local development corporation under Sections 402 and 1411 of the Not-For-Profit Corporation Law, hereby certifies:

FIRST: The name of the corporation is:

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND  
DEVELOPMENT CORPORATION

SECOND: The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law, is a Type C corporation, and is a local development corporation under Section 1411 of said Law.

THIRD: (a) The Corporation is incorporated and shall be operated for the exclusive 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, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or 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.

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(b) In furtherance of its purposes ~~set forth in~~ Paragraph (a), ~~but not for any other purpose~~, the Corporation shall have, in addition to all other powers (including all powers in furtherance of its corporate purposes ~~mentioned in Section 202 of the Not-For-Profit-Corporation Law~~), the following powers: to construct, acquire, rehabilitate and improve for use by others, industrial or manufacturing plants in the territory in which its operations are principally to be conducted, to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain such plants for ~~others in such territory~~, to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto, to acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein, to borrow money and to issue negotiable bonds, notes and other obligations therefor, and, notwithstanding Section 510 of the Not-For-Profit Corporation Law (Disposition of all or substantially all assets), without leave of the Court, to sell, lease, mortgage or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such terms as it may determine, and, in connection with loans from the New York Job Development Authority, to enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof and otherwise to carry out its corporate purposes and to foster and encourage the location or expansion of industrial or manufacturing plants in the territory in which the operations of such corporation are principally to be conducted,

provided, however, that the corporation shall not attempt to influence legislation, by propaganda or otherwise, or participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

(c) The lawful or quasi-public objectives which each power and business purpose of the Corporation will achieve are as set forth in Paragraph (a) of this Article.

FOURTH: (a) The purposes of the corporation do not extend to or include any of the purposes mentioned in Paragraphs (b) through (t) of Section 404 of the Not-for-Profit Corporation Law.

(b) The Corporation shall not engage in the solicitation of contributions or any other activity that would require registration under Article 7-A of the Executive Law.

(c) No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation; and the Corporation shall not participate in, nor intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

(d) All income and earnings of the Corporation shall be used exclusively for its corporate purposes or accrue and be paid to the New York Job Development Authority.

(e) No part of the income or earnings of the Corporation shall inure to the benefit or profit of, nor shall any

distribution of its property or assets be made to any member or private person, corporate or individual, or any other private interest, except that the repayment of loans is hereby authorized, and the repayment of contributions (other than dues) to the corporation is hereby authorized, but only if and to the extent that any such contribution may not be allowable as a deduction in computing taxable income under the Internal Revenue Code of 1954.

(f). If the Corporation accepts a mortgage loan or loans from the New York Job Development Authority, the Corporation shall be dissolved in accordance with the provisions of Section 1411 of the Not-For-Profit Corporation Law upon the repayment or other discharge in full by the Corporation of all such loans.

(g) Notwithstanding any other provision of this Certificate, the Corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law) or, (2) by a corporation contributions to which are deductible under Section 170(a)(2) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

FIFTH: In the event of dissolution, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or,

to another organization to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York will best accomplish the general purposes for which this Corporation was formed.

SIXTH: The office of the Corporation shall be located in the City of Buffalo, County of Erie, State of New York.

SEVENTH: The territory in which the activities of the Corporation are principally to be conducted is the County of Erie.

EIGHTH: The names and addresses of the initial directors of the Corporation are:

<u>NAME</u>	<u>ADDRESS</u>
David Edelman	Suite 500 Crosby Building 170 Franklin Street Buffalo, New York 14202
Dean J. Sallak	Suite 500 Crosby Building 170 Franklin Street Buffalo, New York
Charles F. Rossini	Suite 500 Crosby Building 170 Franklin Street Buffalo, New York
Leonard Malloy	Suite 500 Crosby Building 170 Franklin Street Buffalo, New York
Anthony D. [unclear]	Suite 500 Crosby Building 170 Franklin Street Buffalo, New York

NINTH: The Secretary of the State of New York is hereby designated as the agent of the Corporation upon whom process shall be

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may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent for the Corporation is:

Suite 500, Grosby Building  
170 Franklin Street  
Care of the Erie County Industrial  
Development Agency  
Buffalo, New York 14202

TENTH: The subscriber is of the age of eighteen (18) years or over.

ELEVENTH: Prior to delivery to the Department of State for filing, all approvals or consents required by law will be endorsed upon or annexed to this Certificate.

TWELFTH: The Corporation is authorized by resolution of its Board of Directors to accept subscriptions from members of the Corporation on terms not inconsistent with the Non-Profit Corporation Law, and to issue certificates therefor.

EDWwb

STATE OF NEW YORK )

COUNTY OF ERIE )

On the 14<sup>th</sup> day of December, 1981, before me personally came WILLIAM J. DONOHUE, to me known and known to me to be the same person described in and who executed the foregoing Certificate of Incorporation, and he duly acknowledged to me that he executed the same.

*Nancy K. Donohue*  
Notary Public

Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1983

STATE OF NEW YORK )

COUNTY OF ERIE )

ANTHONY D. MANCINELLI, being duly sworn, deposes and says that he is the attorney for the subscribers of the annexed Certificate of Incorporation of BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION and that no previous application for the approval of said Certificate by any Justice of the Supreme Court, has ever been made.

*Anthony D. Mancinelli*  
Anthony D. Mancinelli

Subscribed and sworn to before me  
this 18 day of December, 1981.

*Gary R. Maas*  
Notary Public

GARY R. MAAS  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1982

APPROVAL OF JUSTICE OF SUPREME COURT

I, **NORMAN J. WOLF, J.S.C.**, a Justice of the Supreme Court of the Eighth Judicial District, do hereby approve the foregoing Certificate of Incorporation of BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, and consent that the same be filed.

Dated: December 31, 1981

*Norman J. Wolf*  
Justice of Supreme Court



STATE OF NEW YORK

DEPARTMENT OF LAW

ALBANY, N. Y. 12224

Telephone: 474-7206

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. MCSPARRON  
ASSISTANT ATTORNEY GENERAL  
IN CHARGE  
LITIGATION BUREAU

August 17, 1981

Anthony D. Mancinelli, Esq.  
Magavern, Magavern, Lowe, Bellewech,  
Dopkins & Fadale  
20 Cathedral Park  
Buffalo, New York 14202

Dear Mr. Mancinelli:

Re: BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT  
CORPORATION

Due and timely service of the notice of application  
for the approval of the proposed certificate of incorporation  
of the above entitled corporation is hereby admitted.

The Attorney General declines to appear at the  
time of application.

Very truly yours,

JAMES G. MCSPARRON  
Assistant Attorney General

Assistant Attorney General

Kenneth J. Braun  
Sheriff

Thomas F. Higgins  
Under Sheriff



Ten Delaware Avenue  
Buffalo, New York 14202  
(716) 846-7600

## Sheriff of Erie County

Re: Buffalo and Erie County Industrial  
Land Development Corporation

Dear Sir:

The records of the Erie County Sheriff's Department disclose no reference identifiable with the following listed persons who executed a certificate of incorporation for the above-referenced corporation, dated December 14th 1981, nor with the persons listed therein as directors until the first annual meeting.

David Edelman	08-20-46
Dean J. Sallak	04-23-45
Charles P. Rosenow	02-02-45
Leonard Baljay	04-16-24
Anthony Mancinelli	12-17-50
William Donohue	07-16-38

This identification is by name only, and is not to be construed as a positive identification. Please be advised that the files of the Sheriff's Department contain arrests only when made by our Department or where a person is or has been in the custody of the Sheriff of Erie County.

Very truly yours,

KENNETH J. BRAUN,  
SHERIFF OF ERIE COUNTY

By: CHARLES P. FINK, CHIEF  
IDENTIFICATION BUREAU

cc: Loretta Chrosniak, Clerk  
Supreme Court, Special Term



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1832031

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CERTIFICATE OF INCORPORATION

OF

BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

7/11/58

*Typo*

*11/8*

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JAN 1 1958

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*[Handwritten signature]*

MAGAVERN, MAGAVERN, LOWE  
SILVERMAN, DOPKINS & FADALE  
20 CATHEDRAL PARK  
BUFFALO, NEW YORK 14202

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 29, 2009.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

CERTIFICATE OF CHANGE

OF

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

Under Section 803-A of the Not-for-Profit Corporation Law

We, the undersigned, the President and Secretary, respectively, of BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, certify:

1. The name of the corporation is BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION.

2. Its Certificate of Incorporation was filed by the Department of State on January 13, 1982.

3. The Certificate of Incorporation is changed to change the post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him to: Suite 300 - Liberty Building, 424 Main Street, Buffalo, New York, 14202.

4. The manner in which the change of the Certificate of Incorporation was authorized was by vote of a majority of the entire Board of Directors.

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate this 17th day of May, 1985.

BUFFALO AND ERIE COUNTY INDUSTRIAL  
LAND DEVELOPMENT CORPORATION

By: Richard T. Swist  
Richard T. Swist, President

By: Anthony D. Manalillo  
Anthony D. Manalillo, Secretary

6230615

8230615

STATE OF NEW YORK )  
COUNTY OF ERIE )

SS.:

RICHARD T. SWIST, being duly sworn, deposes and says that he is the President of BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, the corporation named in the within entitled matter; that he has read the foregoing Certificate of Change and knows the contents thereof; and same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes same to be true.

*Richard T. Swist*  
Richard T. Swist, President.

Sworn to before me this  
17th day of May, 1985.

*Anthony D. Mancinelli*  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires March 30, 1987

STATE OF NEW YORK )  
COUNTY OF ERIE )

SS.:

ANTHONY D. MANCINELLI, being duly sworn, deposes and says that he is the Secretary of BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, the corporation named in the within entitled matter; that he has read the foregoing Certificate of Change and knows the contents thereof; and same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes same to be true.

*Anthony D. Mancinelli*  
Anthony D. Mancinelli, Secretary.

Sworn to before me this  
17th day of May, 1985.

*Anthony D. Mancinelli*  
Notary Public

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

B230615

1/13/82 *type*  
*Buffalo, Erie Co*  
A832031-13

S/S to Erie Co Industrial  
Devel. Agency  
170 Franklin St  
Buffalo NY 14202

unaverted program will come  
to Buffalo Park  
Buffalo, NY 14202

N/A  
JH 5/23/85

*28*

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAY 28 1985

AMT. OF CHECK \$             
FILING FEE \$             
TAX \$             
COUNTY FEE \$             
COPY \$             
CERT \$             
REFUND \$             
SPEC NUMBER           

MAY 24 2 PM '85

*Eric  
Spec*

MAY 28 1985

FILED

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on December 29, 2009.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

**CERTIFICATE OF AMENDMENT  
OF THE CERTIFICATE OF INCORPORATION OF  
BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT  
CORPORATION**

Under Section 803 of the  
New York Not-for-Profit Corporation Law

We, the undersigned, being the President and Assistant Secretary of  
**BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT  
CORPORATION** (the "Corporation") do hereby certify the following:

**FIRST:** The name of the Corporation is **BUFFALO AND ERIE  
COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**.

**SECOND:** The Certificate of Incorporation of **BUFFALO AND ERIE  
COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION** was filed by the  
New York Department of State on the 13th day of January, 1982 under the Not-for-Profit  
Corporation Law.

**THIRD:** The Corporation is a corporation as defined in subparagraph  
(a)(5) of Section 102 of the Not-for-Profit Corporation Law, is a Type C corporation as  
defined in subparagraph (b) of Section 201 of the Not-for-Profit Corporation Law and is  
a local development corporation under Section 1411 of the Not-for-Profit Corporation Law,  
and shall remain a Type C Corporation and a local development corporation upon the filing  
of this Certificate of Amendment.

**BILLED**

FOURTH: The Certificate of Incorporation is amended to include the purposes for which the Corporation is to be formed, organized and operated. A new Paragraph 4(h) is hereby added, as follows:

New Paragraph 4(h):

"(h) Should the Corporation be licensed as an insurance broker by the New York State Department of Insurance, (1) the Corporation shall not participate in any transaction involving the sale of insurance to members of the Corporation, (2) the Corporation shall limit its insurance brokerage activities to export-related insurance products, and (c) any commissions received by the Corporation from the sale of such export-related insurance products shall be used to defray the Corporation's operating expenses."

FIFTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon it is: c/o Hurwitz & Fine, P.C., 1300 Liberty Building, Buffalo, New York 14202.

SIXTH: The manner in which this amendment to the Certificate of Incorporation of Buffalo and Erie County Industrial Land Development Corporation, was authorized was by the consent of a majority of the members of the entire Board of

Directors followed by the affirmative vote of a majority of the members entitled to vote  
thereon at a meeting of members duly called, the undersigned will certify to the  
the officers.

IN WITNESS WHEREOF, we have made and signed this certificate on this  
day of September, 1996, and affirm that the statements made herein are true under the  
penalties of perjury.

  
Ronald W. Coon, President

  
Christopher J. Harty, Assistant Secretary



STATE OF NEW YORK  
Office of the Attorney General

DENNIS C. VACCIO  
Attorney General

WILLIAM D. MALDOVAN, JR.  
Assistant Attorney General

October 2, 1994

Telephone: (716) 847-7179

Christopher J. Hurley, Esq.  
Hurwitz & Fine, P.C.  
1300 Liberty Building  
Buffalo, NY 14202-3670

Re: ~~Buffalo and Erie County Industrial Land Development Corp.~~  
Certificate of Amendment

Dear Mr. Hurley:

Based upon our review of the proposed Certificate of Amendment for the above not-for-profit corporation together with additional information you provided us regarding the registration and recording status of the corporation with our Charities Bureau, please be advised that the Attorney General has no objection to the filing of the Certificate of Amendment with the Secretary of State.

Please forward a copy of the judicially approved Certificate of Amendment and with proof of filing of same with the Secretary of State so that we may close our file in this matter.

Thank you for your continuing cooperation.

Very truly yours,

WILLIAM D. MALDOVAN  
Assistant Attorney General

WDM:gom

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The undersigned, a Justice of the Supreme Court of the State of  
Eight Judicial District, does hereby approve of the filing of  
the Certificate of Incorporation of *Blain* and *San Diego* *Insurance*  
Corporation and consents that the same be filed.

Dated: Oct - 9 1936 1936

*[Handwritten signature]*

**GRANTED**

*October 9, 1936*

*Wm. M. Marshall*  
COURT CLERK

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980101000000  
10/15/96

CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION

OF

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT  
CORPORATION

Under Section 803 of the New York Not-for-Profit Corporation Law

File

Filed By: Harvita & Fine, P.C.  
1300 Liberty Boulevard  
Buffalo, NY 14203-3670

STATE OF NEW YORK  
DEPARTMENT OF STATE  
REC OCT 15 1996

RECEIVED  
OCT 11 2 13 PM '96

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**BILLED**

FILED  
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980101000000

**EXHIBIT "C"**

AMENDED AND RESTATED

BYLAWS

OF

BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

Amended and Adopted July 10, 2006

Amended and Adopted September 10, 2007

Amended and Adopted April 20, 2009

Amended and Adopted November 9, 2009

Amended and Restated and Adopted December 8, 2009

ARTICLE I – OFFICES

The principal offices of the Buffalo and Erie County Industrial Land Development Corporation (the "Corporation") shall be in the City of Buffalo, County of Erie, and State of New York. The Corporation may also have offices at such other places within or without the State of New York as the Board of Directors (the "Board") may from time to time determine or the business of the Corporation may require.

ARTICLE II – PURPOSES AND POWERS

1. The Corporation is incorporated and shall be operated for the exclusive 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, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry in the community or area, and lessening the burdens of government and acting in the public interest.

2. In furtherance of its purposes set forth in paragraph (1) but not for any other purpose, the Corporation shall have, in addition to all other powers (including all powers in furtherance of its corporate purposes mentioned in Section 202 of the Not-for-Profit Corporation Law) the following powers: to construct, acquire, rehabilitate and improve for use by others, industrial or manufacturing plants in the territory in which its operations are principally to be conducted; to assist financially in such construction, acquisition, rehabilitation and improvement; to maintain such plants for others in such territory; to disseminate information and furnish advice, technical assistance and liaison with federal, state and local authorities with respect thereto; to acquire by purchase, lease, gift, bequest, devise or otherwise, real or personal property or interests therein; to borrow money and to issue negotiable bonds, notes and other obligations therefor; to issue negotiable revenue bonds, notes and other obligations on behalf of Erie County for the benefit of not-for-profit corporations and private entities to finance projects thereof in furtherance of the purposes of the Corporation and solely for the purposes set forth in the July 24, 2009, Erie County Legislature Resolution No. 218, as may amended by the Erie County Legislature from time to time, and notwithstanding Section 510 of the Not-For-Profit Corporation Law (Disposition of all or substantially all assets), without leave of the Court, to

sell, lease, mortgage or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such terms as it may determine; and, in connection with loans from the New York Job Development Authority, to enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof and otherwise to carry out its corporate purposes; and to foster and encourage the location or expansion of industrial or manufacturing plants in the territory in which the operations of the Corporation are principally to be conducted; provided, however, that the Corporation shall not attempt to influence legislation, by propaganda or otherwise, or participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office; and provided, further, that any revenue bonds, notes or obligations of the Corporation issued on behalf of Erie County shall (a) never be the debt of the State of New York, Erie County or any political subdivision and neither the State of New York, Erie County nor any political subdivision thereof shall be liable thereon and (b) shall be payable solely out of revenues and receipts derived from the leasing or sale by the Corporation of the applicable project.

### ARTICLE III – MEMBERSHIP

1. MEMBERSHIP. The sole member of the Corporation (the “Member”) shall be the County of Erie acting by and through the Erie County Executive, ex officio.
2. RIGHTS AND POWERS OF MEMBER. The Member shall have and exercise all the rights and powers of corporate membership created by the laws of the State of New York, the Certificate of Incorporation or the By-laws of the Corporation.
3. ANNUAL MEETING OF THE CORPORATION. The Member shall hold an annual meeting of the Corporation, once during the first fiscal year of the Corporation’s existence and thereafter within six months after the end of each fiscal year, in all cases at a convenient time and place designated by the Member. At the annual meeting, the Member shall receive the annual report if and to the extent required under Section 4 of these By-Laws and transact such other business as may properly come before the meeting, including the appointment of Directors when appropriate.
4. SPECIAL MEETING. Special meetings of the membership of the Corporation may be called by the Chief Executive Officer (CEO) or the Chief Operating Officer (COO) in the absence of the CEO and shall be called by the CEO or the COO, in the absence of the CEO, upon written request of the Member or the board of directors. The CEO or Secretary shall cause notice of such meeting to be given personally to the Member or mailed to the Member at his/her addresses as it appears in the membership roll book or sent via electronic mail not less than ten (10) days nor more than fifty (50) days before the scheduled date of such meeting. Such notice shall state the date, time, place and purpose of the meeting and by whom called. No other business but that specified in the notice may be transacted at such special meeting without the unanimous consent of all present at such meeting.
5. WAIVER OF NOTICE. Notice of meetings, annual, regular or special, need not be given to any member who submits a signed waiver of notice in person, whether before or after the meeting. The attendance of any member at a meeting, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

6. NO ACTION BY MEMBER WITHOUT A MEETING. Whenever the Member is required or permitted to take any action by vote, no such action may be taken without a meeting where the Member entitled to vote thereon is present.

7. ANNUAL REPORT TO MEMBER. At the annual meeting of the Corporation, except for the annual meeting during the first fiscal year of the Corporation's existence, the CEO and the Treasurer of the Corporation shall present an annual report showing in appropriate detail the complete audited financial statement of the Corporation for the fiscal year immediately preceding the date of the report showing the assets and liabilities, principal changes in assets and liabilities, revenue, receipts, expenses and disbursements of the Corporation; and a summary of the activities of the Corporation during the preceding year. The annual report shall be filed with the minutes of the annual meeting.

#### ARTICLE IV – DIRECTORS

1. MANAGEMENT OF THE CORPORATION. The Corporation shall be managed by the Board. Each director shall be at least eighteen (18) years of age.

2. NUMBER, ELECTION AND TERM OF DIRECTORS.

(a) The number of Directors shall be seven. As used in these By-laws, "the entire Board of Directors" means the total number of Directors which the Corporation would have in accordance with the preceding sentence if there were no vacancies on the Board.

(b) One director shall be the chairperson of the Erie County Legislature, ex officio; one director shall be the chairperson of the Erie County Legislature's Economic Development Committee, ex officio; one director shall be the President of the local AFL-CIO, ex officio (collectively, the aforementioned three directors are sometimes hereinafter referred to as the "Designated Directors" or individually as a "Designated Director"); and four directors to be appointed by the Member and who shall serve at the Member's pleasure. The membership of a Designated Director shall terminate upon the inauguration or appointment of his or her successor in such office, which successor in office shall thereupon become the Designated Director.

(c) Directors are eligible to serve an unlimited number of consecutive terms.

3. RESIGNATIONS AND REMOVAL OF DIRECTORS. Any Director of the Corporation may resign at any time by giving written notice to the President or the Secretary. Such resignation shall take effect at the time specified therein or, if no time is specified, then on delivery. Any or all of the directors may be removed for cause or without cause, however, a Designated Director shall only be removed for cause by the Member.

4. QUORUM OF DIRECTORS. The presence at any directors' meeting of a majority of the individuals then serving as directors shall constitute a quorum for the transaction of business or of any specified item of business.

5. ACTION OF THE BOARD. Unless otherwise required by law, the vote of a majority of the directors shall be the act of the Board. Each director present shall have one vote.

6. PLACE AND TIME OF BOARD MEETINGS. The Board may hold its meetings at the office of the Corporation or at such other places, either within or without the State of New York, as it may from time to time determine.

7. REGULAR AND ANNUAL MEETINGS. Monthly meetings of the Board shall be held at such time and place as directed by the Chair. One such monthly meeting per year shall be designated by the Board as its annual meeting.

8. NOTICE OF MEETINGS OF THE BOARD, ADJOURNMENT. Written notice stating the time and place of each regular meeting of the directors shall be given by the Secretary, personally or by mail or by electronic mail, not less than ten (10) days before the date of the meeting, to each director. The Secretary shall cause to be mailed, via U.S. or electronic mail, not less than ten (10) days nor more than fifty (50) days before the annual meeting to every director a notice stating the time and place of the annual meeting. Notice of a meeting need not be given to any director who submits a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to him or her. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the adjournment shall be given all directors who were absent at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

9. SPECIAL MEETINGS. Special meetings of the Board of the Corporation may be called by the Chief Executive Officer (CEO) or the COO in the absence of the CEO, or the directors and shall be called by the CEO or the COO, in the absence of the CEO, upon written request of at least four (4) members. The Secretary shall cause a notice of such meeting to be given personally to or mailed to directors or sent via electronic mail not less than two (2) days nor more than fifty (50) days before the scheduled date of such meeting. Such notice shall state the date, time, place and purpose of the meeting and by whom called. No other business but that specified in the notice may be transacted at such special meeting without the unanimous consent of all present at such meeting.

10. NO ACTION WITHOUT A MEETING. Whenever directors are required or permitted to take any action by vote, no such action may be taken without a meeting where the directors entitled to vote thereon are present.

11. ORDER OF BUSINESS. The order of business at all meetings of directors shall be as follows:

- Roll call
- Reading of the minutes of the preceding meeting
- Reports of committees
- Reports of officers
- Old and unfinished business
- New business
- Adjournments

Notwithstanding the foregoing, the Chair shall have the authority to vary the order of business, as the need arises.

12. WAIVER OF NOTICE. Notice of meetings, annual, regular or special, need not be given to any director who submits a signed waiver of notice in person, whether before or after the meeting. The attendance of any director at a meeting, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

13. VOTING OF SECURITIES HELD BY THE CORPORATION. Stocks or other securities owned by the Corporation may be voted in person or by proxy as the Board of Directors shall specify. In the absence of any direction by the Board of Directors, such stocks or securities shall be voted by the CEO, or the COO in the absence of the CEO, as he or she shall determine.

14. CHAIR. During any period when the individual acting by and on behalf of the Sole Member appoints himself/herself as a director, that individual shall be the Chair. At all other times, the Chair shall be designated by a majority of the Board. The Chair will preside at all meetings of the Corporation. The Chair shall have the authority to sign all agreements, contracts, deeds and any other instruments on behalf of the Corporation. The Chair shall submit his/her recommendation and such information as he/she shall deem pertinent concerning the business, affairs, and policies of the Corporation at each meeting of the Board. In the event of a vacancy on a committee of the Corporation, the Chair will designate a successor to fill the unexpired portion of the term, if the number of committee members is specified by these bylaws. In the event of a vacancy on a committee of the Corporation, the Chair may designate a successor to fill the unexpired portion of the term, if the number of committee members is not specified by these bylaws. In the event of a vacancy in the chair of a committee of the Corporation, the Chair will designate a successor to fill the unexpired portion of the term.

15. COMPENSATION. All Directors shall serve without compensation. All Directors may be reimbursed for reasonable expenses incurred in the performance of corporate duties.

#### ARTICLE V – COMMITTEES OF THE CORPORATION

1. NOMINATING COMMITTEE. There shall be a nominating committee which shall consist of such directors of the Corporation selected by the Board to nominate such candidates as they deem appropriate for the Chair, officers of the Corporation, and such directors of the Corporation to serve upon its Committees. Members of the Nominating Committee shall serve a term of one (1) year.

2. STANDING COMMITTEES. The Board by resolution adopted by a majority of the entire Board may designate standing committees each to consist of at least three (3) directors, and which may, at the discretion of the Board, include individuals who are not members of the Board. Each committee shall have such authority of the Board as may be delegated and as is set forth in the resolution adopted by the Board. Each committee shall keep minutes of proceedings and report to the Board.

3. LIMITATION OF AUTHORITY OF COMMITTEES. No standing committee shall have authority as to the following matters:

(a) The submission to the Member of any action requiring Member approval under this Article V;

(b) The filling of vacancies in the Board or in any committee;

(c) The amendment or repeal of the By-Laws or the adoption of new By-Laws; and

(d) The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.

4. TERM OF OFFICE OF COMMITTEE MEMBERS. Whenever the term of office of any member of a committee shall expire, the Board may designate a successor member. Any member of the committee may be designated or elected to succeed himself or herself.

5. SPECIAL COMMITTEES. The Board at any time and from time to time, by resolution adopted by a majority of the entire Board, may create such special committees as may be deemed desirable, to serve at the pleasure of the Board, and the members of which shall be appointed by the Chair with the consent of the Board. These committees shall have only the lawful powers specifically delegated to them by the Board, except that no such committee shall have powers which are not authorized for any standing committees of the Board under Section (2) hereof and by law.

6. POLICY COMMITTEE.

(a) The Policy Committee shall be comprised of the following:

(i) Not less than three (3) directors appointed by the Chair with the consent of the Board at the annual meeting of the Board, who shall serve for terms of one (1) year, and thereafter until their successors are appointed; and

(ii) Such other individuals as the Board may designate from time to time.

(b) The committee chair for the Policy Committee shall be designated by a majority of the Board.

(c) The Policy Committee shall:

(i) Have the power to call for such reports and documentation as it deems necessary to properly monitor the Corporation's operation;

(ii) Propose to the Board policy guidelines and policy statements appropriate to the Corporation and its mission; and

(iii) Perform such other duties as may be delegated to them by the Board, from time to time.

7. FINANCE & AUDIT COMMITTEE.

(a) The Finance & Audit Committee shall be comprised of the following, each of whom, to the extent practicable, shall be familiar with corporate financial and accounting practices:

(i) Not less than three (3) members of the Corporation appointed by the Chair with the consent of the Board at the annual meeting of the Board, who shall serve for terms of one (1) year, and thereafter until their successors are appointed; and

(ii) Such other individuals as the Board may designate, from time to time.

(b) The committee chair for the Finance & Audit Committee shall be designated by a majority of the Board.

(c) The Finance & Audit Committee shall be responsible:

(i) To provide assistance to the Board in fulfilling its fiduciary responsibilities relating to accounting, reporting and regulatory compliance practices;

(ii) To maintain, by way of regularly scheduled meetings (at least once prior to the commencement and once after the completion of the annual audit process), a direct line of communication between the Board and the Corporation's independent accountants and auditors to provide for exchanges of views and information;

(iii) To maintain, as appropriate, a direct line of communication between the Board and the governmental authorities having audit authority or official oversight of the Corporation;

(iv) To approve the budget of the Corporation for submission to the Board; and

(v) To approve and/or direct the transfers of moneys under the budget.

Particularly, and without limiting the generality of the foregoing, the Financing & Audit Committee shall be responsible for recommending to the Board the level of cash reserves and the level of fund balances. The Finance & Audit Committee shall also recommend to the Board the hiring of a certified independent accounting firm, establish the compensation to be paid to such accounting firm, provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes and receive reports from such accounting firm. The Finance & Audit Committee shall report to the Board on a periodic basis, at least annually, the findings of its independent accountants and auditors. These reports shall include careful consideration of the actions taken by management on the independent accountants' and auditors' suggestions for correcting weaknesses, if any, in the Corporation's internal controls, regulatory compliance, organizational structure and operations. These reports may include the adequacy of

the audit effort by the Corporation's independent accountants and auditors, the financial and regulatory compliance reporting decisions of management, the adequacy of disclosure of information essential to a fair presentation of the financial affairs and regulatory compliance efforts of the Corporation, and the organization and quality of the Corporation's system of management and internal accounting control.

(d) Each member of the Finance & Audit Committee must be an "independent member" within the meaning of, and to the extent required by, Section 2825 of the New York Public Authorities Law, as amended from time to time.

8. GOVERNANCE COMMITTEE.

(a) The Governance Committee shall be comprised of the following:

(i) Not less than two (2) members of the Corporation appointed by the Chair with the consent of the Board at the annual meeting of the Board, who shall serve for terms of one (1) year, and thereafter until their successors are appointed; and

(ii) Such other individuals as the Board may designate, from time to time.

(b) The committee chair for the Governance Committee shall be designated by a majority of the Board.

(c) The Governance Committee shall be responsible to:

(i) Keep the Board informed of current best governance practices;

(ii) Review corporate governance trends;

(iii) Update the Corporation's corporate governance principles; and

(iv) Advise those responsible for appointing members to the Board of the skills and experience required of potential Board members.

(d) Each member of the Governance Committee must be an "independent member" within the meaning of, and to the extent required by, Section 2825 of the New York Public Authorities Law, as the same may be amended from time to time.

ARTICLE VI – OFFICERS

1. OFFICERS, APPOINTMENT, TERM.

(a) Appointed Officers

The officers of the Erie County Industrial Development Agency (the "ECIDA") shall hold the same positions with this Corporation. Their term of office as officers of the Corporation shall be concurrent with their term of office as officers of the ECIDA. The Board will appoint such other officers as it may determine, who shall have such duties, powers and

functions as hereinafter provided. Such officers' term of office shall be concurrent with the term of office of the ECIDA officers. Should the term of a director expire, or should the term of employment with the Corporation of an officer who is not a director expire, his or her term as an officer shall simultaneously expire. Notwithstanding the provisions set forth in this Article, the powers to perform and exercise the duties and functions of any of the officers of the Corporation may be limited from time to time via resolution of the Board.

(b) Removal, Resignation, Salary

' Any officer appointed by the Board may be removed by the Board with or without cause. In the event of the death, resignation or removal of an officer, the Board in its discretion may appoint a successor to fill the unexpired term. Any two (2) or more offices may be held by the same person, except the offices of CEO and Secretary.

2. CHIEF EXECUTIVE OFFICER (CEO). The CEO shall be the chief executive officer of the Corporation; he or she shall not be a member and/or director of the Corporation; he or she shall have the general management of the affairs of the Corporation; shall exercise supervision and control of all administrative functions of the Corporation, including personnel, budgeting, program and policy implementation; and shall see that all orders and resolutions of the Board are carried into effect. The Board will appoint the CEO of the ECIDA as the CEO of the Corporation. The CEO shall have the authority to sign all agreements, contracts, deeds and any other instruments on behalf of the Corporation.

3. CHIEF OPERATING OFFICER (COO). The COO may not be a member and/or director of the Corporation. He/She shall be hired by the Corporation for such term of employment as the Corporation deems proper. He/She shall exercise supervision and control of all administrative functions of the Corporation, including personnel, budgeting, program and policy implementation. He/She shall be responsible to the Corporation for the implementation of all resolutions, orders, programs or projects of the Corporation. The COO shall have the authority to sign all agreements, contracts, deeds and any other instruments on behalf of the Corporation. He/She shall attend all meetings of the Corporation and its committees with the right to take part in discussions and to recommend such measures as he/she may deem necessary or expedient, and he/she shall perform such other duties and shall have such other powers as may be prescribed for him/her by law or by the Corporation. The COO shall have all necessary incidental powers to perform and exercise any of the duties and functions as specified above or lawfully delegated to him/her. In the absence or inability of the CEO to perform his or her duties or exercise his or her powers, the COO shall have all the powers and functions of the CEO.

4. VICE PRESIDENTS. During the absence or disability of the CEO and the COO, the Executive Vice President shall have all the powers and functions of the CEO and COO. The Executive Vice President shall also solicit and guide the preparation of loan, grant or assistance applications in conformance with applicable plans, contracts and regulations, and shall, along with the CEO, have authority to present such applications to the Loan Committee for its review and approval.

5. TREASURER. The Treasurer shall have the care and custody of all the funds and securities of the Corporation and shall deposit said funds in the name of the Corporation in such bank or trust company as the directors may elect; he or she shall, when duly authorized by the Board, sign and execute all contracts in the name of the Corporation, he or she shall also sign all

checks, drafts, notes and orders for the payment of money, which shall be duly authorized by the Board and shall be countersigned by the CEO, COO, or a Vice President; he or she shall at all reasonable times exhibit his or her books and accounts to any director or member of the Corporation upon application at the office of the Corporation during ordinary business hours. The Treasurer shall not be a member and/or director of the Corporation. At the end of the corporate year, he or she shall present the results of the independent audit performed by the accounting firm hired for such purposes at the annual meeting of the members, at which time he or she shall also present an annual report setting forth in full the financial conditions of the Corporation. During the absence or disability of the Executive Vice President, the Treasurer shall also solicit and guide the preparation of loan, grant or assistance applications and have authority to present such applications to the Board for its review and approval.

6. ASSISTANT TREASURER. During the absence or disability of the Treasurer the Assistant Treasurer, or if there are more than one, the one so designated by the Chair, shall have the powers and functions of the Treasurer. The Assistant Treasurer shall not be a member and/or director of the Corporation.

7. SECRETARY. The Secretary shall keep the minutes of the Board and also the minutes of the members. He or she shall have the custody of the seal of the Corporation and shall affix and attest the same to documents when duly authorized by the Board. He or she shall attend to the giving and serving of all notices of the Corporation and shall have charge of such books and papers as may be assigned to him or her and perform all the duties incidental to his or her office. He or she shall keep a membership roll containing the names, alphabetically arranged, of all persons who are members of the Corporation, showing their places of residence and the time when they became members.

8. ASSISTANT SECRETARY. During the absence or disability of the Secretary, the Assistant Secretary, or if there are more than one, the one so designated by the Chair, shall have all the powers and functions of the Secretary.

9. SURETIES AND BONDS. In case the Board shall so require, any officer or agent of the Corporation shall execute to the Corporation a bond in such sum and with such surety or sureties as the Board may direct, conditioned upon the faithful performance of his or her duties to the Corporation and including responsibility for negligence and for the accounting for all property, funds or securities of the Corporation which may come into his or her hands.

#### ARTICLE VII – SEAL

The seal of the Corporation shall be in the form of a circle and shall bear the name of the Corporation and the year of its organization.

#### ARTICLE VIII – CONSTRUCTION

If there be any conflict between the provisions of the Certificate of Incorporation and these By-Laws, the provisions of the Certificate of Incorporation shall govern.

## ARTICLE IX - ETHICAL STANDARDS

1. In the event that any member or director of the Corporation has a business or other interest in any contract or matter involving the Corporation, in and regard to which such member or director has authority to act on behalf of the Corporation, the member or director shall disclose such interest and abstain from action.

2. Prior to the making or approval by the Corporation of any loan, grant or assistance to, any contract with, and/or employment of any person or private entity, each member, director, officer or employee of the Corporation who has received any communication from or in favor of such private entity shall make written disclosure of such communication to the Board and the fact of such communication shall be noted in the minutes of the next Board meeting.

3. In all other respects, members and directors of the Corporation shall operate in accordance with ethical standards as enumerated in the Not-For-Profit Corporation Law of the State of New York, as the same may be amended from time to time, and any ethics or conflicts of interest policy statement approved by the Board.

4. In addition to any other ethical standards applicable to any member or director of the Corporation pursuant to these By-Laws or other applicable law, a majority of the members and directors of the Corporation, other than those who serve by virtue of holding a civil office of the State of New York, shall, to the extent required by law, be "independent members," as defined in Section 2825 of the New York Public Authorities Law, as amended from time to time.

## ARTICLE X - INDEMNIFICATION OF MEMBERS, DIRECTORS AND OFFICERS

Any person made a party to any action, suit or proceeding by reason of the fact that he or she is or was a member, director, officer or employee of this Corporation, or of any corporation which he or she served as such at the request of this Corporation, shall be indemnified by this Corporation against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him or her in connection with the defense of such action, suit or proceeding or in connection with any appeal therein, except in relation to the matters as to which it shall be adjudged and such action, suit or proceeding that (i) such member, officer, director or employee acted in bad faith, (ii) liability resulted from the active and deliberate dishonesty of such individual, or (iii) such individual gained in fact a financial profit or other advantage to which he or she was not legally entitled. Such right of indemnification shall not be exclusive of any other right to which such director, officer or employee may be entitled apart from the provisions of this Article.

## ARTICLE XI - AMENDMENTS

The By-Laws may be adopted, amended or repealed by the affirmative vote of at least a majority of the individuals then serving as directors or by the affirmative vote of the Member of the Corporation.

## ARTICLE XII – DISSOLUTION

In the event of the dissolution of the Corporation or the winding up of its affairs, the Board of Directors shall, after paying or making provision for the payment of all debts and liabilities of the Corporation of whatsoever kind or nature, distribute all of the remaining assets and property of the Corporation to Erie County for furtherance of the purposes set forth in paragraph (a) of Section 1411 of the Not For Profit Corporation Law. Any of such assets not so disposed of shall be disposed of by order of the Supreme Court of the State of New York pursuant to Section 1008 of the Not For Profit Corporation Law.

## ARTICLE XIII – MISCELLANEOUS

It shall be the policy of the Corporation to adopt By-Laws, rules, regulations, policies, procedures and conduct its operations in accordance with all applicable State, Federal and local laws.

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**EXHIBIT "D"**

**CERTIFICATE OF THE COUNTY EXECUTIVE, ON BEHALF OF ERIE  
COUNTY, NEW YORK, ACCEPTING THE APPOINTMENT OF ERIE,  
COUNTY, NEW YORK AS THE SOLE MEMBER OF THE BUFFALO AND  
ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION**

The undersigned County Executive, acting on behalf of Erie County, New York, the sole member (the "Member") of the Buffalo and Erie County Industrial Land Development Corporation, (the "Corporation"), a local development corporation organized pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, hereby accepts, effective as of November 9, 2009, the appointment of Erie County, New York as the sole member of the Corporation. The undersigned further hereby acknowledges that the Member shall act by and through the County Executive and accepts such rights and duties.

Dated: December 17, 2009

  
\_\_\_\_\_  
Erie County, New York  
Chris Collins  
County Executive, Erie County, New York

**EXHIBIT "E"**

## Debra A. Mantelli

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**From:** Hocienec, Carrie <chocieni@ecidany.com>  
**Sent:** Wednesday, October 07, 2015 1:59 PM  
**To:** Byron W. Brown; Alexandra Williams; Anthony Caruana ; Barry A. Weinstein; Bernadette Taylor; Betty Jean Grant; Bonnie Kane-Lockwood; Brenda McDuffie; Brendan Mehaffy ; Brian Higgins (theresa.kennedy@mail.house.gov); Brian Meyer (bmeyer@wbfo.org); Ca-rin Miles (cmiles@thepartnership.org); Carol Nowak ; Chris Collins (anna.dietrich@mail.house.gov); Chris Pawenski ; Chris Picone; Christine Harris ; Christopher Johnston ; Christopher Johnston ; Cyriac Mathew (cyriacmathew1@gmail.com); Dan Leonard; Daniel Farrell (dfarrell@huntcommercial.com); Darius G. Pridgen ; David J. State Esq. (David\_State@nfta.com); David Mingoia ; David Tytko ; Debra A. Mantelli; Dennis Elsenbeck; Donna Anderson ; Dottie Gallagher-Cohen ; Edward A. Rath III ; Esther Smothers (esther.smothers@erie.gov); Felicia Ali ; Felicia M. Stanley ; Frank Mesiah; Frank Mesiah ; Glenn Nellis ; Grant Loomis ; Gregory Sehr (gregsehr@yahoo.com); Jeanne Stewart; Jenn Diagostino (Jenn@cejbuffalo.org); Jim Doherty; Jim Fink ; Joan Braciak ; John Mills; John Mudie ; John Washington (john@pushbuffalo.org); Karen Weisbeck; Kathleen Peterson ; Kathleen A. Drumm; Katrina Zeplowitz (Katrina.Zeplowitz@erie.gov); Kelly Magin ; Kenneth J. Swanekamp ; Kevin Hardwick (kevin.hardwick@erie.gov); Lanette Boulware; Laura St. Pierre-Smith ; Lewanda Alston ; Linda King ; Lisa M. Flynn (Lisa\_Flynn@nfta.com); Lorrie A. Abounader; Maria Quebral (mquebral@thepartnership.org); Maria R. Whyte; Mark Poloncarz ; Marty Taggart ; Mary Holtz ; Matt Hubacher; Mike Bartlett (ohill@townofhamburgny.com); Natalie M. Lindner (Natalie.Lindner@nationalgrid.com); Olivia Hill (ohill@townofhamburgny.com); Patricia Staniaszek ; Patrick Burke (patrick.burke@erie.gov); Paul Pfeiffer; Paul R. Leone ; Pietra G. Lettieri; Rachael Smith (rsmith@thepartnership.org); Rachelle Dicarlo ; Rebecca Gandour ; Richard Lipsitz ; RJ Ball ; Robert Dimmig (rdimmig@edevstrategies.com); Robert G. Murray; Shirley Voigt ; Susan Gregg (greggs@erie.gov); Thomas A. Kucharski ; Thomas J. Dearing; Thomas Shelberg ; Vernee Shaw (vshaw@city-buffalo.com); Vincent Ricotta  
**Subject:** ECIDA/RDC/ILDC Board Meeting Notice

### Meeting Notice

**Erie County Industrial Development Agency Meeting of the Membership (ECIDA)  
Buffalo & Erie County Regional Development Corporation Board of Directors Meeting (RDC)  
Buffalo & Erie County Industrial Land Development Corporation Board of Directors Meeting (ILDC)**

**DATE:** Wednesday, October 21, 2015

**TIME:** At 9:00 a.m. the ECIDA Meeting of the Membership will be called to order. Immediately upon adjournment of the ECIDA Meeting of the Membership, the RDC Board of Directors Meeting will be called to order. Immediately upon the adjournment of the RDC Board of Directors Meeting, the ILDC Board of Directors Meeting will be called to order.

**PLACE:** 95 Perry Street  
5th Floor, ESD Conference Room  
Buffalo, New York 14203

**Please confirm your attendance plans to me as soon as possible.**

Regards,

Carrie

**Carrie Ann Hocieniec**

Administrative Assistant

Direct Line (716) 362-8367

[chocieni@ecidany.com](mailto:chocieni@ecidany.com)

**Erie County Industrial Development Agency**

**Buffalo Urban Development Corporation**

95 Perry Street, Suite 403

Buffalo, NY 14203

Main (716) 856-6525

Fax (716) 856-6525

[www.ecidany.com](http://www.ecidany.com)

**EXHIBIT "F"**

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF THE ISSUER'S TAX-EXEMPT REVENUE BONDS (BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL PROJECT) SERIES 2015 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,400,000 AND THE EXECUTION OF RELATED DOCUMENTS**

**WHEREAS**, the Buffalo and Erie County Industrial Land Development Corporation (the "*Issuer*") is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "*State*"), as amended (the "*NFP Law*") and Resolution Nos. 218 of 2009 adopted by the Erie County Legislature (the "*Legislature*") on July 24, 2009, as amended by Resolution No. 295 of 2009, adopted by the Legislature on November 19, 2009, and Resolution No. 5-3 (2010) adopted by the Legislature on March 25, 2010, and Resolution No. 110 of 2011, adopted by the Legislature on June 30, 2011 (collectively the "*County Resolutions*" and with the NFP Law, the "*Enabling Act*") ) to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in Erie County (the "*County*") and lessen the burdens of government and act in the public interest; and

**WHEREAS**, to accomplish its stated purposes, the Issuer is authorized and empowered to construct, acquire, rehabilitate and improve for use by others, industrial or manufacturing plants in the County; to assist financially in such construction, acquisition, rehabilitation and improvement; and to issue negotiable revenue bonds, notes and other obligations on behalf of the County for the benefit of not-for-profit corporations and private entities to finance projects; and

**WHEREAS**, the Buffalo Academy Of Science Charter School, a charter school under the New York Education Law (the "*Institution*"), submitted an application to the Issuer on or about September 10, 2015 (the "*Application*"), a copy of which is on file at the office of the Issuer, requesting that the Issuer finance a project through the issuance of its tax-exempt revenue bonds under Section 145 of the Code (the "*Bonds*") in an aggregate principal amount not to exceed \$3,400,000, consisting of: (a) the acquisition of improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 (the "*Land*") to be used to operate a charter school for grades 7-12 (the "*Facility*" and together with the Land collectively, the "*Project*"); and (b) to finance all or a portion of the foregoing through the issuance of the Bonds; (c) paying the costs incidental to the issuance of the Bonds; (d) to fund a debt service reserve fund, if any, required with respect to the Bonds; and (e) the granting of certain other financial assistance in the form of exemptions from mortgage recording tax in connection with any financing of the Project (collectively with the Bonds, the "*Financial Assistance*"); and

**WHEREAS**, the Institution has submitted to the Issuer a Short Environmental Assessment Form (the "*EAF*") in compliance Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "*SEQR*") with respect to the Project; and

**WHEREAS**, notice of a public hearing with respect to the Project was printed in The Buffalo News, a newspaper of general circulation in the County on September 24, 2015, in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "*Code*"); and

**WHEREAS**, pursuant Section 147(f) of the Code, the Issuer conducted a public hearing with respect to the Project on October 8, 2015, a transcript of which is on file at the offices of the Issuer; and

**WHEREAS**, the Institution has proposed that the Issuer issue the Bonds in the aggregate principal amount not to exceed \$3,400,000 as herein provided; and

**WHEREAS**, as required by Section 2824(8) of the Public Authorities Law, the Issuer's Finance & Audit Committee, on October 14, 2015, reviewed the proposal for the issuance of debt by the Issuer related to the Project, recommended that the Issuer undertake the Project and proceed with the issuance thereof, and determined that it is in the best interest of economic development in Erie County for the Issuer to issue the Bonds; and

**WHEREAS**, approval of the County Executive of Erie County (the "*County Executive*"), being the highest elected official of the Erie County, is required as a condition to the tax-exempt status of the Tax-Exempt Bonds; and

**WHEREAS**, the Issuer and the Institution will enter into a Loan Agreement (the "*Loan Agreement*") dated as of November 1, 2015, or such other date as an Authorized Officer (as hereinafter defined) deems appropriate, pursuant to which the Issuer will make a loan of the Bond proceeds to the Institution to finance a portion of the costs of the Project, fund a debt service reserve fund, if any, and pay capitalized interest, if any, and cost of issuance of the Bonds and the Institution will, among other things, agree to make loan payments in an amount sufficient to pay debt service on the Bonds; and

**WHEREAS**, First Niagara Bank, N.A., (the "*Purchaser*"), has offered to purchase the Bonds pursuant to the Bond Purchase Agreement (the "*Bond Purchase Agreement*") substantially in the form executed by the Issuer in similar transactions, to be entered into by the Issuer, the Institution and the Purchaser; and

**WHEREAS**, the Institution, to secure the Institution's obligations under the Loan Agreement, will grant the Issuer a first mortgage lien and security interest in the Land and Facility pursuant to a proposed mortgage and security agreement (the "*Mortgage*") from the Institution to the Issuer. The Issuer will assign the Mortgage to the Purchaser as security for the Bonds pursuant to an assignment of mortgage ("*Assignment of Mortgage*"); and

**WHEREAS**, as additional security for the repayment of the Bonds, the Issuer will, among other things, assign all of its right, title and interest in and to the Loan Agreement (other than the Unassigned Rights (as defined in the Bond Purchase Agreement)) to the Purchaser pursuant to a certain Pledge and Assignment, between the Issuer and the Purchaser, with an acknowledgment by

the Institution (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "*Pledge and Assignment*"); and

**WHEREAS**, the Issuer has given due consideration to the Application and the representations by the Institution that undertaking the Project and issuing the Bonds and undertaking the Project is for a proper purpose, to wit, to promote the reduction of unemployment, better and maintain additional job opportunities and lessen the burdens of government; and is in the public interest.

**NOW, THEREFORE, BE IT RESOLVED BY THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION AS FOLLOWS:**

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration.

**Section 2.** It is among the purposes of the Issuer to promote, develop, encourage and assist in the acquisition, construction, rehabilitation and improvement of facilities for not-for profit corporations and thereby relieve and reduce unemployment, better and maintain job opportunities and lessen the burdens of government.

**Section 3.** Based upon representations made by the Institution to the Issuer, the Issuer makes the following findings and determinations:

(a) The Project involves an "Unlisted Action" as said term is defined under SEQR and subject to an uncoordinated review by the Issuer. Based upon the review by the Issuer of the Application, the EAF and related documents delivered by the Company to the Issuer and other representations made by the Company to the Issuer in connection with the Project, the Issuer hereby finds that the Project will not result in a potential significant adverse environmental impact, and that the preparation of an environmental impact statement is not warranted. The Issuer's determination pursuant to SEQR therefore constitutes a Negative Declaration and is incorporated in Part II of the EAF.

(b) The Project is in furtherance of the purposes of the Issuer.

(c) It is desirable and in the public interest for the Issuer to issue its Bonds to finance the costs of the Project, together with certain related costs and amounts, in an aggregate principal amount not to exceed \$3,400,000.

(d) The Institution is not undertaking the Project in place of, on behalf of, for the benefit of, or at the request of the Issuer.

**Section 4.** In consequence of the foregoing, the Issuer hereby determines to:

- (a) execute the Loan Agreement in substantially the form presented at this meeting, with such amendments or modifications as the Chairman, the Vice Chairman, the Treasurer, Executive Vice President and/or the Chief Financial Officer, the Assistant Treasurer or other officer designated by the Chairman (the "**Authorized Officer**") deems necessary under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer;
- (b) execute the Bond Purchase Agreement in substantially the form presented at this meeting, with such amendments or modifications as the Authorized Officer of the Issuer deems necessary under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer;
- (c) issue and deliver the Bonds to the Purchasers subject however to the approval of the final terms for the Bonds and the terms and conditions of the Bond Purchase Agreement consistent with this Resolution, and the prior written approval of all terms contained therein, and of the terms of the Bonds, by the Authorized Officer of the Issuer and by the Institution;
- (d) use the proceeds of the Bonds to make a loan to the Institution pursuant to the Loan Agreement, including to finance a portion of the costs and necessary incidental expenses in accordance with the Bond Purchase Agreement and the Loan Agreement;
- (e) execute the Pledge and Assignment in a form approved by an Authorized Officer on the advice of counsel;
- (f) assign the Mortgage to the Purchaser subject to the Unassigned Rights;
- (g) use the proceeds of the Bonds to accomplish the Project, including to pay necessary incidental expenses in accordance with the Bond Purchase Agreement and the Loan Agreement;
- (h) execute a Tax Compliance Agreement from the Institution and the Issuer to the Trustee (the "**Tax Compliance Agreement**") and a completed Internal Revenue Service Form 8038 (Information Return for Private Activity Bonds) relating to the Tax-Exempt Bonds (the "Information Return") and file the Information Return with the Internal Revenue Service in connection with the issuance of the Tax-Exempt Bonds;
- (i) execute and deliver all other certificates and documents required in connection with issuance and sale of the Bonds including the documents identified on the draft Closing Memorandum and any other documents as may be required by the Purchasers or otherwise required to accomplish the Project, qualify the interest on the Tax-Exempt Bonds for tax-exempt status under Section 103 of the Code (collectively, the "**Financing Documents**"); and
- (j) Grant a mortgage recording tax exemption in an amount not to exceed \$34,000.

**Section 5.** to finance the costs of the Project, the funding of a debt service reserve fund, if any, and capitalized interest, if any, and costs of issuance, by the issuance of the Bonds and all acts previously taken by the Issuer with respect to the undertaking of the Project, and the issuance of the Bonds are hereby approved, ratified and confirmed.

**Section 6.** Subject to receipt of the approval of the County Executive of the issuance of the Tax-Exempt Bonds pursuant to, and solely for the purposes of, Section 147 of the Code, the Issuer is hereby authorized to issue, execute, sell and deliver the Bonds to the Purchasers in accordance with the provisions of the Indenture and the terms authorized in this Resolution. Each of the Authorized Officers of the Issuer is hereby authorized, on behalf of the Issuer, to execute (by manual or facsimile signature) and deliver the Financing Documents, on such terms and conditions as shall be consistent with this Resolution and approved by an Authorized Officer, the execution thereof by such Authorized Officer constituting conclusive evidence of such approval.

**Section 7.** There is hereby expressly delegated to each Authorized Officer, subject to receipt of the approval of the County Executive of the issuance of the Tax-Exempt Bonds pursuant to, and solely for the purposes of, Section 147 of the Code and other the limitations contained herein, the power with respect to the Bonds and the Financing Documents to determine and carry out the following:

(a) The issuance and sale of the Bonds in accordance with the provisions of the Bond Purchase Agreement to be provided by the Purchaser, provided that the purchase price paid by the purchasers of the Tax-Exempt Bonds shall not be less than ninety-five percent (95%) of the principal amount of the Tax-Exempt Bonds so sold;

(b) The principal amount of Bonds to be issued, not to exceed an initial aggregate principal amount of \$3,400,000;

(c) The date or dates, maturity date or dates and principal amount of each series and maturity of the Bonds, the amount and date of each sinking fund installment, if any, and which Bonds are serial bonds or term bonds, if any, provided that no Bond shall mature later than 20 years from the date of issuance;

(d) The interest rate or rates of the Bonds, the date from which interest on the Bonds shall accrue and the first interest payment date therefor, provided that the initial interest rate on the Bonds shall not exceed ten percent (10%) per annum;

(e) The form of the Bonds, the place or places of payment of the Bonds, denomination or denominations of and the manner of numbering and lettering the Bonds;

(f) The redemption price or redemption prices, if any, and the redemption terms, if any, for the Bonds; provided, however, that the redemption price of any Bond subject to redemption at the election of the Issuer or the Institution or in accordance with the Bond Purchase Agreement shall not be greater than one hundred two percent (102%) of the principal amount of the Bonds or portion thereof to be redeemed, plus accrued interest thereon to the date of redemption;

(g) Directions for the application of the proceeds of the Bonds; and

(h) Any other provisions deemed desirable by the Authorized Officer not in conflict with the provisions hereof or of the Indenture.

**Section 8.** In addition to the authority hereinabove granted, the Authorized Officer of the Issuer is hereby authorized and directed, for and in the name and on behalf of the Issuer, to do and cause to be done any such other acts and things, to execute and deliver any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, and to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Sections 1 through 5 of this Resolution, as they determine may be necessary or desirable to consummate the transactions contemplated by this Resolution, the Financing Documents and the other documents referred to above.

**Section 9.** The Bonds, together with interest payable thereon, shall be special obligations of the Issuer payable solely from revenues (other than with respect to the Unassigned Rights) derived from the sale or other disposition of the Project. No covenant, stipulation, obligation or agreement contained in this Resolution or the Financing Documents or any other document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, director, agent or employee of the Issuer in his or her individual capacity and neither the members or directors of the Issuer nor any officer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Neither the member, directors or officers of the Issuer, nor any person executing the Bonds or any of the Financing Documents or other documents referred to above on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Bonds shall never be a debt of the State, the County or any political subdivision thereof. The State, the County or any political subdivision thereof shall not be liable thereon. None of the State, the County or any political subdivision thereof is obligated to pay, 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 or redemption price, if any, of or interest on, the Bonds.

**Section 11.** Any expense incurred by the Issuer with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the Bonds or, in the event such proceeds are insufficient after payment of other costs of the Project, or the Bonds are not issued by the Issuer for any reason whatsoever, shall be paid by the Institution. By acceptance hereof, the Institution hereby agrees to pay such expenses and further agrees to indemnify the Issuer, its members, employees and agents and hold the Issuer and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Issuer with respect to the Project and the financing thereof.

**Section 12.** Should the Issuer's participation in the Project or the financing be challenged by any party, in the courts or otherwise, the Institution shall defend, indemnify and hold harmless the Issuer and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Issuer's counsel. Should any court of competent jurisdiction determine that the Issuer is not authorized under the Enabling

Act to make a loan to the Institution or otherwise participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Issuer shall have no liability to the Institution hereunder or otherwise.

**Section 13.** The law firm of Barclay Damon, LLP is hereby appointed as bond counsel to the Issuer with respect to the issuance of the Bonds.

**Section 14.** A copy of this Resolution, together with documents presented at this meeting and referred to herein, shall be placed on file in the office of the Issuer where the same shall be available for public inspection during business hours.

**Section 15.** This Resolution shall take effect immediately.

\* \* \* \* \*

ADOPTED: October     , 2015

ACCEPTED: October     , 2015

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

\_\_\_\_\_  
**Authorized Officer**

**EXHIBIT "G"**

# THE BUFFALO NEWS

## -Affidavit-

Marcy Lombardo of the City of Buffalo, New York, being duly sworn, deposes and says that he/she is Principal Clerk of THE BUFFALO NEWS INC., Publisher of THE BUFFALO NEWS, a newspaper published in said city, that the notice of which the annexed printed slip taken from said newspaper is a copy, was inserted and published therein 1 times, the first insertion being on **09/24/2015** and the last insertion being on **09/24/2015**

*Marcy Lombardo*

Dates Ad Ran:

Buffalo News (P1) 09/24/15

Sworn to before me this 24<sup>th</sup> day of September 2015

*Lori A. Moskal*  
\_\_\_\_\_  
Notary Public, Erie County, New York

LORI A. MOSKAL  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 05/24/19

NOTICE OF

**PUBLIC  
HEARING**

Pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Buffalo and Erie County Industrial Land Development Corporation (the "Issuer") will hold a public hearing on October 8, 2015, 2015 at 9:00 a. m. in the City of Buffalo at the Erie County Industrial Development Agency offices, 95 Perry Street, Suite 403, Buffalo, New York 14203, regarding the following matter:

Buffalo Academy of Science Charter School, a charter school duly incorporated and existing under a charter approved by the Board of Regents of the University of the State of New York (the "Institution"), has requested the Issuer provide an exemption from mortgage recording tax and Issue its tax-exempt Revenue Bonds, Series 2015 (the "2015 Bonds"), in an amount estimated to be approximately \$3,400,000. The 2015 Bonds will be used to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 to be used to operate a charter school for grades 7-12, and (b) to pay costs incidental to the Issuance of the 2015 Bonds, including issuance costs of the 2015 Bonds and to fund a debt service reserve fund, if any, required with respect to the 2015 Bonds.

It is expected that the interest on the 2015 Bonds will be excluded from gross income for federal income tax purposes pursuant to Section 145 of the Code.

A representative of the Issuer will, at the above-stated time and place, hear and accept written comments from all persons with views in favor of or opposed to the Issuance of the 2015 Bonds. At said public hearing, interested parties will be provided reasonable opportunity to present their views, both orally and in writing, with respect to the Issuance of the 2015 Bonds.

Under the Code, approval of the Issuance of the 2015 Bonds by the County Executive of Erie County is necessary in order for the interest on the 2015 Bonds to be excluded from the gross income for federal income tax purposes.

THE 2015 BONDS SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING ERIE COUNTY, AND NEITHER THE STATE OF NEW YORK NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING ERIE COUNTY, SHALL BE LIABLE THEREON.

Dated: September 24, 2015

*THE BUFFALO NEWS/THURSDAY, SEPTEMBER 24, 2015*

**EXHIBIT "H"**

## PUBLIC HEARING SCRIPT

### Buffalo Academy of Science School Project

Public Hearing to be held October 8, 2015 at 9:00 a.m. in the offices of the Buffalo and Erie County Industrial Land Development Corporation (the "ILDC" or the "Issuer") at 95 Perry Street, Suite 403, Buffalo, New York 14203

#### ATTENDANCE

George Bellows – Jaeckle Fleischmann & Mugel, LP  
Yusuf Akyar – Buffalo Academy of Science Charter School  
John Cappellino – ECIDA

#### **1. WELCOME:** Call to Order and Identity of Hearing Officer.

Hearing Officer: *Welcome. This public hearing is now open; it is 9:00 a.m. My name is Beth O'Keefe. I am the Business Development Officer of the Erie County Industrial Development Agency, and I have been designated by the ILDC to be the hearing officer to conduct this public hearing.*

#### **2. PURPOSE:** Purpose of the Hearing.

Hearing Officer: *Pursuant to and in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Issuer is conducting this public hearing in connection with the a certain proposed project, as more fully described below (the "Project"), to be undertaken by the Issuer for the benefit of Buffalo Academy of Science School (the "Company"). The Issuer published a Notice of Public Hearing with respect to the Project in The Buffalo News on September 24, 2015.*

#### **3. PROJECT SUMMARY:** Description of Project and Contemplated Agency Benefits.

Hearing Officer: *The proposed Project shall consist of the issuance by the Issuer of its tax-exempt Revenue Bonds, Series 2015 (the "2015 Bonds"), in an amount estimated to be approximately \$3,400,000. The 2015 Bonds will be used to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 to be used to operate a charter school for*

grades 7-12; and (b) to pay costs incidental to the issuance of the 2015 Bonds, including issuance costs of the 2015 Bonds and to fund a debt service reserve fund, if any, required with respect to the 2015 Bonds. In addition to the Bonds, the financial assistance requested to be provided by the Issuer consists generally of mortgage recording tax exemptions in connection with any financing or subsequent refinancing of the Project, if required.

Pursuant to the Code, interest on the Bonds will not be excluded from gross income for Federal income tax purposes unless the issuance of the Bonds is approved by the Buffalo and Erie County Industrial Land Development Corporation Board of Directors. It is anticipated that the Buffalo and Erie County Industrial Land Development Corporation Board of Directors will approve of the issuance of the Bonds at its meeting on October 21, 2015.

**4. FORMAT OF HEARING: Review rules and manner in which the hearing will proceed.**

Hearing Officer: All those in attendance are required to register by signing the sign-in sheet at the front of the room; you will not be permitted to speak unless you have registered. If you have a written comment to submit for the record, you may do so. Written comments may also be delivered to the Issuer at 95 Perry Street, Suite 403, Buffalo, New York 14203 until the comment period closes on October 20, 2015. There are no limitations on written comments.

**5. PUBLIC COMMENT: Hearing Officer gives the Public an opportunity to speak.**

Hearing Officer: If anyone is interested in making a comment, please raise your hand, state your name and address; if you are representing a company, please identify the company. I request that speakers keep comments to 5 minutes, and if possible, 3 minutes.

**The Hearing Officer calls on those who raise their hand.**

Yusuf Akyar, Operations Manager, Buffalo Academy of Science Charter School – The Buffalo of Science Charter School is a tuition-free, college preparatory charter school for grades 7 through 12 dedicated to providing quality education to a diverse body of students in the Buffalo region. Our emphasis and highlights are science, technology, engineering and math (STEM). These are the areas that we are mainly focusing on.

The history of Buffalo Academy of Science Charter is we were founded in 2004, the Academy was the first charter school in the City of Buffalo. The Academy serves a student body of 400 students from diverse backgrounds.

Our mission statement is to provide an excellent academic educational plan with emphasis on math, science, and technology; providing a rigorous, innovative, challenging and enhanced curriculum focused on preparing students for college; preparing students to become responsible, educated citizens who have the skills and understanding to participate and work productively in a diverse, multicultural, globally-oriented environment; and create a partnership and a participation environment among the student-teacher-parent triad in order to reach their highest potential in any aspect.

The Academy has created a proven track record for success. Buffalo Academy of Science received a full five year renewal from the New York State Board of Regents. It suggest that the Academy is able to provide sufficient services for students.

Finally, I would like to briefly mention why this project is important to the Buffalo Academy of Science. While academics are our first priority, we realize that stability in students' lives is vital in order for learning to occur. When the school first opened, it was located at 15 Jewett Parkway. The accommodations were not sufficient to support the growing student body and the needs of the Academy. In the fall of 2007 the students were moved into the current location at 190 Franklin Street. At this location we are able to provide sufficient space for the total student body, as well as areas which can be renovated for expansion.

Located in the heart of the business district of the City, the Academy is easily accessible to student and families by car, public transportation and via walking routes. Our close proximity to businesses, academia, the arts community and local government make it an ideal location for our students to have access to a myriad of learning experiences. Our location makes it more convenient to invite local stakeholders from the various sectors. So the acquisition of the building will be an investment that will allow the Buffalo Academy of Science to continue to provide uninterrupted services to our students. Ownership of the property will enable the Academy the financial freedom to grow once all balances for the building portions have been paid.

## **6. ADJOURNMENT.**

As there were no further comments, the Hearing Officer closed the public hearing at 9:15 a.m.

**SIGN IN SHEET**

**PUBLIC HEARING**

October 8, 2015 at 9:00 a.m. at  
95 Perry Street, Suite 403, Buffalo, NY 14203 regarding:

**Buffalo Academy of Science Charter School**

Project Location: 180-190 Franklin Street  
City of Buffalo, Erie County, New York

<b>Name</b>	<b>Company and/or Address</b>	<b>X box to speak/ comment</b>
George Bellows	Jaeckle Fleischmann & Mugel, LLP Avant Building 200 Delaware Avenue, Suite 900 Buffalo, New York 14202	
Yusuf Akyar	Buffalo Academy of Science Charter School 190 Franklin Street Buffalo, New York 14202	X
John Cappellino	ECIDA 95 Perry Street, Suite 403 Buffalo, New York 14203	

**APPROVAL OF COUNTY EXECUTIVE  
OF ERIE COUNTY**

**WHEREAS**, the Buffalo and Erie County Industrial Land Development Corporation (the "**Issuer**") was created pursuant to and in accordance with the provisions of Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "**State**"), as amended (the "**NFP Law**") and Resolution Nos. 218 of 2009 adopted by the Erie County Legislature (the "**Legislature**") on July 24, 2009, as amended by Resolution No. 295 of 2009, adopted by the Legislature on November 19, 2009, and Resolution No. 5-3 (2010) adopted by the Legislature on March 25, 2010, and Resolution No. 110 of 2011, adopted by the Legislature on June 30, 2011, to undertake the providing of projects and the issuance of its revenue bonds on behalf of Erie County (the "**County**") for the public purposes of the County and the State; and

**WHEREAS**, Buffalo Academy of Science Charter School (the "**Institution**"), a charter school under the New York Education Law, submitted an application to the Issuer on or about September 10, 2015 (the "**Application**"), a copy of which is on file at the office of the Issuer, requesting that the Issuer finance a project through the issuance of its tax-exempt revenue bonds under Section 145 of the Code (the "**Bonds**") in an aggregate principal amount not to exceed \$3,400,000, consisting of: (a) the acquisition of improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 (the "**Land**") to be used to operate a charter school for grades 7-12 (the "**Facility**" and together with the Land collectively, the "**Project**"); and (b) to finance all or a portion of the foregoing through the issuance of the Bonds; (c) paying the costs incidental to the issuance of the Bonds; (d) to fund a debt service reserve fund, if any, required with respect to the Bonds; and (e) the granting of certain other financial assistance in the form of exemptions from mortgage recording tax in connection with any financing of the Project (collectively with the Bonds, the "**Financial Assistance**");

**WHEREAS**, the County Executive has been advised by the Issuer that the Issuer proposes to issue its Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 subsequent to the execution of this Certificate, in an aggregate principal amount not to exceed \$3,400,000 to finance the Project; and

**WHEREAS**, by resolution dated October 21, 2015, the Issuer approved the issuance of the Bonds; and

**WHEREAS**, notice of a public hearing with respect to the Project and the proposed issuance of the Bonds was printed in *The Buffalo News*, a newspaper of general circulation in Erie County (the "**County**") on September 24, 2015, in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "**Code**"); and

**WHEREAS**, pursuant to Section 147(f) of the Code, the Issuer conducted a public hearing with respect to the Project on October 8, 2015; and

**WHEREAS**, the Company has requested that the interest on the 2015 Bonds be excluded from the gross income of the owners thereof for federal income tax purposes pursuant to Sections 103 and 142 of the Code; and

**WHEREAS**, pursuant to Section 147(f) of the Code, interest on the Bonds will not be excludable from gross income unless the issuance of the 2015 Bonds shall be approved by the County Executive after the Issuer has conducted a public hearing thereon following reasonable public notice; and

**WHEREAS**, pursuant to Section 147(f) of the Code, the County Executive desires to allow the interest on the 2015 Bonds to be excludable from gross income for federal income tax purposes; and

**WHEREAS**, neither the Bonds nor any other obligation of the Issuer shall be a debt of Erie County, New York, the municipality for whose benefit the Issuer was established, nor shall Erie County, New York be liable thereon; and

**WHEREAS**, the Issuer has provided the County Executive with a copy of the Report of the Public Hearing held on October 8, 2015.

**NOW, THEREFORE**, in my capacity as the "applicable elected representative," within the meaning of Section 147(f) of the Code, of Erie County, New York, I hereby approve the issuance of the 2015 Bonds by the Issuer, *provided that* the Bonds and the interest thereon shall be a special obligation of the Issuer and shall never be a debt of the State of New York, Erie County, New York or any political subdivision thereof (other than the Issuer), and neither the State of New York, Erie County, New York nor any political subdivision thereof (other than the Issuer) shall be liable thereon. This approval is given for the sole purpose of satisfying the requirements of Section 147(f) of the Code and of qualifying any interest payable on the Bonds for exclusion from gross income for federal income tax purposes pursuant to the provisions of Sections 103 and 141-150 of the Code.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**ERIE COUNTY, NEW YORK**

By:   
Mark C. Poloncarz  
County Executive

**DATED:** October 27, 2015



**Information Return for Tax-Exempt  
 Private Activity Bond Issues**  
 (Under Internal Revenue Code section 149(e))  
 ▶ See separate instructions.

OMB No 1545-0720

<b>Part I Reporting Authority</b>		Check if Amended Return <input type="checkbox"/>
<b>1 Issuer's name</b> Buffalo and Erie County Industrial Land Development Corporation		<b>2 Issuer's employer identification number</b> 22-2413596
<b>3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)</b>		<b>3b Telephone number of other person shown on 3a</b>
<b>4 Number and street (or P.O. box if mail is not delivered to street address)</b> 95 Perry Street	<b>Room/suite</b> 403	<b>5 Report number (For IRS Use Only)</b> <input checked="" type="checkbox"/> 1 <input type="checkbox"/> <input type="checkbox"/>
<b>6 City, town, or post office, state, and ZIP code</b> Buffalo, New York 14203		<b>7 Date of issue (MM/DD/YYYY)</b> 11/03/2015
<b>8 Name of Issue</b> Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015		<b>9 CUSIP number</b> n/a
<b>10a Name and title of officer or other employee of the issuer whom the IRS may call for more information</b> Karen Fiala, Assistant Treasurer		<b>10b Telephone number of officer or other employee shown on 10a</b> (716)856-652

Part II Type of Issue (Enter the issue price.)	Issue Price
<b>11 Exempt facility bond.</b>	
<b>a</b> Airport (sections 142(a)(1) and 142(c)) . . . . .	<b>11a</b>
<b>b</b> Docks and wharves (sections 142(a)(2) and 142(c)) . . . . .	<b>11b</b>
<b>c</b> Water furnishing facilities (sections 142(a)(4) and 142(e)) . . . . .	<b>11c</b>
<b>d</b> Sewage facilities (section 142(a)(5)) . . . . .	<b>11d</b>
<b>e</b> Solid waste disposal facilities (section 142(a)(6)) . . . . .	<b>11e</b>
<b>f</b> Qualified residential rental projects (sections 142(a)(7) and 142(d)) (see instructions) . . . . .	<b>11f</b>
Meeting 20–50 test (section 142(d)(1)(A)) . . . . . <input type="checkbox"/>	
Meeting 40–60 test (section 142(d)(1)(B)) . . . . . <input type="checkbox"/>	
Meeting 25–60 test (NYC only) (section 142(d)(6)) . . . . . <input type="checkbox"/>	
Has an election been made for deep rent skewing (section 142(d)(4)(B))? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>g</b> Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f)) . . . . .	<b>11g</b>
<b>h</b> Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions) . . . . .	<b>11h</b>
Facility type _____	
1986 Act section _____	
<b>i</b> Qualified enterprise zone facility bonds (section 1394) (see instructions) . . . . .	<b>11i</b>
<b>j</b> Qualified empowerment zone facility bonds (section 1394(f)) (see instructions) . . . . .	<b>11j</b>
<b>k</b> District of Columbia Enterprise Zone facility bonds (section 1400A) . . . . .	<b>11k</b>
<b>l</b> Qualified public educational facility bonds (sections 142(a)(13) and 142(k)) . . . . .	<b>11l</b>
<b>m</b> Qualified green building and sustainable design projects (sections 142(a)(14) and 142(l)) . . . . .	<b>11m</b>
<b>n</b> Qualified highway or surface freight transfer facilities (sections 142(a)(15) and 142(m)) . . . . .	<b>11n</b>
<b>o</b> Other (see instructions) _____	
<b>p</b> Qualified New York Liberty Zone bonds (section 1400L(d)) _____	<b>11p</b>
<b>q</b> Other (see instructions) _____	<b>11q</b>
<b>12a</b> Qualified mortgage bond (section 143(a)) . . . . .	<b>12a</b>
<b>b</b> Other (see instructions) _____	<b>12b</b>
<b>13</b> Qualified veterans' mortgage bond (section 143(b)) (see instructions) . . . . . ▶	<b>13</b>
Check the box if you elect to rebate arbitrage profits to the United States . . . . . <input type="checkbox"/>	
<b>14</b> Qualified small issue bond (section 144(a)) (see instructions) . . . . . ▶	<b>14</b>
Check the box for \$10 million small issue exemption . . . . . <input type="checkbox"/>	
<b>15</b> Qualified student loan bond (section 144(f)) . . . . .	<b>15</b>
<b>16</b> Qualified redevelopment bond (section 144(c)) . . . . .	<b>16</b>
<b>17</b> Qualified hospital bond (section 145(c)) (attach schedule—see instructions) . . . . .	<b>17</b>
<b>18</b> Qualified 501(c)(3) nonhospital bond (section 145(b)) (attach schedule—see instructions) . . . . .	<b>18</b>
Check box if 95% or more of net proceeds will be used <b>only</b> for capital expenditures . . . . . ▶ <input checked="" type="checkbox"/>	3,250,000
<b>19</b> Nongovernmental output property bond (treated as private activity bond) (section 141(d)) . . . . .	<b>19</b>
<b>20a</b> Other (see instructions) _____	
<b>b</b> New York Liberty Zone advance refunding bond (section 1400L(e)) (see instructions) _____	<b>20b</b>
<b>c</b> Other. Describe (see instructions) ▶ _____	<b>20c</b>

**Part III Description of Bonds** (Complete for the entire issue for which this form is being filed.)

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	4/30/2023	\$ 3,250,000	\$ 3,250,000	3.7845 years	VR %

**Part IV Uses of Proceeds of Issue** (including underwriters' discount)

		Amount
22	Proceeds used for accrued interest	22
23	Issue price of entire issue (enter amount from line 21, column (b))	23 3,250,000
24	Proceeds used for bond issuance costs (including underwriters' discount)	24 7,394.50
25	Proceeds used for credit enhancement	25
26	Proceeds allocated to reasonably required reserve or replacement fund	26
27	Proceeds used to currently refund prior issue (complete Part VI)	27
28	Proceeds used to advance refund prior issue (complete Part VI)	28
29	Add lines 24 through 28	29 7,394.50
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30 3,242,605.50

**Part V Description of Property Financed by Nonrefunding Proceeds**

**Caution:** The total of lines 31a through e below must equal line 30 above. Do not complete for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.

31	Type of Property Financed by Nonrefunding Proceeds:	Amount
a	Land	31a
b	Buildings and structures	31b 3,192,773.50
c	Equipment with recovery period of more than 5 years	31c
d	Equipment with recovery period of 5 years or less	31d
e	Other. Describe (see instructions) Issuer Fee, Title Insurance	31e 49,832.00
32	North American Industry Classification System (NAICS) of the projects financed by nonrefunding proceeds.	
a	NAICS Code	Amount of nonrefunding proceeds
b	611110	\$ 3,242,605.50
c	NAICS Code	Amount of nonrefunding proceeds
d		\$

**Part VI Description of Refunded Bonds** (Complete this part only for refunding bonds)

33	Enter the remaining weighted average maturity of the bonds to be currently refunded	_____ years
34	Enter the remaining weighted average maturity of the bonds to be advance refunded	_____ years
35	Enter the last date on which the refunded bonds will be called	____/____/____
36	Enter the date(s) the refunded bonds were issued	_____

**Part VII Miscellaneous**

37 Name of governmental unit(s) approving issue (see the instructions) ► Erie County County Executive, date of approval 10/27/15  
 date of public hearing 10/8/15

38 Check the box if you have designated any issue under section 265(b)(3)(B)(i)(III) . . . . .

39 Check the box if you have elected to pay a penalty in lieu of arbitrage rebate . . . . .

40a Check the box if you have identified a hedge and enter the following information . . . . .

b Name of hedge provider \_\_\_\_\_

c Type of hedge ► \_\_\_\_\_

d Term of hedge ► \_\_\_\_\_

41 Check the box if the hedge is superintegrated . . . . .

42a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) ► \_\_\_\_\_

b Enter the final maturity date of the GIC . . . . . ► \_\_\_\_/\_\_\_\_/\_\_\_\_

c Enter the name of the GIC provider ► \_\_\_\_\_

43 Check the box if the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated in accordance with the requirements under the Code and Regulations (see instructions) . . . . .

44 Check the box if the issuer has established written procedures to monitor the requirements of section 148 . . . . .

45a Enter the amount of reimbursement if some portion of the proceeds was used to reimburse expenditures . . . . . ► \_\_\_\_\_

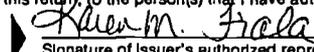
b Enter the date the official intent was adopted . . . . . ► \_\_\_\_/\_\_\_\_/\_\_\_\_

46 Check the box if the issue is comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds and provide name and EIN of the primary private user . . . . .

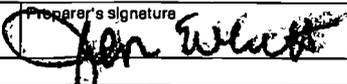
Name ► \_\_\_\_\_ EIN \_\_\_\_\_

<b>Part VIII Volume Caps</b>		Amount
47	Amount of state volume cap allocated to the issuer. <b>Attach copy of state certification</b>	47
48	Amount of issue subject to the unified state volume cap	48
49	Amount of issue not subject to the unified state volume cap or other volume limitations:	49
a	Of bonds for governmentally owned solid waste facilities, airports, docks, wharves, environmental enhancements of hydroelectric generating facilities, or high-speed intercity rail facilities	49a
b	Under a carryforward election. Attach a copy of Form 8328 to this return	49b
c	Under transitional rules of the Tax Reform Act of 1986 Enter ACT section ▶	49c
d	Under the exception for current refunding (section 146(f) and section 1313(a) of the Tax Reform Act of 1986)	49d
50a	Amount of issue of qualified veterans' mortgage bonds	50a
b	Enter the state limit on qualified veterans' mortgage bonds	50b
51a	Amount of section 1394(f) volume cap allocated to issuer. <b>Attach copy of local government certification</b>	51a
b	Name of empowerment zone ▶	
52	Amount of section 142(k)(5) volume cap allocated to issuer. <b>Attach copy of state certification</b>	52

**Signature and Consent** Under penalties of perjury, I declare that I have examined this return, and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above


11/3/15
Karen Fiala, Assistant Treasurer  
 Signature of issuer's authorized representative Date Type or print name and title

**Paid Preparer Use Only**

Print/Type preparer's name Jean Everett	Preparer's signature 	Date 11/10	Check <input type="checkbox"/> if self-employed	Preparer's PTIN P01285587
Firm's name ▶ Barclay Damon, LLP	Firm's EIN ▶ 15-0339022			
Firm's address ▶ 300 South State Street, Syracuse, New York 13202	Phone no 315-425-2700			

**Attachment to Form 8038**

Page 1 of 1

Buffalo and Erie County Industrial Land Development Corporation

Issuer EIN: 22-2413596

Dated: 11/3/2015

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Line 18: Buffalo Academy of Science Charter School

20-0723492

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**FILED**

NOV 04 2015

**ERIE COUNTY  
CLERK'S OFFICE**

**MORTGAGE RECORDING TAX EXEMPTION AFFIDAVIT**

**KAREN M. FIALA**, being duly sworn, deposes and says:

1. That she resides in Erie County, New York, and is the Assistant Treasurer of the BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (the "Issuer").

2. That the Issuer is a not-for-profit local development corporation formed pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203.

3. That the Issuer has entered into certain agreements with Buffalo Academy of Science Charter School (the "Institution") relating to a certain project in the City of Buffalo, Erie County, New York (the "Project"), located at 180-190 Franklin Street, City of Buffalo, Erie County, New York (the "Project Facility") as is more specifically described on Exhibit A-1 attached hereto.

4. That on or about November 1, 2015, the Issuer will issue its Tax Exempt Revenue Bonds (Buffalo Academy of Science Charter School, Inc. Project), Series 2015 in the aggregate principal amount of up to \$3,250,000.00 (the "Bonds") to fund a loan to the Institution to finance the acquisition of the Project Facility, pay for incidental issuance costs, and fund a debt service reserve fund, if any, required with respect to the Bonds, pursuant to a certain Bond Purchase Agreement, by and between the Issuer, the Institution and First Niagara Bank, N.A. (the "Purchaser"), dated as of November 2, 2015, (the "Bond Purchase Agreement"), and a certain Loan Agreement, by and between the Issuer and the Institution, dated as of November 1, 2015, (the "Loan Agreement") in connection with the Project.

5. That the Issuer has assigned substantially all of its rights (other than Unassigned Rights, as such term is defined in the Loan Agreement) to the Purchaser pursuant to the terms and conditions of that certain Pledge and Assignment, dated as of November 1, 2015 (the "Pledge and Assignment"), by and between the Issuer and the Purchaser, with an acknowledgment by the Institution.

6. That as collateral for said loan, the Institution has executed in favor of the Issuer, as mortgagee, and the Purchaser, as purchaser, a certain Mortgage and Security Agreement, dated as of November 1, 2015 (the "Mortgage") in the principal sum of THREE MILLION, TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$3,250,000.00).

7. That the Institution has covenanted that it will cause the Mortgage to be recorded in all offices where recordation thereof is necessary.

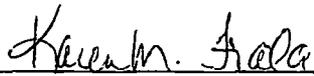
8. That the Issuer has assigned its interest in the Mortgage to Purchaser pursuant to the terms and conditions of that certain Assignment of Mortgage, dated as of November 1, 2015 (the "Assignment of Mortgage").

9. That additionally, after the Mortgage is recorded in the Office of the Erie County Clerk, the Assignment of Mortgage will be recorded in the Office of the Erie County Clerk followed by a certain (i) Assignment of Leases and Rents, dated as of November 1, 2015 (the "Assignment of Leases and Rents") from the Institution to the Issuer and Purchaser, and (ii) Assignment of Assignment of Leases and Rents, dated as of November 1, 2015, (the "Assignment of Assignment of Leases and Rents") from the Issuer to the Purchaser, all of which will be recorded in the Erie County Clerk's office exempt from mortgage recording tax under Section 255 of the Tax Law.

10. That, in the opinion of your deponent, while the Issuer would ordinarily pay the mortgage recording tax with respect to the Mortgage, the Assignment of Mortgage, the Assignment of Leases and Rents and the Assignment of Assignment of Leases and Rents, deponent respectfully submits that no mortgage recording tax should be imposed with respect to the Mortgage, the Assignment of Mortgage, the Assignment of Leases and Rents and the Assignment of Assignment of Leases and Rents because: (1) the Mortgage, the Assignment of Mortgage, the Assignment of Leases and Rents and the Assignment of Assignment of Leases and Rents are delivered to and by, respectively, a local not-for-profit corporation incorporated under Section 1411 of Not-For-Profit Corporation Law of the State of New York; (2) the use by the Issuer of its powers is deemed by Section 1411 of Not-For-Profit Corporation Law of the State of New York to be a public purpose essential to the public interest; (3) based on Section 1411(f) of Not-For-Profit Corporation Law of the State of New York, the Commissioner of the Tax Department has indicated in several advisory opinions that the involvement of a local not-for-profit development corporation in the construction and/or financing aspects of a qualifying project may allow for an exemption from mortgage recording tax imposed by Article 11 of the Tax Law of the State of New York. (See, TSB-A-09-R, TSB-A-93(13)-R, TSB-A-95(16)-R, TSB-A-97(7)-R, and TSB-A-97(54)-S).

11. That, therefore, I request that the Erie County Clerk record the Mortgage, the Assignment of Mortgage, the Assignment of Leases and Rents, and the Assignment of Assignment of Leases and Rents, as exempt from mortgage recording tax under Section 255 of the New York State Tax Law.

12. That this affidavit exempts the Mortgage, the Assignment of Mortgage, the Assignment of Leases and Rents, and the Assignment of Assignment of Leases and Rents from mortgage recording tax.

  
\_\_\_\_\_  
Karen M. Fiala

Subscribed and sworn to before me  
this 30<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
Notary Public  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co No 01MC5055591  
Commission Expires on Feb 12, 2018

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of inner Lots. 121 and 124, bounded and described as follows:

BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225.75 feet; running thence westerly on a line drawn at right angles to said line of Franklin Street 116.01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225.75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning; running thence easterly along said right angle line 116.01 feet to the westerly line of Franklin Street at the point or place of beginning.

## GENERAL CERTIFICATE OF THE INSTITUTION

**THIS CERTIFICATE** is made in connection with the issuance by Buffalo and Erie County Industrial Land Development Corporation (the "**Issuer**") of its Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "**Bonds**") pursuant to and in accordance with a resolution adopted by the Issuer on October 21, 2015 and a Bond Purchase Agreement dated November 2, 2015 (the "**Bond Purchase Agreement**"), by and among the Issuer, the Institution and First Niagara Bank, N.A. (the "**Purchaser**") at the request of the Buffalo Academy of Science Charter School (the "**Institution**"), a charter school organized and existing under and by virtue of the State Education Law, to provide for a project undertaken by the Institution consisting of: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 (the "**Land**") to be used to operate a charter school for grades 7-12 (the "**Facility**"); and (b) to pay costs incidental to the issuance of the Bonds; and (c) to fund a debt service reserve fund, if any, required with respect to the Bonds (the foregoing collectively, the "**Project**"). At the request of the Institution, the Issuer has granted certain other financial assistance to the Project in the form of exemption from mortgage recording tax (together with the Bonds, the "**Financial Assistance**").

The undersigned, a member of the Board of Trustees of the Institution, does hereby certify as follows:

1. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the Institution's Charter and such Charter was in full force and effect at the time the Institution Resolution (as defined herein) was adopted and is in full force and effect on the date hereof.

2. Attached hereto as **Exhibit "B"** is a true, correct and complete copy of the Institution's By-laws and such By-laws were in full force and effect at the time the Institution Resolution was adopted and are in full force and effect on the date hereof.

3. The Institution is a charter school and education corporation duly organized and validly existing and in good standing as an education corporation under a Charter approved by the Board of Regents of the University of the State of New York. Attached hereto as **Exhibit "C"** is a true and correct copy of the Institution's Certificate of Existence from the State Education Department.

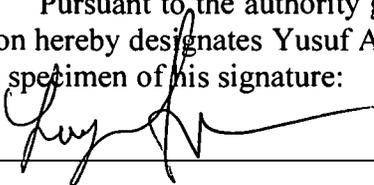
4. The Institution has been determined to be and is exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "**Code**"), by virtue of being an organization described in Section 501(c)(3) of the Code, and is not a private foundation as described in Section 509(a) of the Code. Attached hereto as **Exhibit "D"** is a true and correct copy of the determination letter of the Internal Revenue Service under Section 501(c)(3) thereof and the Institution has not received notice that such determination letter is not in full force and effect as of the Closing Date. The Institution is organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual. The Institution does not have unrelated

business income to such an extent as would threaten the status of the Institution as an organization described in Section 501(c)(3) of the Code.

5. Attached hereto as **Exhibit "E"** is a certified copy of the Resolution duly adopted by the Institution on October 29, 2015 (the "**Institution Resolution**"), and said Institution Resolution has not been amended, modified, repealed or rescinded and is in full force and effect on the date hereof.

6. The agreements identified in **Schedule "A"** hereto, and all other documents and certificates executed by the Institution in connection with the Bonds are hereinafter collectively referred to as the "**Institution Documents**"; the Institution Documents have been duly authorized, executed and delivered and are in full force and effect as of the date hereof.

7. Pursuant to the authority granted to the undersigned in the Institution Resolution, the Institution hereby designates Yusuf Akyar as an Authorized Representative and the following is a genuine specimen of his signature:

  
\_\_\_\_\_, Yusuf Akyar, Authorized Representative.

8. That I or an Authorized Representative did officially cause all certificates necessary for the transactions contemplated by the Institution Documents and included in the Official Transcript of Closing to be executed, as required, in the name of the Institution.

9. The Institution has full corporate power and authority to own its property and conduct its business. The Institution has full corporate power and authority to enter into and complete the transactions contemplated by the Bond Purchase Agreement and the other Institution Documents and has duly and validly taken all corporate action required to authorize all actions as may be necessary to complete such transactions. The Institution lawfully possesses all necessary licenses, approvals, consents, permits, accreditations and certificates which are required for it to acquire and operate the Project as described in the Bond Purchase Agreement and to carry out the transactions contemplated by the Bond Purchase Agreement and the other Institution Documents.

10. The representations and warranties of the Institution set forth in the Bond Purchase Agreement and the other Institution Documents are true, complete and correct in all respects on and as of the date hereof and thereof, and the agreements, conditions and obligations of the Institution under the Bond Purchase Agreement and the Institution Documents required to be complied with or performed on or prior to the Closing Date have been performed by the Institution.

11. The Bond Purchase Agreement, the Loan Agreement and other Institution Documents have been duly authorized, executed and delivered by the Institution and are legal, valid and binding obligations of the Institution enforceable against the Institution in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency or other laws or equitable principles affecting the enforcement of creditors' rights generally. No authority for the execution, delivery or performance of the Institution Documents has been repealed, revoked or rescinded.

12. The authorization, approval and execution of the Institution Documents and all other proceedings of the Institution relating to the transactions contemplated thereby have been performed in accordance with the Charter Schools Act, applicable open meeting and all other laws, rules and regulations of the State specifically applicable to charter schools.

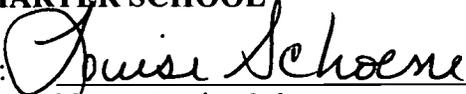
13. The Institution has obtained all necessary material licenses, approvals, consents and orders of any governmental authority, board, agency, commission or other body which would constitute a condition precedent to or are otherwise required of the Institution in connection with the performance by the Institution of any of its obligations under the Bond Purchase Agreement or any of the other Institution Documents, and any and all instruments delivered pursuant to or in connection therewith.

14. There is no litigation or administrative proceeding of any nature pending or threatened against the Institution which seeks to restrain or enjoin the Project or the issuance, sale or delivery of the Bonds or the execution and delivery or performance by the Institution of the Bond Purchase Agreement or any of the other Institution Documents, or which contests or affects the validity or enforceability of: (i) the Bond Purchase Agreement, the Bonds or any of the other Institution Documents; (ii) the pledge or application of Gross Revenues and any other moneys or security provided for the payment of the Bonds; (iii) the titles of the officers of the Institution to their respective offices; or (iv) the corporate existence or powers of the Institution.

15. The consummation of the transactions on the part of the Institution contemplated in the Institution Documents and the execution and delivery of, and the performance and compliance by the Institution with the terms, conditions and provisions of the Institution Documents do not contravene any provision of applicable law, administrative regulation, court decree, writ, injunction, the Charter or By-laws of the Institution, or any agreement, indenture, mortgage, lease, sublease or other instrument to which the Institution is a party or by which it may be bound or by which its properties may be subject or bound.

IN WITNESS WHEREOF, I have set my hand and signature as of the 1<sup>st</sup> day of November, 2015.

**BUFFALO ACADEMY OF SCIENCE  
CHARTER SCHOOL**

By: 

Name: Louise Schoene

Title: Authorized Representative

## **SCHEDULE "A"**

### **INSTITUTION DOCUMENTS**

Loan Agreement dated as of November 1, 2015, by and between the Issuer and the Institution, as the same may be amended, restated, supplemented or otherwise modified from time to time.

Bond Purchase Agreement dated November 2, 2015, by and among the Issuer, the Institution and the Purchaser.

Pledge and Assignment dated as of November 1, 2015, by and between the Issuer and the Purchaser, with an acknowledgment by the Institution, as the same may be amended, restated, supplemented or otherwise modified from time to time.

The Mortgage and Security Agreement dated as of November 1, 2015 by and between the Issuer and the Institution.

The Assignment of Leases and Rents dated as of November 1, 2015 by and between the Issuer and the Institution.

Environmental Compliance and Indemnification Agreement dated as of November 1, 2015 from the Institution to the Issuer and Purchaser, as the same may be amended, modified or supplemented from time to time in accordance with its terms.

Tax Compliance Agreement dated November 2, 2015, between the Issuer and the Institution, as the same may be amended, restated, supplemented or otherwise modified from time to time.

The Closing Receipt dated November 2, 2015, by and among the Institution, the Issuer, the Trustee and the Purchaser.

The General Certificate of the Institution dated as of November 1, 2015 by the Institution.

The Closing Statement dated as of November 1, 2015 by the Institution and the Trustee.

**EXHIBIT A**

**CERTIFIED COPY OF CHARTER EVIDENCING  
APPROVAL OF THE BOARD OF REGENTS  
AND AMENDMENTS THERETO**

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
PROVISIONAL CHARTER**

Voted, that

1. A provisional charter valid for a term of five years is issued incorporating Yunus Kumek, Shigeji Fujita, Linda M. Kunz, Erica L. McLean, and Levent Kaya as an education corporation under the corporate name of Buffalo Academy of Science Charter School; located in the city of Buffalo, county of Erie, state of New York.
2. The purpose for which such corporation is formed is to operate a charter school pursuant to Article 56 of the Education Law and in accordance with the charter agreement between Yunus Kumek, Shigeji Fujita, Linda M. Kunz, Erica L. McLean, and Levent Kaya, on behalf of Buffalo Academy of Science Charter School, and the Board of Regents as approved by the Board of Regents on January 12, 2004.
3. The names and post office addresses of the first trustees are as follows:  

Yunus Kumek  
877 Delaware Ave. #2B  
Buffalo, NY 14209

Shigeji Fujita  
247 Cimarand Court  
Amherst, NY 14068

Linda M. Kunz  
31 East Northrup Place  
Buffalo, NY 14214

Erica L. McLean  
300 W. Ferry Avenue  
Buffalo, NY 14222

Levent Kaya  
135D Kenville Road  
Buffalo, NY 14215
4. The board shall have power to adopt bylaws not inconsistent with the provisions of Article 56 of the Education Law.
5. The corporation hereby created shall be a nonstock corporation organized and operated exclusively for educational purposes as defined in section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), and no part of its earnings or net income shall inure to the benefit of any individual; and no officer, member, or employee of the corporation shall receive or be entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services.

Buffalo Academy of Science Charter School

Page two

6. Notwithstanding any other provision of these articles the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).
7. No substantial part of the activities of the corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation (except to the extent authorized by Internal Revenue Code section 501(h) as amended, or the corresponding provision of any future United States Internal Revenue Law, during any fiscal year or years in which the corporation has chosen to utilize the benefits authorized by the statutory provision), and the corporation shall not participate in nor intervene (including the publishing or distribution of statements) in any political campaign on behalf of, or in opposition to, any candidate for public office.
8. Upon dissolution of the corporation, the board of trustees shall, after paying or making provision for the payment of all the liabilities of the corporation, dispose of the remaining assets of the corporation to a charter school located within the school district in which the charter school is located, provided that such charter school shall be exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), or, if no charter school accepts the assets, to the school district in which the charter school is located for a public purpose.
9. The principal office of the corporation shall be located at 577 Delaware Avenue, #2B, Buffalo, NY 14209.
10. The Commissioner of Education is designated as the representative of the corporation upon whom process in any action or proceeding against it may be served.
11. Such provisional charter may be renewed upon application for a term of up to five years in accordance with the provisions of Article 56 of the Education Law.

Granted, January 12, 2004, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 118.

  
Chancellor

  
President of the University and  
Commissioner of Education

The University of the State of New York  
Education Department

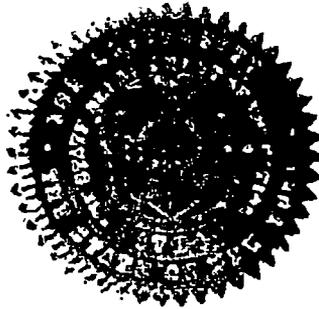


BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
EXTENSION TO PROVISIONAL CHARTER

This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of December 16, 2008,

Yield, that

The Board of Regents extend the provisional charter, and any amendments thereto, up through and including June 30, 2012, of the Buffalo Academy of Science Charter School, which was granted on January 12, 2004.



Granted, December 16, 2008, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 383.

*[Handwritten Signature]*  
Chancellor

*[Handwritten Signature]*  
President of the University and  
Commissioner of Education

The University of the State of New York  
Education Department



BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL

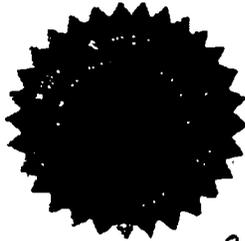
EXTENSION TO PROVISIONAL CHARTER

This Instrument Witnesseth that, the Board of Regents, for and on behalf of the Education Department of the State of New York at their meeting on March 20, 2012.

Voted, that,

The Board of Regents extend the provisional charter, and any amendment thereto, up through and including June 30, 2015, of the Buffalo Academy of Science Charter School, which was granted on January 12, 2004.

Granted, March 20, 2012, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 650.



*Raymond A. Loefer*  
Chancellor

*John B. King, Jr.*  
President of the University and  
Commissioner of Education

The University of the State of New York  
Education Department

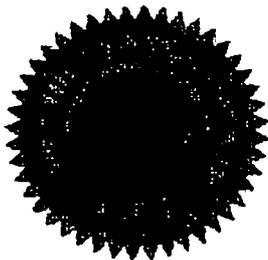
**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

**EXTENSION TO PROVISIONAL CHARTER**

This Instrument Witnesseth that, the Board of Regents, for and on behalf of the Education Department of the State of New York at their meeting on February 10, 2015

Voted, that,

The Board of Regents extend the provisional charter, and any amendment thereto, up through and including June 30, 2020, of the Buffalo Academy of Science Charter School, which was granted on January 12, 2004.



Granted, February 10, 2015, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 908.

*Meryl A. Lick*  
Chancellor

*Elizabeth R. Berlin*  
Acting Commissioner of Education

**EXHIBIT B**  
**BY-LAWS**

**BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**  
**BY-LAWS**

**ARTICLE I**

***NAME***

The name of the Corporation is the Buffalo Academy of Science Charter School (hereinafter the "Corporation").

**ARTICLE II**

***MEMBERSHIP***

The Corporation has no members. The rights, which would otherwise vest in, the members vest in the Directors of the Corporation (hereinafter the "Trustees") of the Buffalo Academy of Science Charter School. Actions, which would otherwise require approval by a majority of all members or approval by the members, require only approval of a majority of all Trustees or approval by the Board of Trustees (hereinafter the "Board").

**ARTICLE III**

***BOARD OF TRUSTEES***

***A. Powers:***

The Board shall conduct or direct the affairs of the Corporation and exercise its powers, subject to the limitations of the Education Law, Not-for-Profit Corporation Law, the Corporation's Charter and these Bylaws. The Board may delegate the management of the activities of the Corporation to others, so long as the affairs of the Corporation are managed, and its powers are exercised, under the Board's ultimate jurisdiction. Without limiting the generality of the powers hereby granted to the Board, but subject to the same limitations, the Board shall have all the powers enumerated in these Bylaws, and the following specific powers:

1. To elect and remove Trustees.
2. To select and remove Officers, agents and employees of the Corporation; to prescribe powers and duties for them; and to fix their compensation.
3. To conduct, manage and control the affairs and activities of the Corporation, and to make rules and regulations.
4. To enter into contracts, leases and other agreements which are, in the Board's judgment, necessary or desirable in obtaining the purposes of promoting the interests of the Corporation.
5. To carry on the business of operating a charter school and apply any surplus that results from the business activity to any activity in which the Corporation may engage.
6. To act as trustee under any trust incidental to the Corporation's purposes, and to receive, hold, administer, exchange and expend funds and property subject to such a trust. To acquire real or personal property, by purchase, exchange, lease, gift, devise, bequest, or otherwise, and to hold, improve, lease, sublease, mortgage, transfer in trust, encumber, convey or otherwise dispose of such property.
7. To borrow money, incur debt, and to execute and deliver promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations and other evidences of debt and securities.
8. To indemnify and maintain insurance on behalf of any of its Trustees, Officers, employees or agents for liability asserted against or incurred by such person in such capacity or arising out of such person's status as such, subject to the

provisions of the New York Not-for-Profit Corporation Law and the limitations noted in these Bylaws.

**B. Number of Trustees:**

The number of Trustees of the Corporation shall be seven.

**C. Election of Trustees:**

1. *Election:* The Board shall elect the Trustees by the vote of a majority of the Trustees then in office, whether or not the number of Trustees in office is sufficient to constitute a quorum, or by the sole remaining Trustee.
2. *Eligibility.* The Board may elect any person who has expressed written interest in serving on the Board of Trustees and who is in its discretion it believes will serve the interests of the Corporation faithfully and effectively.
3. *Interested Persons:* Not more than 49% of the persons serving on the Board may be interested persons. An "interested person" is: (1) any person currently being compensated by the Corporation for services rendered to it within the previous 12 months, whether as a full-time or part-time employee, independent contractor or otherwise; or (2) any sister, brother, ancestor, descendant, spouse, sister-in-law, brother-in-law, daughter-in-law, son-in-law, mother-in-law or father-in-law of any such person.
4. *Term of Office:*
  1. The term of each Trustee shall continue for three (3) years.
  2. The term of office of a Trustee elected to fill a vacancy in these Bylaws begins on the date of the Trustee's election, and continues: (1) for the balance of the unexpired term in the case of a vacancy created because of the resignation, removal, or death of a Trustee, or (2) for the term specified by the Board in the

case of a vacancy resulting from the increase of the number of Trustees authorized.

5. *Time of Elections:* The Board shall elect Trustees whose terms begin on September 1st of a given year at the Annual Meeting for that year, or at a Regular Meeting designated for that purpose, or at a Special Meeting called for that purpose.

**D. Removal of Trustees:**

The Board may remove a Trustee in accordance with the provisions of the Education Law and the Not-for-Profit Corporation Law.

The Board may remove any Trustee who:

1. Has been declared of unsound mind by a final order of court.
2. Has been convicted of a felony.
3. Has been found by a final order or judgment of any court to have breached any duty imposed by the Education Law and the Not-for-Profit Corporation Law; or
4. For such other good causes as the Board may determine.

**E. Resignation by Trustee:**

A Trustee may resign by giving written notice to the Board Chair or Secretary. The resignation is effective upon receipt of such notice, or at any later date specified in the notice. The acceptance of a resignation by the Board Chair or Secretary shall not be necessary to make it effective, but no resignation shall discharge any accrued obligation or duty of a Trustee. If any Trustee shall fail to attend three consecutive meetings without an excuse accepted as satisfactory by the trustees, he or she shall be deemed to have resigned, and the vacancy shall be filled.

**F. Vacancies:**

A vacancy is deemed to occur on the effective date of the resignation of a Trustee, upon the removal of a Trustee, upon declaration of vacancy pursuant to these Bylaws, or upon a Trustee's death. A vacancy is also deemed to exist upon an increase by the Board of the authorized number of Trustees.

**G. Compensation of Trustees:**

Trustees shall serve without compensation. However, the Board may approve reimbursement of a Trustee's actual and necessary expenses while conducting Corporation business.

**ARTICLE IV**  
**PRINCIPAL OFFICE**

The Corporation's principal office shall be at the following address:

The Buffalo Academy of Science Charter School, 190 Franklin Street, Buffalo, NY 14202, or at such other place as the Board may select by resolution or amendment of the Bylaws. The Secretary shall note any change in principal office on the copy of the Bylaws maintained by the Secretary.

**ARTICLE V**  
**MEETINGS OF THE BOARD**

**A. Place of Meetings:**

Board Meetings shall be held at the Corporation's principal office or at any other reasonably convenient place as the Board may designate.

**B. Annual Meetings:**

An Annual Meeting shall be held in the month of July of each year for the purpose of electing Trustees, making and receiving reports on corporate affairs, and transacting such other business as comes before the meeting.

**C. Regular Meetings:**

Regular Meetings shall be held monthly throughout the year and other times as the Board determines.

**D. Special Meetings:**

A Special Meeting may be called by the Board President when the need arises.

**E. Adjournment:**

A majority of the Trustees present at a meeting, whether or not a quorum, may adjourn the meeting to another time and place.

**F. Notices:**

Notices of Board Meetings shall be given as follows:

1. Annual Meetings and Regular Meetings may be held without notice to the Board members if the Bylaws or the Board fixes the time and place of such meetings.
2. Special Meetings shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, facsimile or e-mail. Notices will be deemed given when deposited in the United States mail, addressed to the recipient at the address shown for the recipient in the Corporation's records, first-class postage prepaid; when personally delivered in writing to the recipient; or when faxed, e-mailed, or communicated orally, in person or by telephone, to the

Trustee or to a person whom it is reasonably believed will communicate it promptly to the Trustee.

**G. Waiver of Notice:**

Notice of a meeting need not be given to a Trustee who signs a waiver of notice or written consent to holding the meeting or an approval of the minutes of the meeting, whether before or after the meeting, or attends the meeting without protest prior to the meeting or at its commencement, of the lack of notice. The Secretary shall incorporate all such waivers, consents and approvals into the minutes of the meeting.

**ARTICLE VI**  
***ACTION BY THE BOARD***

**A. Quorum:**

Unless law requires a greater proportion, a majority of the entire Board of Trustees shall constitute a quorum for the transaction of any business or of any specified item of business.

**B. Action by the Board:**

1. *Actions Taken at Board Meetings:* Except as otherwise provided by statute or by these Bylaws, the vote of a majority of the Board present at the time of the vote, if a quorum is present at such time, shall be the act of the Board. If at any meeting of the Board there shall be less than a quorum present, the Trustees present may adjourn the meeting until a quorum is obtained.
2. *Action by the Board without a Meeting:* Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board of Trustees or the committee consent in writing to the

adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board of Trustees or committee shall be filed with the minutes of the proceedings of the Board or committee. Action by the Board without a meeting shall occur only as permitted by the Public Officers Law.

3. *Board Participation by Other Means:* In all events, a quorum of Trustees must be physically present to lawfully conduct a Board Meeting of the charter school. Once a quorum is physically present, additional Trustees may participate in a Board meeting through use of video-conferencing equipment to the extent permitted by Article 7 of the Public Officer's Law (the Open Meetings Law), so long as all Trustees participating in such meeting can hear one another and there is no objection from any Trustee or any person in the public audience. Trustees may not vote unless they are physically present or can otherwise be seen (and not just heard) by the other Trustees and anyone else present at the meeting. Participation in a meeting pursuant to this section constitutes presence in person at such meeting.

#### C. Committees:

1. *Appointment of Committees:* The Board may create committees for any purpose, and the Chair of the Board shall appoint members to and designate the chairs of such Boards. A Board Standing Committee will consist of not less than three Trustees except for any Executive committee, which shall comprise not fewer than five Trustees, who shall serve at the pleasure of the Chair of the Board.

2. *Authority of Board Committees:* The Chair of the Board may delegate to a Board committee any of the authority of the Board, except with respect to:
  1. Election of Trustees.
  2. Filling vacancies on the Board or any committee that has the authority of the Board.
  3. Fixing of Trustee compensation for serving on the Board or on any committee.
  4. Amendment or repeal of Bylaws or the adoption of new Bylaws; and
  5. Appointment of other committees of the Board, or the members of the committees.
  
3. *Procedures of Committees:* The Board may prescribe the manner in which the proceedings of any Board Committee are to be conducted. In the absence of such prescription, a Board Committee may prescribe the manner of conducting its proceedings, except that the regular and special meetings of the Committee are governed by the provisions of these Bylaws with respect to the calling of meetings including compliance with the Open Meetings Law.

**D. Standard of Care:**

1. *Performance of Duties:* Each Trustee shall perform all duties of a Trustee, including duties on any Board Committee, in good faith and with that degree of diligence, care and skill, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.

2. *Reliance on Others:* In performing the duties of a Trustee, a Trustee shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, presented or prepared by:
  1. One or more Officers or employees of the Corporation whom the Trustee believes to be reliable and competent in the matters presented;
  2. Legal counsel, public accountants or other persons as to matters that the Trustee believes are within that person's professional or expert competence; or
  3. A Board Committee on which the Trustee does not serve, duly designated in accordance with a provision of the Corporation's Charter or Bylaws, as to matters within its designated authority, provided the Trustee believes the Committee merits confidence and the Trustee acts in good faith, and with that degree of care specified in Paragraph D.1. and after reasonable inquiry when the need is indicated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.
  
3. *Investments:* In investing and dealing with all assets held by the Corporation for investment, the Board shall exercise the standard of care described above in Paragraph D.1. and shall consider among other relevant considerations the long and short term needs of the Corporation in carrying out its purposes, including its present and anticipated financial requirements. The Board may delegate its investment powers to others, provided that those powers are exercised within the ultimate direction of the Board.

**E. Rights of Inspection:**

Every Trustee has the right to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation, provided that such inspection is conducted at a reasonable time after reasonable notice, and provided that such right of inspection and copying is subject to the obligation to maintain the confidentiality of the reviewed information, in addition to any obligations imposed by any applicable federal, state or local law.

**F. Participation in Discussions and Voting:**

Every Trustee has the right to participate in the discussion and vote on all issues before the Board or any Board Committee, except that any Trustee shall be excused from the discussion and vote on any matter involving such Trustee relating to: (a) a self-dealing transaction; (b) a conflict of interest; (c) indemnification of that Trustee uniquely; or (d) any other matter at the discretion of a majority of the Trustees then present.

**G. Duty to Maintain Board Confidences:**

Every Trustee has a duty to maintain the confidentiality of all Board actions, which are not required by law to be open to the public, including discussions and votes, which take place at any Executive Sessions of the Board. Any Trustee violating this confidence may be removed from the Board.

**ARTICLE VII**

**OFFICERS**

**A. Officers:**

The Officers of the Corporation consist of a President (hereinafter "Chair"), Vice President (hereinafter "Vice Chair"), a Secretary and a Chief Financial Officer (hereinafter "Treasurer"). The Corporation also may have such other officers, as the Board deems advisable.

1. *Chair:* Subject to Board control, the Chair has general supervision, direction and control of the affairs of the Corporation, and such other powers and duties as the Board may prescribe. If present, the Chair shall preside at Board meetings.
2. *Vice Chair:* If the Chair is absent or disabled, the Vice Chair shall perform all the *Chair's* duties and, when so acting, shall have all the Chair's powers and be subject to the same restrictions. The Vice Chair shall have other such powers and perform such other duties as the Board may prescribe.
3. *Secretary:* The Secretary shall: (a) keep or cause to be kept, at the Corporation's principal office, or such other place as the Board may direct, a book of *minutes* of all meetings of the Board and Board Committees, noting the time and place of the meeting, whether it was regular or special (and if special, how authorized), the notice given, the names of those present, and the proceedings; (b) keep or cause to be kept a copy of the Corporation's Charter and Bylaws, with amendments; (c) give or cause to be given notice of the Board and Committee meetings as required by the Bylaws; and (d) have such other powers and perform such other duties as the Board may prescribe.
4. *Treasurer:* The Treasurer shall: (a) keep or cause to be kept adequate and correct accounts of the Corporation's properties, receipts and disbursements; (b) make the books of account available at all times for inspection by any Trustee; (c) deposit or cause to be deposited the Corporation's monies and other valuables in the Corporation's name and to its credit, with the depositories the Board designates; (d) disburse or cause to be disbursed the Corporation's funds

as the Board directs; (e) render or cause to be rendered to the Chair and the Board, as requested but no less frequently than once every fiscal year, an account of the Corporation's financial transactions and financial condition; (f) prepare or cause to be prepared any reports on financial issues required by an agreement on loans; and (g) have such other powers and perform such other duties as the Board may prescribe.

**B. Election, Eligibility and Term of Office:**

1. *Election:* The Board shall elect the Officers annually at the Annual Meeting in July or a Regular Meeting designated for that purpose or at a Special Meeting called for that purpose, except that Officers appointed to fill vacancies shall be elected as vacancies occur.
2. *Eligibility:* A Trustee may hold any number of offices, except that neither the Secretary nor Treasurer may serve concurrently as the Chair.
3. *Term of Office:* Each Officer serves at the pleasure of the Board, holding office until resignation, removal or disqualification from service, or until his or her successor is elected.

**C. Removal and Resignation:**

The Board may remove any Officer, either with or without cause, at any time. Such removal shall not prejudice the Officer's rights, if any, under an employment contract. Any Officer may resign at any time by giving written notice to the Corporation, the resignation taking effect upon receipt of the notice or at a later date specified in the notice.

**ARTICLE VIII**  
***NON-LIABILITY OF TRUSTEES***

The Trustees shall not be personally liable for the Corporation's debts, liabilities or other obligations.

**ARTICLE IX**  
***INDEMNIFICATION OF CORPORATE AGENTS***

The Buffalo Academy of Science Charter School may, to the fullest extent now or hereafter permitted by and in accordance with standards and procedures provided by Sections 721 through 726 of the Not-for-Profit Corporation Law and any amendments thereto, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that he, his testate or intestate was a Director, Officer, employee or agent of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees.

**ARTICLE X**  
***SELF-DEALING TRANSACTIONS***

The Corporation shall not engage in any self-dealing transactions, except as approved by the Board. "Self-dealing transaction" means a transaction to which the Corporation is a party and in which one or more of the Trustees has a material financial interest ("interested Trustee(s)"). Notwithstanding this definition, the following transaction is not a self-dealing transaction, and is subject to the Board's general standard of care:

A transaction which is part of a public or charitable program of the Corporation, if the transaction (a) is approved or authorized by the Board in good faith and without unjustified favoritism, and (b) results in a benefit to one or more Trustees or their families because they are in a class of persons intended to be benefited by the program.

**ARTICLE XI**  
**OTHER PROVISIONS**

**A. Fiscal Year:**

The fiscal year of the Corporation begins on July 1 of each year and ends on June 30.

**B. Execution of Instruments:**

Except as otherwise provided in these Bylaws, the Board may adopt a resolution authorizing any Officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized, no Officer, agent or employee shall have any power to bind the Corporation by any contract or engagement, to pledge the Corporation's credit, or to render it liable monetarily for any purpose or any amount.

**C. Checks and Notes**

Except as otherwise specifically provided by Board resolution, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the Director. Any check with an amount of more than \$5,000 shall require two signatures. One of such signatures shall be the Director's and the other may be Board President's or Treasurer's.

**D. Construction and Definitions:**

Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the Not-for-Profit Corporation Law and the Education Law shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, words in these Bylaws shall be read as the masculine or feminine gender, and as the singular or plural, as the context requires, and the word "person" includes both a corporation and a natural person. The

captions and headings in these Bylaws are for reference and convenience only and are not intended to limit or define the scope or effect of any provisions.

**E. Conflict of Interest:**

Any Trustee, Officer, key employee, or Committee member having an interest in a contract, other transaction or program presented to or discussed by the Board or Board Committee for authorization, approval, or ratification shall make a prompt, full and frank disclosure of his or her interest to the Board or Committee prior to its acting on such contract or transaction. Such disclosure shall include all relevant and material facts known to such person about the contract or transaction that might reasonably be construed to be adverse to the Corporation's interest. The body to which such disclosure is made shall thereupon determine, by majority vote, whether the disclosure shows that a conflict of interest exists or can reasonably be construed to exist. If a conflict is deemed to exist, such person shall not vote on, nor use his or her personal influence on, nor be present during the discussion or deliberations with respect to, such contract or transaction (other than to present factual information or to respond to questions prior to the discussion). The minutes of the meeting shall reflect the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation. The Board may adopt conflict of interest policies requiring:

- (1) Regular annual statements from Trustees, Officers and key employees to disclose existing and potential conflicts of interest; and,
- (2) Corrective and disciplinary actions with respect to transgressions of such policies. For the purpose of this section, a person shall be deemed to have an "interest" in a contract or other transaction if he or she is the party (or one of the parties) contracting or dealing with the Corporation, or is a Director, Trustee or

Officer of, or has a significant financial or influential interest in the entity contracting or dealing with the Corporation.

**F. Interpretation of Charter:**

Whenever any provision of the Bylaws is in conflict with the provisions of the Charter, the provisions of the Charter shall control.

**ARTICLE XII**  
**AMENDMENT**

A majority of the Trustees may adopt, amend or repeal these Bylaws.

1158772

**EXHIBIT C**  
**CERTIFICATE OF EXISTENCE**

The University of the State of New York  
Education Department



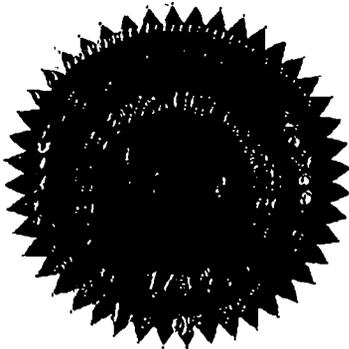
STATE OF NEW YORK )

ss.:

COUNTY OF ALBANY )

I, Richard J. Trautwein, Counsel and Deputy Commissioner for Legal Affairs for the New York State Education Department, hereby certify that the Buffalo Academy of Science Charter School, located in Buffalo, county of Erie, and state of New York, was incorporated by action of the Board of Regents by the issuance of a provisional charter granted on January 12, 2004 for a term of five years; that such provisional charter was extended on December 16, 2008, March 20, 2012 and February 10, 2015; that no certificate or order of dissolution of such corporation has been filed or issued; and that such corporation is currently authorized to do business in the State of New York.

IN WITNESS WHEREOF, I hereunto set my hand and affix the seal of the University of the State of New York and of the State Education Department at the City of Albany, New York on this 7th day of October, 2015.



*Richard J. Trautwein*

Richard J. Trautwein  
Counsel and Deputy Commissioner  
For Legal Affairs

**EXHIBIT D**  
**IRS DETERMINATION LETTER**



Department of the Treasury  
Internal Revenue Service

P.O. Box 2508  
Cincinnati OH 45201

In reply refer to: 0248164798  
Apr. 30, 2012 LTR 4168C E0  
20-0723492 000000 00

00021180  
BODC: TE

BUFFALO ACADEMY OF SCIENCE CHARTER  
SCHOOL  
% YUNUS KUMEK  
190 FRANKLIN ST  
BUFFALO NY 14202-2407

004923

Employer Identification Number: 20-0723492  
Person to Contact: Mr Bayer  
Toll Free Telephone Number: 1-877-829-5500

Dear Taxpayer:

This is in response to your Apr. 19, 2012, request for information regarding your tax-exempt status.

Our records indicate that you were recognized as exempt under section 501(c)(3) of the Internal Revenue Code in a determination letter issued in October 2004.

Our records also indicate that you are not a private foundation within the meaning of section 509(a) of the Code because you are described in section(s) 509(a)(1) and 170(b)(1)(A)(ii).

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Please refer to our website [www.irs.gov/eo](http://www.irs.gov/eo) for information regarding filing requirements. Specifically, section 6033(j) of the Code provides that failure to file an annual information return for three consecutive years results in revocation of tax-exempt status as of the filing due date of the third return for organizations required to file. We will publish a list of organizations whose tax-exempt status was revoked under section 6033(j) of the Code on our website beginning in early 2011.

0248164798  
Apr. 30, 2012 LTR 4168C E0  
20-0723492 000000 00  
00021181

BUFFALO ACADEMY OF SCIENCE CHARTER  
SCHOOL  
% YUNUS KUMEK  
190 FRANKLIN ST  
BUFFALO NY 14202-2407

If you have any questions, please call us at the telephone number  
shown in the heading of this letter.

Sincerely yours,



S. A. Martin, Operations Manager  
Accounts Management Operations

**EXHIBIT E**

**RESOLUTIONS OF BOARD OF DIRECTORS  
APPROVING INSTITUTION DOCUMENTS  
AND EXECUTION AND DELIVERY OF SAME**

**AMENDED AND RESTATED RESOLUTIONS  
OF THE  
BOARD OF TRUSTEES OF  
BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL**

WHEREAS, Buffalo Academy of Science Charter School, a New York education corporation (the "School"), intends to undertake a project (the "Project") consisting of the acquisition of the land and improvements located at 180-190 Franklin Street, Buffalo, New York (the "Facility"); and

WHEREAS, the School entered into the Agreement of Purchase and Sale dated August 6, 2015 between Apple Educational Services, Inc. and the School (the "Purchase Agreement"), pursuant to which the School agreed to purchase the Facility for \$4,150,000; and

WHEREAS, the board of trustees of the School intends to finance the Project, in part, with a tax-exempt revenue bond (the "Bond") issued by the Buffalo and Erie County Industrial Land Development Corporation (the "Issuer"); and

WHEREAS, First Niagara Bank, N.A. (the "Bank") issued a commitment letter dated August 6, 2015, as amended (the "Commitment Letter"), pursuant to which it agreed, subject to certain terms and conditions, to purchase the Bond;

NOW THEREFORE, the board of trustees of the School hereby adopts the following resolutions:

RESOLVED, that the School undertake the Project and finance up to \$3,250,000 of the costs of the Project on substantially the terms and conditions described in the Commitment Letter, with such changes as may be required by the Issuer and the Bank and approved by the School; and it is further

RESOLVED, that the School enter into a bond purchase agreement with the Issuer and the Bank, pursuant to which the Issuer will issue the Bond and the Bank will purchase the Bond (the "Bond Purchase Agreement"); and it is further

RESOLVED, that the School enter into a loan agreement with the Issuer, pursuant to which the Issuer will make a loan of the proceeds of the Bond to the School to finance a portion of the costs of the Project and to pay certain costs of the issuance of the Bond (the "Loan Agreement"); and it is further

RESOLVED, that the School execute and deliver to the Issuer and the Bank a mortgage and security agreement granting a lien on and security interest in the interests of the School in the Facility and certain other assets of the School (the "Mortgage"), which Mortgage, to the extent of the Issuer's interest therein, the Issuer will assign to the Bank as security for the Bond; and it is further

RESOLVED, that the School enter into an acknowledgement of a pledge and assignment between the Issuer and the Bank (the "Acknowledgement"), pursuant to which, as security for payment of the Bond, the Issuer will assign to the Bank all of its right, title and interest (except for certain unassigned rights) in the Loan Agreement; and it is further

RESOLVED, as additional security for the School's obligations under the Loan Agreement, the School grant to the Issuer and the Bank an assignment of leases and rents with respect to the Facility (the "Assignment of Leases and Rents"), which Assignment of Leases and Rents, to the extent of the Issuer's interest therein, the Issuer will assign to the Bank as additional security for the Bond; and it is further

RESOLVED, that to further secure the obligations of the School to the Bank, the School grant to the Bank a security interest in certain of its assets and execute and deliver a security agreement for the benefit of the Bank (the "Security Agreement"); and it is further

RESOLVED, that the School enter into a tax compliance agreement with the Issuer, pursuant to which the School agrees to take certain action to maintain the tax-exempt status of interest on the Bond (the "Tax Compliance Agreement"); and it is further

RESOLVED, that the School enter into an environmental compliance and indemnification agreement from the School to the Issuer (the "Environmental Compliance Agreement") and a Hazardous Substances Indemnity Agreement from the School to the Bank (the "Hazardous Substances Agreement"); and it is further

RESOLVED, that the Bond Purchase Agreement, the Loan Agreement, the Mortgage, the Acknowledgement, the Assignment of Leases and Rents, the Security Agreement, the Tax Compliance Agreement, the Environmental Compliance Agreement, the Hazardous Substances Agreement and all other documents necessary to effectuate the issuance of the Bond and to carry out the intent of these resolutions be executed in the name and on behalf of the School and contain such terms and be in such form, as the School may determine, with advice of counsel, as conclusively evidenced by the execution thereof, to be advisable and in the best interests of the School; and it is further

RESOLVED, that all action taken and all instruments and documents entered into by the School prior to the adoption of these resolutions with respect to the Project and the financing of the Project and all matters related thereto, including, without limitation, execution and delivery of the Purchase Agreement, are hereby ratified, confirmed and approved; and it is further

RESOLVED, that, in addition to and without limiting the generality of the foregoing resolutions with respect to the Project, the President, the Treasurer, Louise Schoene, Yusuf Akyar and any other person authorized by the President or the Treasurer be, and each of them is, hereby authorized and directed to take such further action with respect to the Project and to execute and deliver such instruments and documents as may be appropriate to carry out the foregoing resolutions, including, without limitation, any amendment, extension, restatement or modification of any such instrument or document; and the taking of such action or the execution

of such instruments and documents shall be deemed conclusive evidence of the determination that such action or execution was appropriate and in the best interests of the School.

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**CHICAGO TITLE INSURANCE COMPANY  
STANDARD NEW YORK ENDORSEMENT  
(LOAN POLICY)**

Attached to and made a part of Policy No 1513-41781

- 1 Covered Risk Number 11 is deleted, and the following is substituted:
  - 11 The lack of priority of the lien of the Insured Mortgage upon the Title
    - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien arising under Article 2 of the New York Lien Law for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
      - (i) contracted for or commenced on or before Date of Policy; or
      - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance, and
    - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy
- 2 Exclusion Number 7 is deleted, and the following is substituted
  - 7. Any lien on the Title for real estate taxes, assessments, water charges or sewer rents imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).
- 3 Exclusions From Coverage is amended by adding new Exclusion Number 8:
  - 8 Any consumer protection law including, without limitation, New York Banking Law Section 6-l ("High-Cost Home Loans") and 6-m ("Subprime Home Loans"), relating to a mortgage on Land improved or to be improved by a structure or structures intended principally for occupancy by one-to-four families.

This endorsement is issued as part of the policy Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements

**CHICAGO TITLE INSURANCE COMPANY**

Dated: **NOVEMBER 4, 2015**

Reference Information  
Buy/Borr Buffalo Academy of Science Charter School  
Seller Apple Educational Services, Inc  
Lender First Niagara Bank, N A  
Prop 180 Franklin Street, Buffalo NY  
(Erie County)  
Countersigned.



By:   
Raymond R. Quirk  
President

By:   
Michael L. Gravelle  
Secretary



Authorized Signatory

Note This endorsement shall not be valid or binding until countersigned by an authorized signatory



**CHICAGO TITLE INSURANCE COMPANY  
ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT  
-NEW YORK-**

Attached to and made a part of Policy No. 1513-41781

The Policy insures the insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

Section 1307 of the Public Health Law

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any other endorsement thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the amount of insurance.

**CHICAGO TITLE INSURANCE COMPANY**

Dated: **NOVEMBER 4, 2015**

Reference Information  
 Buy/Borr Buffalo Academy of Science Charter School  
 Seller Apple Educational Services, Inc  
 Lender First Niagara Bank, N A  
 Prop 180 Franklin Street, Buffalo NY  
 (Erie County)  
 Countersigned.



By:   
 Raymond R. Quirk  
 President

By:   
 Michael L. Gravelle  
 Secretary

  
 \_\_\_\_\_  
 Authorized Signatory

Note This endorsement shall not be valid or binding until countersigned by an authorized signatory



**CHICAGO TITLE INSURANCE COMPANY**

**WAIVER OF ARBITRATION ENDORSEMENT  
(OWNER'S OR LOAN POLICY)**

Attached to and made a part of Policy No. 1513-41781

The policy is amended by deleting therefrom:

- (A) If this endorsement is attached to an ALTA Loan Policy: Condition 13.
- (B) If this endorsement is attached to an ALTA Owner's Policy: Condition 14.
- (C) If this endorsement is attached to a TIRSA Owner's Extended Protection Policy: Condition 12.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the face amount thereof.

**CHICAGO TITLE INSURANCE COMPANY**

Dated **NOVEMBER 4, 2015**

Reference Information  
 Buy/Borr Buffalo Academy of Science Charter School  
 Seller Apple Educational Services, Inc  
 Lender First Niagara Bank, N A  
 Prop 180 Franklin Street, Buffalo NY  
 (Erie County)

Countersigned:

Authorized Signatory

Note This endorsement shall not be valid or binding until countersigned by an authorized signatory



By:   
 Raymond R. Quirk  
 President

By:   
 Michael L. Gravelle  
 Secretary



**Policy No: 1513-41781**

**Title No: 1513-41781**

**CHICAGO TITLE INSURANCE COMPANY  
VARIABLE RATE MORTGAGE ENDORSEMENT**

Attached to and made a part of policy No. 1513-41781

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by said changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law.

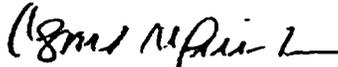
This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof, including, without limitation, Section 8 of the Exclusions From Coverage, as added by the Standard New York Endorsement (Loan Policy), and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to Section 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the amount of insurance.

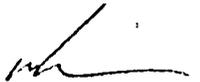
**CHICAGO TITLE INSURANCE COMPANY**

Dated: **NOVEMBER 4, 2015**

Reference Information:  
Buy/Borr: Buffalo Academy of Science Charter School  
Seller: Apple Educational Services, Inc.  
Lender: First Niagara Bank, N.A.  
Prop: 180 Franklin Street, Buffalo NY (Erie County)  
Countersigned:



By:   
Raymond R. Quirk  
President

By:   
Michael L. Gravelle  
Secretary



Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.



**CHICAGO TITLE INSURANCE COMPANY**

**ACCESS ENDORSEMENT  
(LOAN POLICY ONLY)**

**Attached to and made a part of Policy No. 1513-41781**

The Policy hereby insures the Insured against loss which the Insured shall sustain in the event that the described land does not abut upon a physically open public street known as Franklin Street.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the amount of Insurance.

**CHICAGO TITLE INSURANCE COMPANY**

Dated: **NOVEMBER 4, 2015**

Reference Information  
Buy/Borr Buffalo Academy of Science Charter School  
Seller Apple Educational Services, Inc  
Lender First Niagara Bank, N A  
Prop 180 Franklin Street, Buffalo NY  
(Erie County)

Countersigned:

Authorized Signatory

Note This endorsement shall not be valid or binding until countersigned by an authorized signatory



By:   
Raymond R. Quirk  
President

By:   
Michael L. Gravelle  
Secretary



Policy No: 1513-41781

Title No: 1513-41781

**CHICAGO TITLE INSURANCE COMPANY**

**LAND SAME AS SURVEY ENDORSEMENT**

**Attached to and made a part of Policy No. 1513-41781**

The Company hereby assures the Insured that said Land is the same as that delineated on the plat of a survey made by Nussbaumer & Clarke, Inc. designated as Job No. 06J2-0309A.

The Company hereby insures said Assured against loss which said Assured shall sustain in the event said assurances herein shall prove to be incorrect.

The total liability of the Company under said policy and any endorsement therein shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the Conditions thereof to pay.

This endorsement is made part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

**CHICAGO TITLE INSURANCE COMPANY**

Dated: **NOVEMBER 4, 2015**

Reference Information:

Buy/Borr: Buffalo Academy of Science Charter School

Seller: Apple Educational Services, Inc.

Lender: First Niagara Bank, N.A.

Prop: 180 Franklin Street, Buffalo NY (Erie County)

Countersigned



By.

Raymond R. Quirk  
President

By.

Michael L. Gravelle  
Secretary

Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.



Policy No: 1513-41781

**CHICAGO TITLE INSURANCE COMPANY**

**MORTGAGE TAX ENDORSEMENT**

**ATTACHED TO AND MADE A PART OF POLICY NO. 1513-41781**

The Policy insures the owner of the indebtedness secured by the insured mortgage(s) against loss or damage which may be sustained by reason that all mortgage recording taxes required to be paid on the insured mortgage(s) have not been paid.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the face amount thereof.

**CHICAGO TITLE INSURANCE COMPANY**

Dated: **NOVEMBER 4, 2015**

Reference Information  
Buy/Borr Buffalo Academy of Science Charter School  
Seller Apple Educational Services, Inc  
Lender First Niagara Bank, N A  
Prop 180 Franklin Street, Buffalo NY  
(Erie County)

Countersigned:



By:

Raymond R. Quirk  
President

By:

Michael L. Gravelle  
Secretary

Authorized Signatory

Note This endorsement shall not be valid or binding until countersigned by an authorized signatory

Policy No:

1513-41781

**LOAN POLICY OF TITLE INSURANCE**  
 Issued by  
**CHICAGO TITLE INSURANCE COMPANY**

**Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.**

**COVERED RISKS**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, Chicago Title Insurance Company, a Nebraska Corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protection
 

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.



Policy No:

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6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage
  - (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
  - (b) failure of any person or Entity to have authorized a transfer or conveyance;
  - (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
  - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
  - (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
  - (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
  - (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title.
  - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
    - (i) contracted for or commenced on or before Date of Policy; or
    - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
  - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
  - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.



Policy No:

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14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

**IN WITNESS WHEREOF**, CHICAGO TITLE INSURANCE COMPANY has caused this Policy to be signed with the facsimile signatures of its President and Secretary and sealed as required by its By-Laws.

Issued by:  
CHICAGO TITLE INSURANCE COMPANY  
424 MAIN STREET, SUITE 200  
BUFFALO, NY 14202  
Tel: 716-854-2982 Fax: 716-852-7346

**CHICAGO TITLE INSURANCE COMPANY**



By:

Raymond R. Quirk  
President

By:

Michael L. Gravelle  
Secretary

Countersigned:   
Authorized Signature



Policy No:

1513-41781

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of

- 1 (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land,
  - (ii) the character, dimensions, or location of any improvement erected on the Land,
  - (iii) the subdivision of land, or
  - (iv) environmental protection,
 or the effect of any violation of these laws, ordinances, or governmental regulations This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5
- (b) Any governmental police power This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6
- 2 Rights of eminent domain This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8
- 3 Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant,
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy,
  - (c) resulting in no loss or damage to the Insured Claimant,
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14), or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage
- 4 Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated
- 5 Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law
- 6 Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy
- 7 Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b)

**CONDITIONS****1. DEFINITION OF TERMS**

The following terms when used in this policy mean

- (a) "Amount of Insurance" The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions
- (b) "Date of Policy" The date designated as "Date of Policy" in Schedule A
- (c) "Entity" A corporation, partnership, trust, limited liability company, or other similar legal entity
- (d) "Indebtedness" The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of
  - (i) the amount of the principal disbursed as of Date of Policy,
  - (ii) the amount of the principal disbursed subsequent to Date of Policy,
  - (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance,
    - (iv) interest on the loan,
    - (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law,
    - (vi) the expenses of foreclosure and any other costs of enforcement,
    - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title,
    - (viii) the amounts to pay taxes and insurance, and
    - (ix) the reasonable amounts expended to prevent deterioration of improvements,
 but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured

- (e) "Insured" The Insured named in Schedule A

- (i) The term "Insured" also includes
  - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions,
  - (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law,
  - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization,
  - (D) successors to an Insured by its conversion to another kind of Entity,
  - (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
    - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
    - (2) if the grantee wholly owns the named Insured, or
    - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity,
  - (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not,
    - (ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy



Policy No:

1513-41781

- (f) "Insured Claimant" An Insured claiming loss or damage
- (g) "Insured Mortgage" The Mortgage described in paragraph 4 of Schedule A
- (h) "Knowledge" or "Known" Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title
- (i) "Land" The land described in Schedule A, and affixed improvements that by law constitute real property The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy
- (j) "Mortgage" Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law
- (k) "Public Records" Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located
- (l) "Title" The estate or interest described in Schedule A
- (m) "Unmarketable Title" Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title

## 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice

## 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage

## 5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy

adverse to the Insured This obligation is limited to only those stated causes of action alleging matters insured against by this policy The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action It shall not be liable for and will not pay the fees of any other counsel The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy If the Company exercises its rights under this subsection, it must do so diligently

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order

## 6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim

## 7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness



Policy No:

1513-41781

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay, or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay, or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation

**8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

- (i) the Amount of Insurance,
- (ii) the Indebtedness,
- (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

- (i) the Amount of Insurance shall be increased by 10%, and
- (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions

**9. LIMITATION OF LIABILITY**

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or

from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions

**11. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days

**12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

(a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss

(b) The Insured's Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage

(ii) If the Insured exercises a right provided in (b)(i), but has knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation

(c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights



Policy No:

1513-41781

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(1)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy

**13. ARBITRATION**

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules") Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured Arbitration pursuant to this policy and under the Rules shall be binding upon the parties Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction

**14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company In interpreting any provision of this policy, this policy shall be construed as a whole

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy

(d) Each endorsement to this policy issued at any time is made a part

of this policy and is subject to all of its terms and provisions Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance

**15. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect

**16. CHOICE OF LAW; FORUM**

(a) Choice of Law The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**17. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at

Chicago Title Insurance Company  
National Claims Administration  
P O Box 45023  
Jacksonville, Florida 32232-5023



LOAN POLICY OF TITLE INSURANCE  
ALTA LOAN POLICY (6/17/06) NNY

No

1513-41781

Date of Policy. November 4, 2015

Amount of Insurance \$3,250,000 00

## 1 Name of Insured

First Niagara Bank, N A , its successors and/or assigns

## 2 The estate or interest in the Land which is encumbered by the Insured Mortgage is

FEE SIMPLE

## 3 Title to the estate or interest in the land is vested in

Buffalo Academy of Science Charter School

by Bargain and Sale Deed made by Apple Educational Services, Inc to Buffalo Academy of Science Charter School dated October 30, 2015, recorded November 4, 2015 in Liber 11287 of Deeds, page 6271

## 4 The insured mortgage and assignments thereof, if any, are described as follows:

Mortgage and Security Agreement for \$3,250,000.00 and interest made by Buffalo Academy of Science Charter School to Buffalo and Erie County Industrial Land Development Corporation and First Niagara Bank, N.A. dated as of November 1, 2015 and recorded November 4, 2015 in the Erie County Clerk's Office in Liber 13744 of Mortgages, Page 1107

NOTE The above mortgage was assigned to First Niagara Bank, N A by an Assignment dated as of November 1, 2015 and recorded November 4, 2015 in Liber 13744 of Mortgages, Page 1137

## 5 The land referred to in this Policy is known as

Address. 180 Franklin Street  
City/Town Buffalo  
County Erie  
State NY  
Lot. 121 & 124

(Legal Description Continued on Attached Page)

This Policy valid only if Schedule B is attached

ALTA LOAN POLICY (6/17/06)

NY-02100 430013-RAM-72-30732-1-15-1513-41781

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Issued By:

CHICAGO TITLE INSURANCE COMPANY

Schedule A (cont'd)

LOAN POLICY OF TITLE INSURANCE  
ALTA LOAN POLICY (6/17/06) NNY

No

1513-41781

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Buffalo, County of Erie and State of New York being parts of Inner Lots Nos 121 and 124, bounded and described as follows

BEGINNING at a point in the westerly line of Franklin Street 105 feet southerly from the southerly line of Huron Street; running thence southerly along the westerly line of Franklin Street 225 75 feet, running thence westerly on a line drawn at right angles to said line of Franklin Street 116 01 feet to the easterly line of Bean Alley (said easterly line of Bean Alley being also the westerly lines of said Inner Lots Nos. 121 and 124); running thence northerly along said easterly line of Bean Alley 225 75 feet to its point of intersection with a line drawn at right angles to the westerly line of Franklin Street through the point of beginning, running thence easterly along said right angle line 116 01 feet to the westerly line of Franklin Street at the point or place of beginning.

A3-24-159-164

ALTA LOAN POLICY (6/17/06)

NY-02100 430013-RAM-72-30732-1-15-1513-41781

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03/02/2016 7 00 33 AM JD

LOAN POLICY OF TITLE INSURANCE  
ALTA LOAN POLICY (6/17/06) NNY

No

1513-41781

This Policy does not insure against loss or damage (and the Company will not pay costs, legal fees or expenses) that arise by reason of

- 1 New York Real Property Tax Law Sections 302 and 520 may affect the real estate tax liability if the premises described in Schedule "A" have a tax exemption Pursuant to the Real Property Tax Law, the exemption of the premises from taxation terminates immediately upon the acquisition of title by a non-exempt entity. The premises shall be taxed pro rata for the unexpired term of that taxable year and subsequent thereon at the full valuation without benefit of such tax exemption.
- 2 Exceptions as disclosed by Survey, Job No 06J2-0309A made by Nussbaumer & Clarke, Inc and dated September 23, 2015 as follows
  - a. 3 story building on the insured premises encroaches up to .35 feet onto the premises next westerly
  - b 3 story building on the insured premises encroaches up to 35 feet into the right of way of Bean Alley
  - c Building on the premises next southerly encroaches up to 3 feet onto the insured premises.
  - d 3 story building on the insured premises encroaches up to .09 feet into the right of way of Franklin Street
  - e Building on the insured premises encroaches up to 03 feet onto the premises next southerly
  - f Two manholes located near the west boundary line of the insured premises within the concrete loading dock on the insured premises.
  - g Electric manhole located on the east boundary line of the insured premises.
  - h Gas valve located on the east boundary line of the insured premises
  - i Variation in the record (116.01 feet) and (115 64 feet) measured distance of the north boundary line of the insured premises
  - j Variation in the record (116 01 feet) and measured (115 64 feet) distance of the south boundary line of the insured premises

NOTE. With respect to Exception 1 a and e This policy insures against monetary loss by reason of the enforced removal of encroaching portions of the building.

NOTE. With respect to Exception 1 b and d This policy insures against monetary loss by reason of the enforced removal of encroaching portions of the building

NOTE. With respect to Exceptions 1 c, f, g, h, i and j This policy insures against monetary loss by reason of the enforced removal of encroaching portions of the building

- 3 Pledge and Assignment made by Buffalo and Erie County Industrial Land Development Corporation to First Niagara Bank, N A , as purchaser with acknowledgement thereof by Buffalo Academy of Science Charter School by instrument dated as of November 1, 2015 and recorded November 4, 2015 in Liber



LOAN POLICY OF TITLE INSURANCE  
ALTA LOAN POLICY (6/17/06) NNY

No.

1513-41781

11287 of Deeds at page 6277

- 4 Assignment of Leases and Rents made by Buffalo Academy of Science Charter School to Buffalo and Erie County Industrial Land Development Corporation and First Niagara Bank, N.A. dated as of November 1, 2015 and recorded November 4, 2015 in Liber 11287 of Deeds at page 6286 and Liber 13744 of Mortgages at page 1142.

NOTE: Above Assignment of Leases and Rents was assigned by Assignment of Assignment of Leases and Rents made by Buffalo and Erie County Industrial Land Development Corporation to First Niagara Bank, N.A. by instrument dated as of November 1, 2015 and recorded November 4, 2015 in Liber 11287 of Deeds at page 6296 and Liber 13744 of Mortgages at page 1152

- 5 Financing Statement No. Q286-2366

Debtor Buffalo Academy of Science Charter School

Secured Party Buffalo and Erie County Industrial Land Development Corporation and First Niagara Bank, N A

Date Filed November 4, 2015

- 6 Financing Statement No. Q286-2371

Debtor Buffalo Academy of Science Charter School

Secured Party Buffalo and Erie County Industrial Land Development Corporation and First Niagara Bank, N A

Date Filed November 4, 2015

- 7 Financing Statement No Q286-2378

Debtor. Buffalo Academy of Science Charter School

Secured Party Buffalo and Erie County Industrial Land Development Corporation and First Niagara Bank, N A

Date Filed November 4, 2015



Issued by

CHICAGO TITLE INSURANCE COMPANY

Signature Page

LOAN POLICY OF TITLE INSURANCE  
ALTA LOAN POLICY (6/17/06) NNY

No.

1513-41781

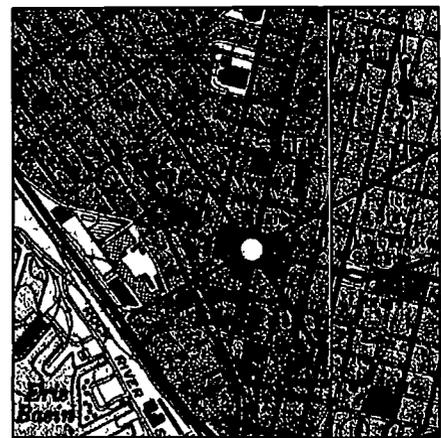
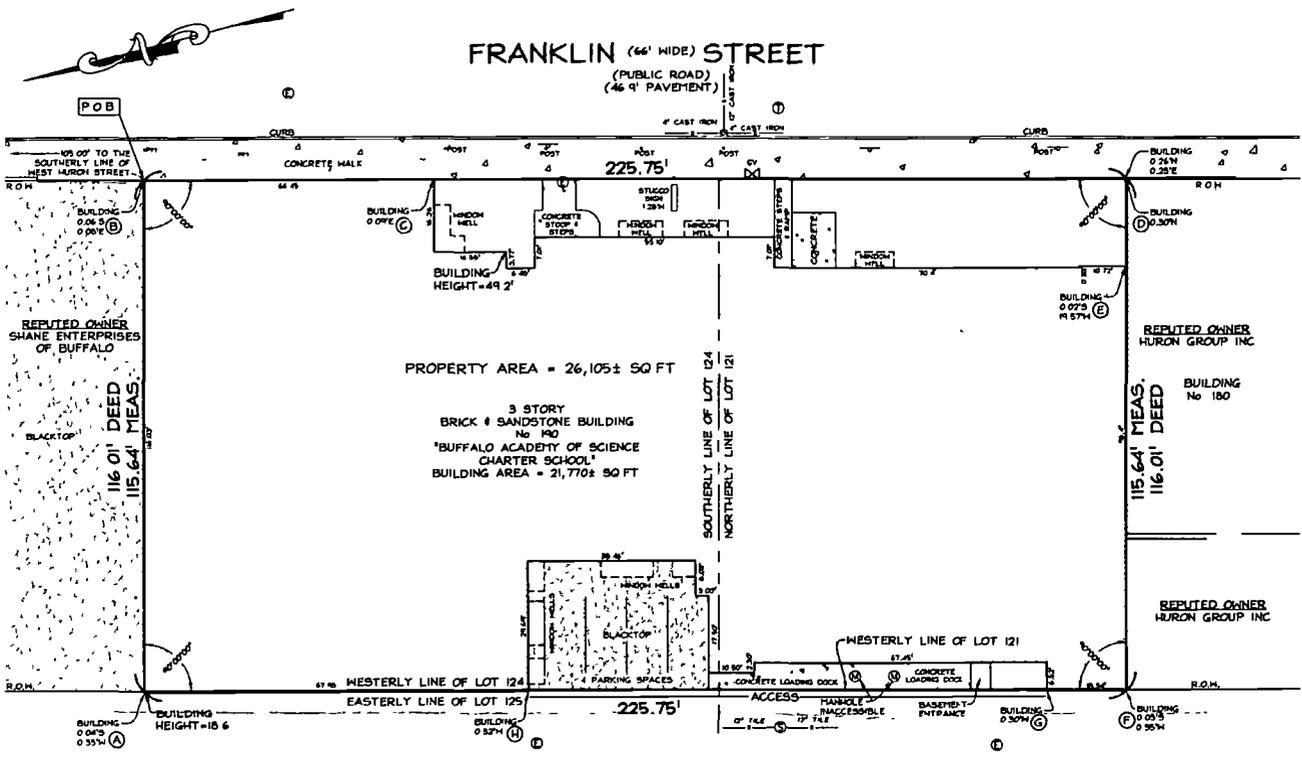
Countersigned

By



Authorized Signatory





VICINITY MAP  
(NOT TO SCALE)

**POTENTIAL ENCROACHMENTS**

- (A) BUILDING IS 0.55'W INTO BEAN ALLEY
- (B) BUILDING IS 0.06'E INTO FRANKLIN STREET
- (C) BUILDING IS 0.04'E INTO FRANKLIN STREET
- (D) ADJACENT BUILDING IS 0.30'N INTO PREMISES
- (E) BUILDING IS 0.02'S INTO ADJACENT PREMISES
- (F) BUILDING IS 0.05'S INTO ADJACENT PREMISES AND 0.35'W INTO BEAN ALLEY
- (G) BUILDING IS 0.30'W INTO BEAN ALLEY
- (H) BUILDING IS 0.32'W INTO BEAN ALLEY

**EASEMENTS**

NO EASEMENTS LISTED IN SEARCH No 1515-03672

**LEGEND**

- ⊗ GAS VALVE
- ⊕ PARKING METER
- SIGN
- ⊖ DRAINAGE INLET
- ⊙ TELEPHONE MANHOLE
- ⊚ ELECTRIC MANHOLE
- ⊛ MANHOLE (UNKNOWN TYPE)
- ⊜ SANITARY AND STORY MANHOLE

**FLOOD NOTE**

ZONE X (AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN)

REFERENCE: F.I.R.M. (WITH FEMA GOV) COMMUNITY PANEL NO. 360230 0020 D MAP REVISED: SEPTEMBER 26, 2008

**ZONING NOTE**

- ZONE: DO - DOWNTOWN OPPORTUNITY
- |                             |  |
|-----------------------------|--|
| MINIMUM LOT AREA:           | NONE                                       |
| MINIMUM LOT WIDTH:          | NONE                                       |
| MAXIMUM BUILDING HEIGHT:    | 2 STORIES OR 24 FEET, WHICHEVER IS GREATER |
| MAXIMUM LOT COVERAGE:       | NONE                                       |
| MINIMUM FRONT YARD SETBACK: | 0 FEET                                     |
| MINIMUM SIDE YARD SETBACK:  | 0 FEET                                     |
| MINIMUM REAR YARD SETBACK:  | 0 FEET                                     |
| PARKING REQUIREMENTS:       | NONE                                       |

**BEAN (16' WIDE) ALLEY**

(PUBLIC ROAD)  
(NO CURBS)  
(15'± PAVEMENT)

**LEGAL DESCRIPTION**

REFERENCE: CHICAGO TITLE INSURANCE COMPANY SEARCH No 1515-03672 EFFECTIVE DATE: SEPTEMBER 3, 2015

ALL THAT TRACT OR PARCEL OF LAND, SITUATE IN THE CITY OF BUFFALO, COUNTY OF ERIE AND STATE OF NEW YORK, BEING PART OF INNER LOTS NOS 121 AND 124 IN SAID CITY, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WESTERLY LINE OF FRANKLIN STREET 105 FEET SOUTHERLY FROM THE SOUTHERLY LINE OF HURON STREET, RUNNING THENCE SOUTHERLY ALONG THE WESTERLY LINE OF FRANKLIN STREET 225.75 FEET, RUNNING THENCE WESTERLY ON A LINE DRAWN AT RIGHT ANGLES TO SAID LINE OF FRANKLIN STREET 116.01 FEET TO THE EASTERLY LINE OF BEAN ALLEY (SAID EASTERLY LINE OF BEAN ALLEY BEING ALSO THE WESTERLY LINES OF SAID INNER LOTS NOS 121 AND 124), RUNNING THENCE NORTHERLY ALONG SAID EASTERLY LINE OF BEAN ALLEY 225.75 FEET TO ITS POINT OF INTERSECTION WITH A LINE DRAWN AT RIGHT ANGLES TO THE WESTERLY LINE OF FRANKLIN STREET THROUGH THE POINT OF BEGINNING, RUNNING THENCE EASTERLY ALONG SAID RIGHT ANGLE LINE 116.01 FEET TO THE WESTERLY LINE OF FRANKLIN STREET AT THE POINT OR PLACE OF BEGINNING

**NOTES**

1. THERE IS NO OBSERVABLE EVIDENCE OF EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS WITHIN RECENT MONTHS
2. THERE ARE NO RECENT CHANGES IN STREET RIGHT OF WAY LINES EITHER COMPLETED OR PROPOSED, AND AVAILABLE FROM THE CONTROLLING JURISDICTION
3. THERE IS NO OBSERVABLE EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS
4. THERE IS NO OBSERVABLE EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL
5. THERE IS NO OBSERVABLE EVIDENCE OF SITE USE AS A CEMETERY OR BURIAL GROUND
6. THERE ARE 4 PARKING SPACES LOCATED ON THE PROPERTY

**CERTIFICATION**

To:  
- CHICAGO TITLE INSURANCE COMPANY  
- BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL  
- FIRST NIAGARA BANK, N.A., ITS SUCCESSORS AND/OR ASSIGNS  
- BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 6, 7(a), 8, 9, 10, 11(a), AND 13 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON SEPTEMBER 15, 2015.

DATE OF PLAT OR MAP: SEPTEMBER 30, 2015

*Michael J. Ennis*  
MICHAEL J. ENNIS, PLS  
REGISTERED PROFESSIONAL LAND SURVEYOR NO 50415  
DATE: SEPTEMBER 30, 2015

THE PROPERTY DESCRIBED AND SHOWN HEREON IS THE SAME PROPERTY DESCRIBED IN STEWART TITLE INSURANCE COMPANY TITLE NO 5114-2115 WITH AN EFFECTIVE DATE: MAY 17, 2014

**ALTA/ACSM LAND TITLE SURVEY**  
OF  
**190 FRANKLIN STREET**

PART OF LOT(S) 121 & 124  
INNER LOTS  
CITY OF BUFFALO  
COUNTY OF ERIE STATE OF NEW YORK

**Nussbaumer & Clarke, Inc.**  
3554 Lake Shore Road  
Buffalo, New York 14219-1494  
(716) 527-6000  
www.nussbaumer.com  
Engineers and Surveyors

DRAWN BY: L.R.D.	REV	SHEET NO
DATE: 09/23/15	JOB NO 06J2-0309A	OF
SCALE: 1"=20'	DWG NO 5B-226B	

NOTE: UNAUTHORIZED ALTERATIONS OR ADDITIONS TO ANY SURVEY, DRAWING, DESIGN SPECIFICATION PLAN, OR REPORT IS A VIOLATION OF SECTION 7203, PROVISION 2 OF THE NEW YORK STATE EDUCATION LAW.  
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# CERTIFICATE OF LIABILITY INSURANCE

BUFFA1C

OP ID DX

DATE (MM/DD/YYYY)  
02/29/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Austin & Co., Inc. 20 Corporate Woods Blvd. Albany, NY 12211-2366 Shawn T. Berger	<b>CONTACT NAME</b> Shawn T. Berger <b>PHONE (A/C, No, Ext.)</b> 518-465-3591 <b>E-MAIL ADDRESS</b> sberger@austin-co.com <b>FAX (A/C, No)</b> 518-465-3968
	<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A Philadelphia Insurance Cos INSURER B Hartford Insurance Group INSURER C INSURER D INSURER E INSURER F
<b>INSURED</b> Buffalo Academy of Science Charter School 190 Franklin Street Buffalo, NY 14202	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

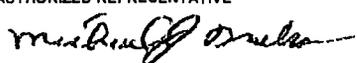
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	X		PHPK1117012	07/01/2015	07/01/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 Emp Ben. \$ 1,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			PHPK1117012	07/01/2015	07/01/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10000	X		PHUB445734	07/01/2015	07/01/2016	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A	01WBGF0686	07/01/2015	07/01/2016	PER STATUTE OTH-ER E L EACH ACCIDENT \$ 1,000,000 E L DISEASE - EA EMPLOYEE \$ 1,000,000 E L DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Per Policy Terms, Conditions and Exclusions. Certificate Holder is included as additional insured on the General Liability and Excess Liability policies, but only with respects to 190 Franklin Street, Buffalo, NY 14202, if required by written contract.

**CERTIFICATE HOLDER****CANCELLATION**

Buffalo and Erie County Industrial Land Development Corporation 95 Perry St, Suite 403 Buffalo, NY 14203	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS  AUTHORIZED REPRESENTATIVE 
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STATE OF NEW YORK  
WORKERS' COMPENSATION BOARD

CERTIFICATE OF INSURANCE COVERAGE UNDER THE NYS DISABILITY BENEFITS LAW

**PART 1. To be completed by Disability Benefits Carrier or Licensed Insurance Agent of that Carrier**

1a. Legal Name and Address of Insured (Use street address only)  BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL 190 FRANKLIN STREET BUFFALO, NY 14202	1b. Business Telephone Number of Insured 716-856-8690 1c. NYS Unemployment Insurance Employer Registration Number of Insured 8689780 1d. Federal Employer Identification Number of Insured or Social Security Number 200723492
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)  Buffalo and Erie County Industrial Land Development Corporation 95 Perry Street, Suite 403 Buffalo, New York 14203	3a. Name of Insurance Carrier HARTFORD LIFE AND ACCIDENT 3b. Policy Number of entity listed in box "1a" LNY646814 3c. Policy effective period. 07-01-2015 to 06-30-2016

4. Policy covers:

- a.  All of the employer's employees eligible under the New York Disability Benefits Law  
b.  Only the following class or classes of the employer's employees

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability Benefits insurance coverage as described above.

Date Signed 11-03-2015

By

(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number (800) 454-7020

Title Manager

**IMPORTANT** If box "4a" is checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.  
If box "4b" is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the Disability Benefits Law. It must be mailed for completion to the Workers' Compensation Board, DB Plans Acceptance Unit, 20 Park Street, Albany, New York 12207.

**PART 2. To be completed by NYS Workers' Compensation Board (Only if box "4b" of Part 1 has been checked)**

State Of New York  
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability Benefits Law with respect to all of his/her employees.

Date Signed

By

(Signature of NYS Workers' Compensation Board Employee)

Telephone Number

Title

*Please Note: Only insurance carriers licensed to write NYS disability benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. Insurance brokers are NOT authorized to issue this form.*

## Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in box "3" on this form is certifying that it is insuring the business referenced in box "1a" for disability benefits under the New York State Disability Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in box "2". *This Certificate is valid for the earlier of one year after this form is approved by the insurance carrier or its licensed agent, or the policy expiration date listed in box "3c".*

Please Note Upon the cancellation of the disability benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability Benefits Law

### DISABILITY BENEFITS LAW

#### §220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article.

## INVESTOR LETTER

The undersigned, First Niagara Bank, N.A., as purchaser (the "**Purchaser**") of the Issuer's Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "**2015 Bonds**" or the "**Bonds**" issued pursuant to and on the terms set forth in the Resolution adopted by the Buffalo and Erie County Industrial Land Development Corporation (the "**Issuer**") on October 21, 2015 and a Bond Purchase Agreement dated November 2, 2015 (the "**Bond Purchase Agreement**"), among the Issuer, the Purchaser and the Institution hereby states that:

1. We are a "Financial Institution", which term is defined to mean: (A) any national bank, banking corporation, trust company or other banking institution, whether acting in its individual or fiduciary capacity, organized under the laws of the United States, any state, any territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the Comptroller of the Currency or a comparable state or territorial official or agency; (B) an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state, a territory or the District of Columbia; (C) an investment company registered under the Investment Company Act of 1940 or a business development company as described in Section 2(a)(48) of that Act; (D) an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, insurance company or registered investment company; or (E) institutional investors or other entities who customarily purchase commercial paper or tax-exempt securities in large denominations.

2. We have sufficient knowledge and experience in financial and business matters to be able to evaluate the risk and merits of the investment represented by the Bonds. The Bonds are an appropriate investment for the Purchaser's corporate purposes.

3. We acknowledge that we have either been supplied with or have been given access to information relating to the Project and we have had the opportunity to ask questions and receive answers from the Institution and other knowledgeable individuals we deemed appropriate concerning the Project and the security for the Bonds.

4. We understand that the Bonds have not been registered under the Securities Act of 1933, as amended. We are purchasing the Bonds for investment for our own account and not with a present view toward resale or the distribution thereof, in that we do not now intend to resell or otherwise dispose of all or any part of our interests in the Bonds.

5. The undersigned understands that the Bonds shall never be a debt of the State of New York, the County of Erie or any political subdivision thereof. The State of New York, the County of Erie or any political subdivision thereof shall not be liable thereon. None of the State of New York, the County of Erie or any political subdivision thereof is obligated to pay, and

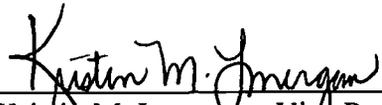
neither the faith and credit nor the taxing power of State of New York, the County of Erie or any political subdivision thereof is pledged to, the payment of the principal or redemption price, if any, of or interest on, the Bonds. The Bonds are special, limited obligations of the Issuer, payable solely 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 Bonds do not now and shall never constitute a charge against the general credit of the Issuer. The Issuer has no taxing power.

6. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Bond Purchase Agreement.

SIGNATURE PAGE FOLLOWS

Dated: November 3, 2015

**FIRST NIAGARA BANK, N.A.**, a National  
Banking Association

By:   
Kristin M. Lonergan, Vice President

November 2, 2015

Buffalo and Erie County Industrial Land  
Development Corporation  
Buffalo, New York

First Niagara Bank, N.A.  
Buffalo, New York

Buffalo Academy of Science Charter School  
Buffalo, New York

RE: \$3,250,000 Buffalo and Erie County Industrial Land Development Corporation Tax  
Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series  
2015

Ladies and Gentlemen:

We have acted as counsel to the Buffalo and Erie County Industrial Land Development Corporation (the "Issuer"), a not-for-profit local development corporation organized under the laws of the State of New York, authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended, and Resolution No. 218 of 2009 adopted by the Erie County Legislature (the "Legislature") on July 24, 2009, as amended by Resolution No. 295 of 2009, adopted by the Legislature on November 19, 2009, Resolution No. 5-3 (2010) adopted by the Legislature on March 25, 2010 and Resolution No. 110 of 2011, adopted by the Legislature on June 30, 2011 (as so amended, collectively, the "Resolutions"), in connection with the issuance and sale by the Issuer of its (i) \$3,250,000 Buffalo and Erie County Industrial Land Development Corporation Tax Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 (the "Bonds").

The Bonds are being issued for the purpose of financing a certain Project, as such term is defined in that certain Bond Purchase Agreement, dated November 2, 2015 (the "Bond Purchase Agreement"), by and among the Issuer, Buffalo Academy of Science Charter School (the "Institution") and First Niagara Bank, N.A. (the "Holder").

In connection with the issuance of the Bonds, the Issuer has executed and delivered the following documents, which are collectively referred to herein as the "Issuer Documents":

1. the Bond Purchase Agreement; and
2. a certain Loan Agreement, dated as of November 1, 2015, by and between the Issuer and the Institution; and

3. the Pledge and Assignment, dated as of November 1, 2015, by and between the Issuer and the Holder, with an acknowledgment thereof by the Institution; and
4. the Tax Compliance Agreement, dated November 1, 2015, by and between the Issuer and the Institution; and
5. the Mortgage and Security Agreement, dated as of November 1, 2015, from the Institution to the Issuer and the Holder; and
6. the Assignment of Mortgage, dated as of November 1, 2015, from the Issuer to the Holder; and
7. the Assignment of Leases and Rents, dated as of November 1, 2015, from the Institution to the Issuer and the Holder; and
8. the Assignment of Assignment of Leases and Rents, dated as of November 1, 2015, from the Issuer to the Holder.

We have examined originals or certified copies of the proceedings of the Issuer, certificates of the Issuer's officers, and related documents. We have also examined such statutes, court decisions, proceedings and other documents as we have considered necessary or appropriate in the circumstances to render the following. As to various questions of fact material to our opinion, we have relied upon certificates of the Issuer and the Institution and the representations of the Institution made in the related documents.

The opinions set forth in this letter, whether or not qualified by the phrase "to our knowledge," are subject to the following qualifications:

1. We have assumed without any inquiry or other investigation (a) the legal capacity of each natural person other than individuals signing on behalf of the Issuer, (b) the full power and authority of each person, other than the Issuer, in connection with the Issuer Documents, to execute, deliver and perform each document heretofore executed and delivered or hereafter to be executed and delivered, (c) the due authorization, execution and delivery by each person, other than the Issuer, in connection with the Issuer Documents, of each document heretofore executed and delivered or hereafter to be executed and delivered by such person, (d) the legality, validity, binding effect and enforceability as to each person, other than the Issuer, in connection with the Issuer Documents, of each document heretofore executed and delivered or hereafter to be executed and delivered, (e) the payment of all required filing or recording fees and taxes, (f) no future modification of any provision of any document and no future waiver of any right or remedy, (g) the genuineness of each signature other than the signature of the Issuer on the Issuer Documents, (h) the completeness of each document submitted to us, the authenticity of each document submitted to us as an original, the conformity to the original of each document

submitted to us as a copy and the authenticity of the original of each document submitted to us as a copy, (i) the truthfulness of each statement as to any factual matter contained in any of the documents reviewed by us, and (j) the accuracy on the date of this letter as well as on the date stated in any governmental certificate of each statement as to any factual matter contained in such governmental certificate.

2. Any opinion concerning the validity, binding effect or enforceability of any document (a) means that (i) such document constitutes an effective contract under applicable law, (ii) such document is not invalid in its entirety under applicable law because of a specific statutory prohibition or public policy and is not subject in its entirety to a contractual defense under applicable law and (iii) subject to the following sentence, an adequate remedy or remedies are available under applicable law if the person concerning whom such opinion is given is in material default under such document but (b) does not mean that (i) any particular remedy is available under applicable law upon such material default or (ii) every provision of such document will be upheld or enforced in any or each circumstance by a court applying applicable law. Furthermore, the enforceability of any document may be limited or otherwise affected by (a) any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar statute, rule, regulation or other law affecting the enforcement of creditors' rights and remedies generally or (b) the unavailability of, or any limitation on the availability of, any particular right or remedy (whether in a proceeding in equity or at law) because of the discretion of a court or because of any equitable principle or requirement as to commercial reasonableness, conscionability or good faith.

3. Except as set forth in paragraph 3 below, we express no opinion on the application or effect of any environmental laws (including, without limitation, the provisions of the Environmental Conservation Law of the State of New York), ordinances, rules, regulations or other requirements of any governmental authority with respect to the transactions contemplated by the Issuer Documents, or the potential liability thereunder, or the existence of any environmental hazards relating to such transactions, and specifically note that we have not conducted any independent review with respect to such matters.

4. We express no opinion on compliance with federal or state securities or "blue sky" laws, rules or regulations with regard to the transactions evidenced by the Issuer Documents.

5. We express no opinion concerning any law other than the law of the State of New York and the federal law of the United States of America.

Subject to the qualifications contained in this letter, we are of the opinion that:

1. The Issuer is a not-for-profit local development corporation organized and in good standing under the laws of the State of New York, authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended, and Resolution No. 218 of 2009 adopted by the Legislature on July 24, 2009, as amended by

Resolution No. 295 of 2009, adopted by the Legislature on November 19, 2009, Resolution No. 5-3 (2010) adopted by the Legislature on March 25, 2010 and Resolution No. 110 of 2011, adopted by the Legislature on June 30, 2011.

2. The Issuer has the power and lawful authority to execute and deliver the Bonds and the Issuer Documents, and to perform and observe the provisions of the Bonds and the Issuer Documents on its part to be performed and observed.

3. The Issuer has complied with all of the requirements of New York law with respect to the authorization, execution and delivery of the Bonds and Issuer Documents. The Issuer has duly authorized the execution, delivery and performance of the Bonds and the Issuer Documents.

4. To the best of our knowledge, there is no litigation pending or threatened in any court, either state or federal, calling into question the creation, organization or existence of the Issuer or the validity of the Bonds and the Issuer Documents.

5. The Bonds and the Issuer Documents have been duly authorized, executed and delivered by the Issuer, and the Bonds and the Issuer Documents constitute legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms.

We have not made any investigation of, and do not express any opinions as to any matters of title to or the descriptions of any property (whether real, personal or mixed), priority or perfection of liens, or compliance with zoning, land use or other similar governmental regulations.

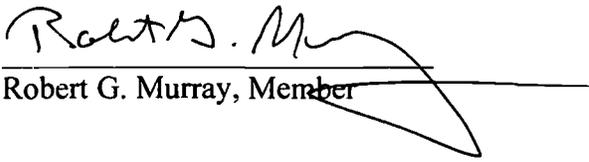
Insofar as the foregoing opinions express or involve conclusions as to compliance by the Issuer with the provisions of Article Eight of the Environmental Conservation Law of the State of New York, we have relied upon (A) the accuracy of the statements and assertions contained in the environmental assessment form verified by a representative of the Institution and submitted to the Issuer with respect to the Project, and (B) the accuracy of the conclusions contained in the resolution adopted by the members of the Issuer on October 21, 2015, to the effect that the acquisition of the Project, and the financing thereof by the Issuer, will not have a significant effect upon the environment; provided, however, that we are not passing upon nor do we assume any responsibility for the accuracy, completeness, or fairness of the statements, information or conclusions contained in the foregoing and we make no representation that we have independently verified the accuracy, completeness, or fairness of any such statements, information or conclusions.

Only the parties to whom this opinion is addressed may rely on this opinion. This opinion speaks only as of the date hereof and is limited to present laws and regulations and the facts as they

currently exist and have been represented to us. We assume no obligation to revise, update or supplement this opinion.

Very truly yours,

**HARRIS BEACH PLLC**

BY:   
Robert G. Murray, Member

November 3, 2015

First Niagara Bank, N.A.  
Buffalo, New York

Buffalo and Erie County Industrial Land Development Corporation  
Buffalo, New York

Re: **\$3,250,000 Buffalo and Erie County Land Development Corporation Tax-Exempt Revenue Bond (Buffalo Academy of Science Charter School Project), Series 2015 (the "Bond")**

Ladies and Gentlemen:

We have acted as special counsel for Buffalo Academy of Science Charter School, a New York education corporation (the "Institution"), in connection with the execution and delivery by the Institution of (a) the Loan Agreement dated as of November 1, 2015 (the "Loan Agreement") between Buffalo and Erie County Industrial Land Development Corporation (the "Issuer") and the Institution, (b) the Bond Purchase Agreement dated November 3, 2015 (the "Bond Purchase Agreement") among the Issuer, the Institution and First Niagara Bank, N.A. (the "Holder"), (c) the Acknowledgement of Assignment of Issuer's Rights under Loan Agreement dated as of November 1, 2015 (the "Acknowledgement") from the Institution and attached to the Pledge and Assignment dated as of November 1, 2015 from the Issuer to the Holder, (d) the Mortgage and Security Agreement dated as of November 1, 2015 (the "Mortgage") from the Institution to the Issuer and the Holder, (e) the Assignment of Leases and Rents dated as of November 1, 2015 (the "Assignment of Rents") from the Institution to the Issuer and the Holder, (f) the Security Agreement dated as of November 1, 2015 (the "Security Agreement") from the Institution to the Holder, (g) the Environmental Compliance and Indemnification Agreement dated as of November 1, 2015 (the "Environmental Compliance Agreement") from the Institution to the Issuer and the Holder, (h) the Hazardous Substance Indemnity Agreement dated as of November 1, 2015 (the "Hazardous Substances Agreement") from the Institution to the Holder and (i) the Tax Compliance Agreement dated November 3, 2015 (the "Tax Compliance Agreement") between the Issuer and the Institution. We have been requested by the Institution to render to you our opinion pursuant to Section 28 of the Loan Agreement.

In connection with our opinion, we have reviewed the following documents:

1. The Loan Agreement, the Bond Purchase Agreement, the Acknowledgement, the Mortgage, the Assignment of Rents, the Security Agreement, the

Environmental Compliance Agreement, the Hazardous Substances Agreement and the Tax Compliance Agreement (collectively, the "Institution Documents");

2. The General Certificate of the Institution dated as of November 1, 2015 and the charter of the Institution, the by-laws of the Institution, the certificate dated October 7, 2015 issued by the New York Education Department with respect to the status of the Institution in the State of New York, the letter dated April 30, 2012 from the Internal Revenue Service to the Institution with respect to the Institution's status as an organization described in Section 501(c)(3) of the Internal Revenue Code and the resolutions of the board of trustees of the Institution, all attached thereto as exhibits;

3. The Exempt Organizations Select Check website of the Internal Revenue Service updated through October 14, 2015; and

4. The reports in response to our internal office requests addressed to all attorneys and legal assistants with respect to claims and litigated matters pertaining to the Institution.

Items 1 through 4 above collectively are referred to as the "Examined Documents".

Our opinions herein are subject to the following qualifications:

1. Our opinions are rendered only in our capacity as counsel to the Institution as set forth above and are based solely upon our examination of the Examined Documents and our review of such relevant law as we deemed appropriate. For purposes of our opinions, our "knowledge" is based solely on our examination of the Examined Documents and the conscious awareness of information by those of our present attorneys who have had primary responsibility for reviewing and negotiating the Institution Documents on behalf of the Institution. Our opinions are based solely on the laws of the State of New York and federal laws of the United States as of the date of this letter.

2. We have assumed without investigation (a) that each signature on any of the Examined Documents, other than signatures on behalf of the Institution on the Institution Documents, is genuine, (b) the authenticity of all documents submitted to us as originals and the conformity to the authentic original documents of all documents submitted to us as copies or facsimile, (c) the legal capacity of each natural person, (d) that each document upon which we opine has been duly authorized, executed and delivered by each party thereto other than the Institution and is a legal, valid and binding obligation of each party thereto other than the Institution and is enforceable against each such other party in accordance with its terms, (e) the truth of the factual representations and warranties and other statements of fact in the Examined Documents and (f) the continued accuracy of the matters set forth in the Examined Documents to the date hereof.

3. The validity, binding effect or enforceability of any document or any provision thereof may be limited or otherwise affected by (a) bankruptcy, insolvency, involuntary liquidation, fraudulent conveyance, reorganization, moratorium or other similar laws or regulations, (b) equitable principles affecting the enforcement of creditors' rights in general or (c) the unavailability of, or any limitation upon the availability of, any particular right or remedy because of the discretion of a court, the principle of election of remedies or any requirement as to commercial reasonableness, conscionability or good faith. Furthermore, we express no opinion concerning (i) usury, (ii) the validity, binding effect or enforceability of any provision of any document giving consent, waiving a right, remedy or defense, granting any power of attorney or providing for indemnification or exculpation, (iii) the validity, binding effect or enforceability of a document or a provision of any document with respect to any person or entity other than the Institution, (iv) the status of any liens granted to the Issuer or the Holder pursuant to the Institution Documents, or (v) provisions contained in an assignment of leases and rents providing for the appointment of a receiver with respect to the property subject to such assignment of leases and rents or granting a right to lease or operate such property. Also, wherever any terms, conditions or provisions are limited by the phrase "to the extent permitted by law" or by words of similar effect, we express no opinion as to whether, or to what extent, such terms, conditions or provisions are enforceable.

4. Any opinion concerning the validity, binding effect or enforceability of any document (a) means that (i) that document constitutes a contract under applicable law, (ii) that document is not invalid in its entirety under applicable law because of a specific statutory prohibition or public policy and is not subject in any material respect to a contractual defense under applicable law and (iii) subject to the other qualifications of this letter, a remedy or remedies are available under applicable law substantially enforcing the effect of that document if the person concerning whom that opinion is given is in material default under that document but (b) does not mean that (i) any particular remedy is available under applicable law or (ii) every provision of that document will be upheld or enforced.

Subject to the qualifications set forth in this letter, we are of the opinion that:

1. The Institution is an education corporation validly existing and in good standing under the laws of the State of New York and has adequate power to carry on the business in which it is presently engaged.

2. The execution, delivery and performance of the Institution Documents, including the consummation of the transactions contemplated thereby, are within the corporate powers of the Institution, have been duly authorized by all necessary corporate action on the part of the Institution, are not in contravention of any law which is applicable to the Institution or the terms of the charter or by-laws of the Institution, and do not require (with respect to the Institution) the consent or approval of any governmental body, agency or authority that has not been obtained.

3. The Institution Documents have been duly executed and delivered by the Institution and are valid and binding obligations of the Institution enforceable against the Institution in accordance with their respective terms.

4. The Institution is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or corresponding provisions of prior law, and has received a letter from the Internal Revenue Service to that effect and to the effect that the Institution is exempt from federal income taxes, except for unrelated business income subject to taxation under Section 511 of the Code, which letter, to our knowledge, has not been modified, limited or revoked.

5. The Institution is a corporation organized and operated for educational, benevolent and charitable purposes, not for primary profit, and no part of the net earnings of the Institution inures to the benefit of any person, private stockholder or individual, all within the meaning respectively of subsection 3(a)(4) of the Securities Act of 1933, as amended, and of subsection 12(g)(2)(D) of the Securities Exchange Act of 1934, as amended.

6. The Project (as such term is defined in the Bond Purchase Agreement) and the issuance by the Issuer of the Bond to finance a portion of the costs thereof is in furtherance of the Institution's exempt purposes as above described.

7. To our knowledge, no litigation or other proceeding before any court or administrative agency is pending or threatened against the Institution wherein an unfavorable decision would materially adversely affect the validity or enforceability of any of the Institution Documents or which relates to the Project.

Our opinion is limited to the specific issues addressed and is limited in all respect to the laws and facts existing on the date hereof. By rendering our opinion, we do not undertake to advise you of any changes in such laws or facts or our knowledge which may occur after the date hereof. This opinion is furnished to you in connection with the execution and delivery of the Institution Documents and is not to be used, circulated, quoted or otherwise relied upon for any other purpose; provided, however, this opinion may be furnished to and, subject to the qualifications set forth herein, relied upon by (a) your counsel and bond counsel in connection with their own opinions rendered in connection with the issuance of the Bond and (b) successors and assigns of the Holder, provided that such reliance is, under the circumstances existing at such time reasonable.

Very truly yours,

*Joelle Fleischman \* Myer, LLP*

**BARCLAY DAMON** <sup>LLP</sup>

November 3, 2015

Buffalo and Erie County Industrial Land Development Corporation  
95 Perry Street, Suite 403  
Buffalo, New York 14203

Re: Buffalo and Erie County Industrial Land Development Corporation  
\$3,250,000 Tax-Exempt Revenue Bonds (Buffalo Academy of Science  
Charter School Project), Series 2015

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 (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "*Bonds*").

The 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 Resolution 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 21, 2015 (the "*Resolution*"); and (iii) a Bond Purchase Agreement dated November 3, 2015 (the "*Bond Purchase Agreement*"), by and among the Issuer, Buffalo Academy of Science Charter School (the "*Institution*") and First Niagara Bank, N.A. (the "*Holder*"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bond Purchase Agreement.

The Bonds are being issued in connection with a loan made by the Issuer to the Institution, for the purpose of financing all or a portion of the costs of a project to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 (the "*Land*") to be used to operate a charter school for grades 7-12 (the "*Facility*"); and (b) to pay costs incidental to the issuance of the Bonds; and (c) to fund a debt service reserve fund, if any, required with respect to the Bonds (the foregoing collectively, the "*Project*"). At the request of the Institution, the Issuer has granted certain other financial assistance to the Project in the form of exemption from mortgage recording tax (together with the Bonds, the "*Financial Assistance*").

The Bonds are dated the date hereof, are issued as fully registered bonds without coupons and mature and bear interest as set forth therein. The Bonds are subject to redemption prior to maturity in the manner and upon the terms and conditions set forth therein and in the Bond

Purchase Agreement. The principal and purchase price, if any, of and interest on the Bonds are payable from loan payments to be made by the Institution under the Loan Agreement dated as of November 1, 2015 (the "*Loan Agreement*"), by and between the Issuer and the Institution.

The Bonds are special, limited obligations of the Issuer payable from amounts due from the Institution under the Loan Agreement. The Issuer has assigned its interest in the Loan Agreement (other than the Unassigned Rights) to the Holder as provided in the Loan Agreement pursuant to a Pledge and Assignment dated as of November 1, 2015 (the "*Assignment*"), between the Issuer and the Holder and acknowledged by the Institution.

As security for the obligations of the Institution under the Loan Agreement and for the Bonds, the Institution has granted to the Issuer a first priority leasehold mortgage lien on and security interest in the Project pursuant to a certain Mortgage and Security Agreement dated as of November 1, 2015, by the Institution to the Issuer (the "*Mortgage*") and has assigned to the Holder all of its right, title and interest (other than the Unassigned Rights) in and to the Mortgage pursuant to a certain Assignment of Mortgage, dated as of November 1, 2015 (the "*Assignment of Mortgage*"). The Institution has executed an Assignment of Leases and Rents dated as of November 1, 2015 (the "*Assignment of Leases and Rents*") in favor of the Issuer and the Issuer has assigned to the Holder all of its right, title and interest (other than the Unassigned Rights) in and to the Assignment of Leases and Rents pursuant to a certain Assignment of Assignment of Leases and Rents, dated as of November 1, 2015 (the "*Assignment of Assignment of Leases and Rents*")

We have examined a specimen of the Bond and executed counterparts of the Bond Purchase Agreement, the Loan Agreement, the Pledge and Assignment, the Assignment of Mortgage, the Assignment of Assignment of Leases and Rents and a certain tax compliance agreement dated the date hereof (the "*Tax Compliance Agreement*") executed by the Institution, and the Issuer relating to the Bonds.

We have reviewed an opinion of even date herewith of Jaekle Fleishchmnn & Mugel, LLP, counsel to the Institution, upon which we are relying as to the status of the Institution as a Section 501(c)(3) Organization (as defined in the Tax Compliance Agreement), the validity and enforceability with respect to the Institution of the Loan Agreement, the Bond Purchase Agreement, the Pledge and Assignment, the Tax Compliance Agreement and the other documents to which the Institution is a party. No opinion as to such matters is expressed herein.

As Bond Counsel, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates and documents (including documents contained in the record of proceedings with respect to the issuance of the Bonds) as we have deemed necessary or appropriate for the purposes of the opinions rendered below. In such examination, we have assumed the genuineness of all signatures, the authenticity and due execution of all documents submitted to us as originals and the conformity to the original documents of all documents submitted to us as copies. As to any facts material to our opinion, without having any independent investigation, we have relied upon, and assumed the accuracy and truthfulness of, the aforesaid instruments, certificates and documents.

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 Bonds in order that interest on the 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 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 Bonds to be includable in gross income for purposes of federal income tax, possibly from the date of issuance of the Bonds. The Issuer and the Institution have covenanted in the Tax Compliance Agreement to comply with certain procedures, and they have made certain representations and certifications designed to assure satisfaction of the requirements of the Code. Our opinions in paragraphs (vii) and (viii) 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 Bonds in the event that any such representations and certifications are materially inaccurate or that there occurs a failure to comply with such covenants.

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 Bonds; (b) to enter into and perform its obligations under the Loan Agreement, the Bond Purchase Agreement, the Pledge and Assignment and the Tax Compliance Agreement; (c) to assign its interest in the Loan Agreement to the Holder as provided in the Pledge and Assignment; and (d) to assign to the Holder its interest in the Mortgage pursuant to the Assignment of Mortgage and in the Assignment of Leases and Rents pursuant to the Assignment of Assignment of Leases and Rents.
- (iii) The Resolution has been duly and lawfully adopted by the Issuer and is in full force and effect.
- (iv) The Loan Agreement, the Bond Purchase Agreement, the Pledge and Assignment, the Assignment of Mortgage, the Assignment of Assignment of Leases and Rents 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 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 Bond Purchase Agreement and the Resolution and constitute valid and legally binding special, limited obligations of the Issuer enforceable against it in accordance with

their terms. The Bonds are payable solely from the amounts payable by the Institution pursuant to the Loan Agreement and the Security Documents.

- (vi) The Bonds do not constitute 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, nor any political subdivision thereof shall be liable thereon.
- (vii) Under existing law, interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. We express no opinion regarding whether interest on the Bonds will be included in "adjusted current earnings" for purposes of calculating the federal alternative minimum tax imposed on corporations.
- (viii) The interest on the Bonds is exempt, by virtue of the New York Not-For-Profit Corporation Law, 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 Bonds, the Loan Agreement, the Bond Purchase Agreement, the Pledge and Assignment, the Assignment of Mortgage, the Assignment of Assignment of Leases and Rents 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) Certain requirements and procedures contained or referred to in the Bond Purchase Agreement and certain other documents delivered in connection with the issuance of the 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 the Bonds or the interest thereon if any such change occurs or action is taken upon the advice or approval of Bond Counsel other than Barclay Damon, LLP.

We call attention to the fact that we have not been requested to examine, and have not examined, any documents or information relating to the Institution, other than documents contained in the record of proceedings hereinabove referred to, and no opinion is expressed as to any financial or other information, or the adequacy thereof, which has been, or may be, supplied to any Holder of the Bonds.

November 3, 2015  
Page 5

We have examined the executed Bond numbered RA-1 in fully registered form and, in our opinion, the form of Bond and the execution thereof are regular and proper.

Very truly yours,

  
BARCLAY DAMON, LLP

**BARCLAY DAMON<sup>LLP</sup>**

November 3, 2015

Buffalo Academy of Science Charter School  
Buffalo, New York

First Niagara Bank, N.A.  
Buffalo, New York

Re: Buffalo and Erie County Industrial Land Development Corporation  
\$3,250,000 Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter  
School Project), Series 2015

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 (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "*Bonds*") and issued the approving legal opinion in connection with the issuance of the Bonds.

You may rely on such opinion as if it were addressed to you.

Very truly yours,

  
**BARCLAY DAMON, LLP**

## CLOSING MEMORANDUM

### BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION

### \$3,250,000 TAX-EXEMPT REVENUE BONDS (BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL PROJECT), SERIES 2015

Date and Time of Pre-closing:	October 30, 2015 10:00 a.m.
Date of Closing	November 3, 2015 By telephone
Place of Closing:	Barclay Damon, LLP 1100 M&T Center, Three Fountain Plaza Buffalo, New York
Persons Appearing:	See Schedule "A" attached

#### I. Action Taken Prior To Closing

The Buffalo and Erie County Industrial Land Development Corporation (the "*Issuer*"), a not-for-profit local development corporation organized under the laws of the State of New York (the "*State*"), is issuing its Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project), Series 2015 in the aggregate principal amount of \$3,250,000 (the "*2015 Bonds*" or the "*Bonds*") for the benefit of the Buffalo Academy of Science Charter School, a charter school organized under and existing by virtue of the New York State Education Law (the "*Institution*"), for the purpose of financing a project to: (a) acquire improved real property located at 180-190 Franklin Street, Buffalo, New York, 14202 (the "*Land*") to be used to operate a charter school for grades 7-12 (the "*Facility*"); and (b) to pay costs incidental to the issuance of the Bonds (a) and (b) collectively, the "*Project*") and to fund a debt service reserve fund, if any, required with respect to the Bonds.

The Bonds will be special limited obligations of the Issuer payable solely from loan payments received by the Issuer from the Institution and certain other property of the Institution pledged to the payment of the Bonds.

The Bonds will be issued under and in accordance with a resolution adopted by the Issuer on October 21, 2015 and a Bond Purchase Agreement dated November 2, 2015 (the “**Bond Purchase Agreement**”), by and among the Issuer, the Institution and First Niagara Bank, N.A. (the “**Purchaser**”). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Bond Purchase Agreement.

The Issuer and the Institution will enter into a Loan Agreement dated as of November 1, 2015 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), pursuant to which the Issuer will make a loan of the Bond proceeds to the Institution.

As security for the obligations of the Institution under the Loan Agreement, the Institution will execute and deliver to the Issuer a Mortgage and Security Agreement dated as of November 1, 2015 (as amended, modified or supplemented from time to time, the “**Mortgage**”), granting a first lien on, and security interest in (subject to certain Permitted Encumbrances), the Mortgaged Property (as such term is defined in the Mortgage). The Issuer will assign the Mortgage to the Purchaser as security for the Bonds pursuant to an assignment of mortgage dated as of November 1, 2015 (“**Assignment of Mortgage**”).

In order to provide a source of payment and security for the Bonds, the Issuer has assigned to the Purchaser pursuant to the Pledge and Assignment dated as of November 1, 2015 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Pledge and Assignment**”), the Issuer’s rights and benefits under the Loan Agreement (except with respect to certain Unassigned Rights) and all amounts payable by the Institution thereunder (other than in respect of Unassigned Rights).

As additional security for the Institution’s obligations under the Loan Agreement, the Institution has granted to the Issuer a first priority interest in an assignment of leases and rents with respect to the Project pursuant to a certain Assignment of Leases and Rents dated as of November 1, 2015, by the Institution to the Issuer (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Assignment of Rents**”) which the Issuer has assigned to the Purchaser pursuant to a certain Assignment of Assignment of Leases and Rents dated as of November 1, 2015 by (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Assignment of Assignment of Rents**”), by the Issuer to the Purchaser.

The Institution and the Issuer have also entered into a certain Tax Compliance Agreement dated the date of delivery of the Bonds (the “**Tax Compliance Agreement**”), pursuant to which the Issuer and the Institution have covenanted to take certain action to maintain the tax-exempt status of the interest on the Bonds. The Issuer has executed a completed Internal Revenue Service (“**IRS**”) Form 8038 (Information Return for Private Activity Bonds) relating to the Bonds (“**Form 8038**”), pursuant to Section 149(e) of the Code and will cause the Form 8038 to be filed with the IRS.

The Bonds will be purchased by the Purchaser pursuant to the Bond Purchase Agreement.

Among the actions taken by the Issuer with respect to the Project and the issuance of the Bonds prior to closing were the following:

- September 10, 2015                      The Institution filed an Application for Tax-Exempt Revenue Bonds with the Buffalo and Erie County Industrial Land Development Corporation.
- September 24, 2015                      Notice of the Public Hearing was published in the *Buffalo News* pursuant to Section 147(f) of the Code.
- October 8, 2015                              Issuer held a public hearing pursuant to Section 147(f) of the Code.
- October 14, 2015                              The Finance Committee of the Issuer made a recommendation to the Issuer regarding the proposed issuance of the Bonds.
- October 21, 2015                              The Issuer adopted a resolution (the "*Resolution*") authorizing the issuance and sale of the Issuer's Tax-Exempt Revenue Bonds (Buffalo Academy of Science Charter School Project) in an aggregate principal amount not to exceed \$3,400,000 and the execution of related documents.
- October 27, 2015                              The County Executive of Erie County approved the issuance of the Bonds solely for purposes of Section 147 of the Code.

## II. Action To Be Taken At Closing

The following documents, or copies thereof, are to be delivered by the Issuer (I), the Issuer's Counsel (IC), the Institution (C), the Institution's Counsel (CC), the Purchaser (P), the Purchaser's counsel (PC), Agency (A) and Bond Counsel (BC), as follows:

Instruments	Responsible Party	Signatories
<b>A. Basic Documents</b>		
1. Loan Agreement	BC	C, I
2. UCC-1 Financing Statement Relating to the Loan Agreement (State and County)	BC	
3. Bond Purchase Agreement	BC	I, C, P
4. Pledge and Assignment with acknowledgment of Institution	BC	I, P, C
5. UCC-1 Financing Statements Relating to Pledge and Assignment (State)	BC	—
6. Specimen Bonds	BC	
7. Mortgage and Security Agreement	BC	C
8. UCC-1 Financing Statement Relating to Mortgage (State and County)	BC	
9. Assignment of Mortgage	BC	I
10. Assignment of Rents	BC	C
11. UCC-1 Financing Statement Relating to the Assignment of Rents (State and County)	BC	
12. Assignment of Assignment of Rents	BC	I
13. Security Agreement	PC	C
14. UCC-1 Financing Statements Relating to Security Agreement (State and County)	PC	

<b>Instruments</b>	<b>Responsible Party</b>	<b>Signatories</b>
15. Environmental Compliance and Indemnification Agreement	IC	C
16. Tax Compliance Agreement	BC	C, I
Exhibit A    Certain Defined Terms		---
Exhibit B    Arbitrage Rebate Compliance Requirements		---
Exhibit C    Certificates with Respect to Issue Price And Other Matters		P
Exhibit D    Internal Revenue Service Letters Regarding Tax-Exempt Status of Institution		---
Exhibit E    Exceptions to Institution's Representations and Covenants		---
Schedule A    Use of Proceeds of the Series 2015 Bonds		----
Schedule B    Weighted Average Maturity		----
17. Initial Requisition	BC	C
18. Closing Receipt	BC	C, I, P
<b>B. Items To Be Delivered By the Issuer</b>		
1. General Certificate of the Issuer relating to incumbency and signatures of officers, execution and delivery of the Bonds and the other documents to which it is a party, no litigation and continued existence, with the following items included as exhibits:	IC	I
Exhibit A:    County Resolutions;	IC	
Exhibit B:    Certificate of Incorporation certified by the New York State Department of State;	IC	

<b>Instruments</b>	<b>Responsible Party</b>	<b>Signatories</b>
Exhibit C: By-laws;	IC	
Exhibit D: Acceptance of County Executive of appointment to act as Member on behalf of County;	IC	County Executive
Exhibit E: Copies of Notices or Waiver of October 21, 2015 meeting.	BC	
Exhibit F: Resolution	BC	
Exhibit G: Affidavit of Publication of Notice of Public Hearing under Section 147(f) of the Code	IC	
Exhibit H: Transcript of Public Hearing		
2. TEFRA Approval of highest elected official of Erie County	BC	County Executive
3. Information Return for Private Activity Bond Issues (IRS Form 8038)	BC	I
4. Mortgage Recording Tax Affidavit	IC	I
<b>C. Items To Be Delivered By The Institution</b>		
1. General Certificate of the Institution relating to capacity and signature of Authorized Representative, due authorization, execution and delivery of the Bond Purchase Agreement, Loan Agreement and the other documents to which it is a party, no litigation and approval, etc. with the following items included as exhibits:	BC	C
Exhibit "A": Certified copy of Charter evidencing approval of Board of Regents and amendments thereto;	CC	
Exhibit "B": By-Laws;	CC	
Exhibit "C": Certificate of Existence;	CC	
Exhibit "D": IRS Determination Letter;	C	

<b>Instruments</b>	<b>Responsible Party</b>	<b>Signatories</b>
Exhibit "E": Resolutions of the Board of Trustees approving Institution Documents and authorizing the execution and delivery of same.	C	
2. Mortgagee Title Insurance Policy	C	
3. Survey	C	
4. Certificates of Insurance	C	
<b>D. Items to Be Delivered By the Purchaser</b>		
1. Investor Letter	BC	P
<b>E. Opinions of Counsel</b>		
1. Opinion of Harris Beach PLLC, counsel to the Issuer, addressed to Bond Counsel, the Institution, the Purchaser and the Issuer	IC	
2. Opinion of Jaekle Fleischmann & Mugel, LLP, counsel to the Institution, addressed to the Issuer and the Purchaser	CC	
3. Approving Opinion of Barclay Damon, LLP, Bond Counsel to the Issuer addressed to the Issuer	BC	
4. Reliance Letter of Barclay Damon, LLP, addressed to the Purchaser and the Institution	BC	
<b>J. Closing Memorandum.</b>	BC	—

### **III. Action To Be Required Concurrently With Or After Closing**

A. Mortgage, Assignment of Rents, Assignment of Assignment of Rents, Assignment of Mortgage, Pledge and Assignment to be recorded in the office of the Clerk of County of Erie, New York, and UCC-1 Financing Statements are to be filed as appropriate under the Uniform Commercial Code.

B. The Form 8038 is to be filed by Bond Counsel with the IRS.

Closing completed as above.

**SCHEDULE "A"**

**PERSONS APPEARING**

For the Issuer:	Buffalo and Erie County Industrial Land Development Corporation John Cappellino Karen Fiala Beth O'Keefe
For the Issuer's Counsel:	Harris Beach, PLLC Robert Murray, Esq.
For the Institution:	Buffalo Academy of Science Charter School Project Murat Demirbas, President Yusuf Akyar, Operations Manager Tevfik Kosar, Treasurer
For the Institution's Counsel:	Jaeckle Fleischmann & Mugel, LLP George F. Bellows, Esq.
For the Purchaser:	First Niagara Bank, N.A. Kristin M. Lonergan John Wright
For the Purchaser's Counsel:	Hodgson Russ LLP Christofer C. Fattey, Esq. Kimberly W. Sayoc, Esq.
For Bond Counsel:	Barclay Damon, LLP Susan R. Katzoff, Esq. Jean S. Everett, Esq.